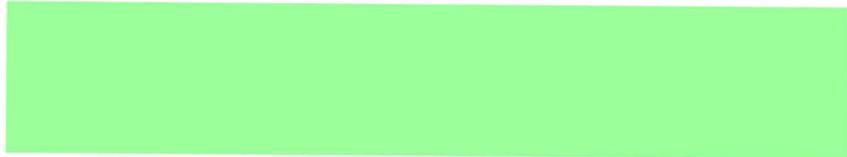


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

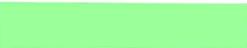


U.S. Citizenship
and Immigration
Services

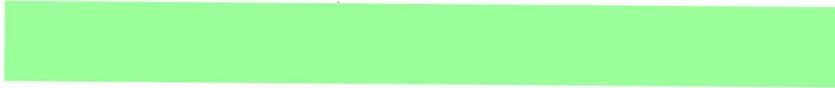


DATE: **JUN 03 2013**

Office: VERMONT SERVICE CENTER

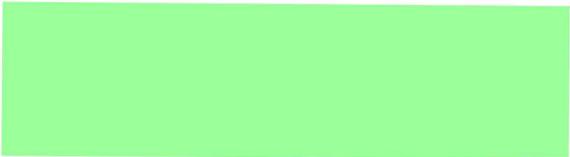
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner filed the nonimmigrant petition to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a computer software development and consultancy company with an affiliate, [REDACTED], located in India. It seeks to employ the beneficiary in the specialized knowledge position of programmer analyst, testing services domain. The petitioner will assign him to work primarily offsite at the [REDACTED] Arizona worksite of [REDACTED] for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed abroad or would be employed in the United States in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the record contains ample evidence establishing that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity. Counsel submits a brief and additional documentation in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has 60,000 employees worldwide, including nearly 12,000 in the United States. In a letter of support appended to the petition, the petitioner averred that it is a "leading provider of custom information technology ("IT") design, development, integration, and maintenance services primarily for 'Fortune 1,000' companies." Regarding its business model, the petitioner stated as follows:

[The petitioner] designs, engineers, and implements business solutions on a project basis for companies that are not in the IT sector. Generally, [the petitioner] does not provide staff augmentation for clients in the IT service sector. Rather, [the petitioner's] employees work directly for [the petitioner] on projects designed and built by our company, and under the direct and primary supervision of one or more [project managers for the petitioner] who typically oversee projects onsite. All projects are completely managed by [the petitioner].

Accordingly, the petitioner is not a placement company, nor an agent that arranges short-term employment.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that the company "typically assigns U.S.-based client site project leaders who have an advanced level of knowledge of [the petitioner's] proprietary tools and systems, as well as experience in key roles on other projects in which [the petitioner's] onsite/offshore methodology was implemented."

With regard to the beneficiary's position, the petitioner stated that he would be employed as a programmer analyst in the petitioner's Testing Services Domain, and that he would be working on the [redacted] project for the petitioner's client, [redacted]. The petitioner noted that the [redacted] project is the same project to which the beneficiary is currently assigned at the petitioner's offices in India. Regarding the beneficiary's physical worksite, the petitioner claimed that he would work onsite at the [redacted] office in [redacted] Arizona.

The petitioner explained that in providing solutions to [redacted] its project teams and the constituent professionals allotted to each project would develop a specific domain, also referred to as "an area of control" or "sphere of knowledge," particular to a specific project. The petitioner further stated that, from project to project, the technology spectrum is quite disparate and may involve any combination of technologies including application servers, products and data warehouse tools, databases, languages, multiple platforms, and other complex systems.

According to the beneficiary's resume submitted in support of the petition, the beneficiary has worked on the [redacted] project for [redacted] for approximately four months, and has worked on various other projects for [redacted] during his two years and nine months of employment with the petitioner's Indian affiliate.

The petitioner provided background information regarding the [redacted] project and the beneficiary's work on this project while in India. Specifically, the petitioner stated;

While serving on the [redacted] project in India, [the beneficiary] has accumulated project and technology specific expertise that is advanced and special. Indeed, his knowledge of the [redacted] project is not commonly held throughout [the petitioner]. Namely, the beneficiary is specialized in the development of CCSG Consumer credit service group targets individual customers in the U.S. markets [*sic*]. CCSG is responsible for developing, marketing and servicing all aspects of charge and lending card products of [redacted] in the United States. CCSG services are grouped according to customer status, i.e. existing card members, new card members, or card members eligible for an upgrade. The site provides an easier way to access information including card benefits, product comparisons, and [redacted] questionnaire. [The beneficiary] will apply his advanced knowledge of Indian subsidiary's proprietary software tools and quality assurance standards and procedures to

maintain and enhance the U.S. client's computer applications in accordance with quality control standards and business practices and procedures. Specifically, [h]e will continue his work on [REDACTED] project, and in that process, and will do the requirement analysis of the project as it relates to this particular [company] project for [REDACTED]. He gained his advanced and special knowledge by performing requirement studies and by developing and implementing several highly sophisticated application support modules.

