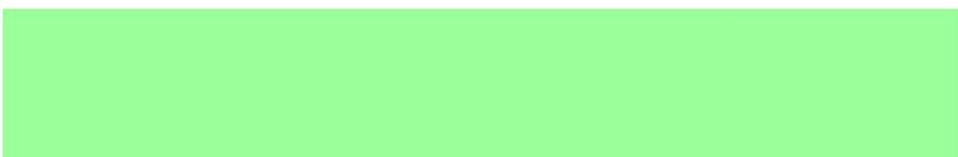




U.S. Citizenship
and Immigration
Services

(b)(6)



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 seeks to temporarily transfer the beneficiary to the United States as an employee with specialized knowledge to serve in the position of Systems Analyst – [REDACTED] for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary's employment abroad was in a specialized knowledge capacity; and (2) that the beneficiary 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.

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 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."

Finally, the petitioner explained that, in providing solutions, 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.

With regard to the beneficiary's position, the petitioner claimed that he would be employed as a systems analyst in the petitioner's [REDACTED]. It claimed that he would work onsite at the petitioner's office in Teaneck, New Jersey, where he would continue to work on an ongoing internal project entitled [REDACTED], the same project upon which he is currently working at the petitioner's offices in India. The petitioner stated that the beneficiary has worked on this project since he began his employment with the foreign entity approximately two years prior to the filing of the petition.¹

Regarding the [REDACTED] project, the petitioner stated:

[The petitioner's [REDACTED] has transitioned into using a new product for all its processes worldwide. It is currently implementing use of the tool [REDACTED] for the U.S. processes. The [REDACTED] tool aims at creating a single, scalable, and global visa processing system to meet [the petitioner's] Immigration needs. The system is being configured to meet the changing immigration requirements and needs to have a configurable work flow for defining the process flows specific to each visa types for all the countries. The system should meet the new requirements expected from business and automate the collection of data for petition processing in order to reduce the time involved and errors. [REDACTED] is an important tool in consolidating reports required for business forecasting and other key reports from the business.

Regarding the beneficiary's work on this project in India, the petitioner stated:

[The beneficiary] was responsible for implementing the [REDACTED] tool for Rest of World (ROW) and Asia-Pacific (APAC) immigration processes. He is responsible for developing the new enhancements required to implement the process flows to meet the concerned country immigration requirements, the company policies, and the regulatory compliance policies of the various government agencies. He is responsible for communicating and coordinating with the immigration user on the change and enhancements required on the tool to meet the requirements. He is also responsible for configuring alerts based on various

¹ The AAO notes that the beneficiary also worked on a second project for the petitioner, [REDACTED] for a period of four months, during his tenure with the foreign entity.

expiry dates, and internal SLAs. [The beneficiary] implements the processes of various immigrant and non-immigrant visas. He is responsible for developing a team to monitor the performance of the tool analyzing the future volume. [The beneficiary] is responsible for the initial User Acceptance Testing (UAT) where the user group was trained on the product and has been involved in the first level testing of the product. He is also involved in preparing the test cases which is required for the users to understand the functionality of the system and steps involved in the processing of a petition. He is responsible for developing the release notes with the enhancements to be delivered. Also, he is responsible for implementing the patches related to the new features of the tool into the staging and production server. He is involved in resolving issues raised during the Phase 1, 2 & 3 launch.

The petitioner further 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 our ongoing and in-house [redacted] project, which would cause [the petitioner] significant economic inconvenience."

Regarding the beneficiary's assignment in the United States, the petitioner stated that the beneficiary would apply the advanced and special knowledge he gained working on the [redacted] project abroad, and would perform the following duties:

Involved in End to End Project Implementation (25%)

- Prepares the project plan with the deadline date[.]
- Responsible for implementing the project on time[.]
- Maintains the Risk Management sheet and provides the mitigation for the risk.
- Formulates the communication plan which needs to be sent to all the stake holders and users.
- Plans for Branding of the new tool[.]
- Implements the change request[.]
- Checks on the functionality of the new enhancements[.]

Inputs Gathering (10%)

- Interacts closely with U.S. immigration user in [the petitioner] to get the required information on the new enhancements to be built in the [redacted] System[.]
- Interacts with the onsite team to understand the "as is" process and implement the same tool with the required features[.]

Development (25%)

- Develop a plan with list of new enhancements required based on the inputs gathered[.]
- Set up a team to work on the features to be delivered[.]
- Set up regular discussion with the Immigration user on the enhancements developed[.]

- Change request to be finalized based on the US immigration rules and regulations[.]
- Delivery dates to be shared with the business[.]
- Develop the request as an enhancement into the tool without affecting the current flows[.]
- Develop the migration tool to migrate the current data to the [REDACTED] tool[.]
- Set Up real time interface with other inter tools like [REDACTED] to flow the required data's of the employees[.]
- Develop contingency report for the business to portray the visa status of the employees with the required details[.]

Testing (10%)

- New functionalities to be tested before delivery to the users in the staging server[.]
- Preparing the test case which will help the users to test the functionality[.]
- Guides the business users while they are performing the UAT.
- Plays part in testing this functionality as a user.

Pre Implementation Work (15%)

- Provides the class room training for the Onsite Users.
- Monitors whether the past records are migrated in [REDACTED] system properly.
- Coordinates with the internal team to prepare the Test case for User acceptance testing[.]
- Prepares the training material for all the users based on their roles.
- Provides the Online training for the offshore team and Vendor.
- Maintains the defect tracker and will get all the issue[s] resolved with help of Technical team before [going] live.
- Coordinates with Auditing team to check the process flow configured in the system as per [the petitioner's] policy.

Post Implementation (15%)

- Resolve the "Initial project launch issues"[.]
- Provides the class room training for onsite team members on regular basics to make them comfortable with the [REDACTED] tool.
- Ensures the best practice of the system is used by the users.
- Streamlines the process flow by new change request.
- Monitors the performance of the [REDACTED] tool[.]
- Details of new enhancements to be announced to the business.

The petitioner also stated that the beneficiary would be under the supervision of a project manager [REDACTED] who would oversee his day-to-day duties.

In addition, the petitioner stated that to serve as a systems analyst on the [REDACTED] project, an individual must have advanced and special knowledge of three of the petitioner's intellectual property tools: [REDACTED] a web-based knowledge-sharing and project management platform; [REDACTED], a web-based workflow driven project management application; and [REDACTED] a software quality assurance tool. The petitioner also stated that "extensive training, both formal and hands-on, is required to perform the specialized job duties for [the petitioner]," which it claimed can only be gained by working for the company. According to the petitioner, before an individual could perform the beneficiary's duties, one must work for the petitioner or its affiliates for at least one year, in order to gain experience utilizing the petitioner's internally developed products, tools, services, techniques, management, and procedures, such as internally-developed project management and software quality assurance tools including [REDACTED] and [REDACTED].

Finally, the petitioner claimed that the beneficiary completed 138 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. Application Development using Visual Studios Team System 2008 Environment (40 hours)²
2. [REDACTED] (24 hours)
3. Microsoft SQL Server 2008 Administration (32 hours)
4. Business Ethics (10 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Science degree in Physics and a Master of Science degree in Information Technology. On his resume, the beneficiary lists his technical skills as: Windows 2000, 2003, XP, Microsoft.Net (Asp.Net, C#.Net), Microsoft SQL Server 2000 and 2