Regarding the beneficiary's proposed transfer to the United States, the petitioner stated that the purpose of the transfer was to bring expertise to the U.S. that is not commonly held throughout the petitioner. The petitioner stated that the beneficiary would apply the advanced and special knowledge he gained while working abroad on the [REDACTED] project abroad, and described the duties to be performed in the United States as follows:

Getting KT from the client. (20%)

- KT is provided by the Business Team during the analysis stage of the project, explaining the requirement.
- Later a team is to be selected and a reverse KT is provided as per the requirement.

Providing KT sessions for Off-shore teams whenever required. (10%)

- KT sessions for the team members are arranged to explain requirements of the project provided by the client and make sure that the team is fine with requirement so that they can proceed further and such sessions are conducted for every new corner in to the team and at the time of new project.

Reviewing testing deliverables delivered by off-shore team. (10%)

- Test conditions are to be reviewed and finalized to prepare the test cases, test strategy, test plan and also to review the same.
- RTM is also prepared based on the requirements, test conditions, and test cases and also to review the same.

Working with External teams for test data set up. (20%)

- Teams like [REDACTED] are to be coordinated for test data set up before SIT phase to get different GNA decisions like Approved, Pending, Declined, Canceled, IRIPS Pending, IRIPS Conditional Approval.

Monitoring Quality Center related Activities. (10%)

- Quality Center is monitored regularly from the requirement phase of the project, and need to check whether all the requirements are covered and mapping with test cases. Defects raised are closed on time and no duplicate defects are raised and a proper defect description is to be followed.

Coordinating with other external teams working for [REDACTED]. (10%)

- Teams like [REDACTED] etc... are being coordinated before the start date of the project for their support and team members who are going to support. During SIT or UAT phase all the above mentioned teams must be coordinated if there is any crucial situation.

Arrange/Participate project status calls. (10%)

- Daily Status Calls are arranged for critical projects and a weekly status call is monitored for all the projects status where respective team leads and the team managers are involved in the call[.]¹

The petitioner further stated that while in the United States, the beneficiary would be under the direct supervision of [REDACTED] one of the petitioner's project managers, and that he would report directly to him regarding issues related to the [REDACTED] project. The petitioner also stated that due to the complexity of the beneficiary's knowledge, it is "difficult to impart it to another [] associate without long-term assignment to the ongoing [REDACTED], which would cause [the petitioner] significant economic inconvenience."

In addition, the petitioner stated that to serve as a test manager on the [REDACTED] project, an individual must have advanced and special knowledge of various technologies and processes, including tools such as QTP and Quality Center; Microsoft Office; winCVS; internal tools such as E-tracker, E-Metrics, and eCockpit; and software quality assurance tools including Qview and Qsmart.² The petitioner provided brief descriptions of its internal tools and noted that the knowledge required for the position is "highly technical knowledge" which is "held by only certain individuals at Programmer Analyst or higher level on the American Express Aurora project" and "not commonly held" throughout the company.

The petitioner noted that the beneficiary had acquired specialized knowledge of the technologies required, noting that he had a strong knowledge of various tools such as:

- CRAFT (Cognizant Reusable Automation Framework)
- TCP (Test Case Point)

¹ The AAO notes that the percentage of time devoted to each of these stated duties, as set forth both in the petitioner's letter of support and in its response to the RFE, accounts for only 90% of the beneficiary's time.

² The petitioner interchangeably uses the terms "programmer analyst" and "test manager" when describing the duties of the proffered position.

- Estimation Model
- ROI Calculator
- AQI (Application Quality Index)
- OATS (Orthogonal Array Testing Strategy)
- CompareIT Tool
- MCDC (Modified Condition & Decision Coverage)

The petitioner stated that the beneficiary gained in-depth knowledge of these various tools while working on various [REDACTED] projects, and further claimed that this knowledge is not generally known within the petitioner or outside of the petitioner in the industry in general. Specifically, the petitioner claimed that the beneficiary had in-depth knowledge of the TCP Estimation Model, good technical knowledge of CRAFT, expertise in Microsoft Office and winCVS, good exposure to the internal tools used in the CCSG group, in-depth knowledge of Prolite, a tool to measure and represent productivity, effort, schedule, requirements, and defect density, as well as Qview and Qsmart, and hands-on experience with HP Quality Center tool, which is used to track defects that arise at various stages of the project.

Finally, the petitioner claimed that the beneficiary completed 382 training hours as part of a formal training program and also acquired specialized knowledge through "informal trainings, knowledge transfer sessions and on the job experience using [the petitioner's] systems and tools." The petitioner identified the following training courses:

1. **Security and Awareness Training (4 hours)** [for [REDACTED] contractors]
2. **ONCOP (Open Network Confidentiality Operating Principles) (3 hours)** [annual training all [REDACTED] employees and contractors are required to complete]
3. **ADS eLearning (4 hours)** [for introducing new resources to [REDACTED] whereabouts such as Details and Timesheets]
4. **Clarity (2 hours)** [REDACTED] tool for entering billing hours and tracking project billing details]
5. **Accessibility – [REDACTED] (2 hours)** [web accessibility tool]
6. **ELM for Learners (eLearning) (2 hours)** [tool for tracking training and learning completed by [REDACTED] associates]
7. **Level 0: Banking & Financial Services (eLearning) (14 hours)** [REDACTED] basic level training in banking and financial services]
8. **Acceptable Use Policy (AUP) (eLearning) (2 hours)** [mandatory "Do's and Don'ts" annual training for employees of the petitioner]
9. **Quick Test Pro (QTP) (eLearning) (1.5 hours)** [overview of QTP automation tool]
10. **Cross Cultural Adaptability – US (8 hours)** [study of US culture and behavior]
11. **Testing Techniques (15 hours)** [overview of different software testing techniques and their functions]
12. **CVS (2 hours)** [tool allowing access to most recent version of project documents and assignments]
13. **L0 Life Sciences (8 hours)** [basic level training in life sciences]
14. **Year End Appraisal 2008 eLearning (3 hours)** [performance appraisal tool]

15. **CRAFT (56 hours)** [*petitioner's proprietary automation framework*]
16. **TCP Estimation Model (40 hours)** [*petitioner's approach for estimating all testing effort*]
17. **ROI Calculator (40 hours)** [*calculator providing return on investment details*]
18. **AQI (40 hours)** [*tool identifying risk-prone areas*]
19. **OATS (40 hours)** [*testing efficiency tool*]
20. **CompareIT Tool (40 hours)** [*tool comparing output files of batch executions*]
21. **MCDC (56 hours)** [*logical technique*]

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Engineering degree in Civil Engineering. On his resume, the beneficiary lists his technical skills as: Windows 95/98/2000/XP, Windows NT 4.0, C, C++, JAVA (Core java, Adv. Java J2EE), Oracle, Win Runner, Quality Center and Prolite. He states that he has four years of experience in the industry in testing, and the resume includes a description of each project to which the beneficiary has been assigned since the start of his career.

The director found the initial evidence insufficient to establish eligibility, and consequently issued a request for additional evidence (RFE). The director instructed the petitioner to submit additional evidence to show that the beneficiary's knowledge is not commonly held by practitioners in the field. The director requested that the petitioner describe a typical work day, highlighting specific duties that require an individual with specialized knowledge. The director also requested, *inter alia*, further documentation with respect to the training provided to the beneficiary, information regarding the amount of time required to train an employee to fill the proffered position, and the number of similarly trained workers within the organization.

In response, the petitioner explained that the beneficiary, while working on the [REDACTED] project in India, "has accumulated project and technology specific expertise that is advanced and special." The petitioner noted that he "gained his advanced and special knowledge by performing requirement studies and by developing and implementing several highly sophisticated application support modules."

The petitioner went on to further describe the beneficiary's training, while noting that classroom training "is not the most important qualification needed to determine who is most qualified to perform the duties required for certain positions." The petitioner stated that most of the beneficiary's knowledge has come from his experience working on past company projects since 2007. Nevertheless, the petitioner provided a new list of the training courses completed by the beneficiary, which included two additional training courses not included on the original list: (1) ISEB (International Systems Examination Board), identified as a Foundation Certificate in software testing (20 hours); and (2) Core Values and Standards of Business Conduct, described as understanding the petitioner's core values and business conduct (45 minutes). The addition of these new courses brings the amount of total training hours to 402.45.

The petitioner further stated that for an individual to adequately be able to perform the duties of the proffered position, one must undergo both classroom and hands-on training, and noted that knowledge of the following proprietary systems was required: (1) eMetrics; (2) Icare; (3) eCockpit; and (4) software quality assurance tools such as Qview and Qsmart. The petitioner also stated that the beneficiary had 36 months of experience

in the "card & payments" domain, which the petitioner claimed was core domain experience very important to [REDACTED] projects. Additionally, the petitioner stated that the beneficiary has received the necessary training and possesses the necessary knowledge to perform the duties of the proffered position. Finally, the petitioner stated that there are 1,192 programmer analysts in its U.S. workforce, and 181 of these employees work in its Business and Financial Services vertical. Although specifically requested by the director, the petitioner failed to state the amount of time required to train another employee in the required processes essential to the [REDACTED] project.

In summary, the petitioner claimed that the beneficiary's special and advanced knowledge may only be attained within the petitioner through direct work experience with the petitioner's process and tools and through project work for its clients such as [REDACTED]

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that it will employ him in a capacity requiring specialized knowledge. In denying the petition, the director noted that the beneficiary's knowledge of the [REDACTED] project and the processes and procedures used on this project appeared to be related more to internal [REDACTED] procedures than to proprietary tools and processes of the petitioner. The director concluded by stating that the beneficiary's knowledge did not appear to be distinguishable from other similarly-employed individuals in the industry.

On appeal, counsel for the petitioner asserts that the director's decision was erroneous, contending that the petitioner has submitted sufficient and detailed evidence of the beneficiary's specialized knowledge and the specialized knowledge capacity of the proposed position.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually

possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

A. Description of Job Duties

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The description of duties that the petitioner provided for the proffered position is entirely vague and generic. First, the AAO notes that the description does not appear to apply specifically to the [REDACTED] project, the claimed overseas source of the beneficiary's specialized knowledge. While the description of the overseas position clearly conveys that the beneficiary worked on the [REDACTED] consumer credit service group, the description of the proffered position includes no specific reference to similar details. Instead, the description is entirely nonspecific. Second, the petitioner repeatedly uses abbreviated terms in the breakdown of duties, such as KT, GNA, EMI, TDM, and RTM for example, yet provides no explanation or further information regarding the nature of these terms or how they apply to the claimed specialized knowledge of the beneficiary and its application to the project in the United States. The pervasive use of acronyms and technical terminology, without explanation, does not assist the AAO in determining eligibility.

The petitioner's description of duties, therefore, does little to clarify exactly what knowledge is required for performance of the role of programmer analyst/test manager, or how such knowledge will be applied. Specifics are plainly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner fails to adequately articulate or document the manner in which the beneficiary has been and will be employed in a specialized knowledge capacity. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

B. Proprietary Tools And Methodologies

With regard to the specific claims on appeal, both counsel and the petitioner continually assert that the proffered position requires project-specific knowledge that the beneficiary gained in India and experience with the petitioner's internal processes and procedures. They conclude that the duties of the proffered position could not be performed by the typical skilled programmer analyst specializing in the petitioner's banking and financial services (BFS) vertical, or in that industry in general.

The question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies, by itself, constitutes specialized knowledge. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects. Initially, in its letter in support of the Form I-129, the petitioner unequivocally stated that in order to serve as a programmer analyst on the [REDACTED] project, a programmer analyst must have "advanced and special knowledge" of various technologies and processes, including tools such as E-tracker, E-Metrics, and eCockpit, and software quality assurance tools including Qview and Qsmart. The petitioner also claimed that knowledge of more common third-party technologies such as QTP, Quality Center, Microsoft Office and winCVS was also required.

The petitioner provided the beneficiary's resume for the record. The AAO notes that while the beneficiary may in fact use the petitioner's internal tools to track his project activities, no company-specific knowledge is mentioned anywhere in his resume. For example, the beneficiary described the objective of one of his previous projects for [REDACTED] as "to display Terms & Conditions and Disclosures at the bottom of the application page as a scroll text box." The beneficiary indicates in his resume that the project was executed using knowledge of Windows XP, Struts Framework, Java, Jsp, Servlets, JavaScripts, AJAX and Quality Center. The beneficiary indicates that he uses the same third-party technologies for his work on the [REDACTED] project.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the [REDACTED] project. However, it is reasonable to expect all IT consulting firms to develop internal tools, methodologies, procedures and best practices for documenting

project management, technical life cycle and software quality assurance activities. The petitioner's Annual Report at page 2 provides an overview of the IT consulting industry, and explains that "IT service providers must have the methodologies, processes and communications capabilities to enable offshore workforces to be successfully integrated with on-site personnel." The petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies. The petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition to the tools and methodologies discussed above, the petitioner also claimed that the beneficiary had knowledge of proprietary tools developed by the petitioner that are applicable to the project in the United States, including CRAFT, TCP, Estimation Model, ROI Calculator, AQI, OATS, CompareIT Tool, and MCDC. The petitioner claimed that the beneficiary's knowledge of these internal tools, which are used in [REDACTED] platforms, has allowed him to play a major role in the initial phases of the various [REDACTED] projects. The petitioner concludes that his thorough knowledge of these projects so essential to the [REDACTED] projects has made the beneficiary an "expert" in application maintenance and development. The record, however, contains no documentation, such as internal handbooks or promotional materials, which document the existence of these internal processes the petitioner claims form the basis of the beneficiary's special and advanced knowledge, and which it claims are essential to the performance of duties for [REDACTED]. This lack of documentary evidence, coupled with the non-specific description of the duties to be performed in the United States, shed little light on the exact requirements for the beneficiary on the [REDACTED] project in the United States and whether specialized knowledge of these, or any similar processes or procedures, will actually be required. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

C. Training

Turning to the training history of the beneficiary, the AAO notes that between August 7, 2008 and November 14, 2008, the beneficiary underwent formal training in the processes identified above. According to the training list, each course lasted approximately one week, ranging from 40 hours to 56 hours. Therefore, it appears that within a three-month period, the beneficiary completed formal training in all of the required proprietary processes the petitioner claims are essential to the [REDACTED] project and [REDACTED] projects in general.

The petitioner failed to specify the amount of time required to train an employee in these claimed proprietary processes, such that they could also perform the duties attributed to the beneficiary. The petitioner claims that 181 programmer analysts are employed in the [REDACTED] vertical in the United States. The record also suggests, based on the beneficiary's training records, that an individual can complete formal training in all of the essential proprietary processes within a three month period, thereby suggesting that such knowledge is easily transferrable to other similarly-trained employees of the petitioner. Absent evidence from the petitioner

outlining the manner in which programmer analysts are trained and the length of time required to become, as the petitioner claims, an "expert" in these processes, the AAO must conclude that other programmer analysts in the [REDACTED] vertical have received similar training and perform similar duties to those of the beneficiary. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Furthermore, the record appears to indicate that the beneficiary has been fully performing the duties of the programmer analyst position since the date he was hired by the foreign entity. The beneficiary received only 17 hours of formal training in 2007, the year he was hired, and this training was provided in "testing techniques" and "CVS," an application allowing for retrieval of the most recent version of project documents and assignments. Neither of these subjects appear to constitute or contribute to specialized knowledge as contemplated by the regulations. Moreover, the petitioner does not articulate or document how specialized knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. Instead, the petitioner repeatedly asserts that knowledge is gained while working in a hands-on manner on various client projects.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in software testing technologies and appropriate functional or domain background for the project to which they will be assigned. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

D. Preponderance Analysis

The petitioner submitted lengthy statements in support of the petition and in response to the RFE which provide extensive detail regarding the nature of its business operations. However, it simultaneously provided varied claims with regard to the beneficiary's specialized knowledge that have not consistently explained the nature or specifics of the claimed knowledge, documented when or how he acquired such knowledge, or explained why such knowledge is necessary to the performance of his proposed job duties in the United States. As such, the evidence as a whole does not allow the AAO to conclude that the beneficiary possesses special knowledge by virtue of his training as a programmer analyst working in the petitioner's [REDACTED] vertical, either compared to programmer analysts working for the petitioner or compared to other programmer analysts providing consulting services in the same industry segment.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

On appeal, counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. In the present matter, the most pertinent memorandum is the Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). The

Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at page 4.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among programmer analysts in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

It is reasonable to conclude, and has not been shown otherwise, that all programmer analysts assigned to client projects must use the same tools to record and track project activities. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is advanced in comparison to that possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies, such that knowledge of such processes alone constitutes specialized knowledge.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

(b)(6)

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IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.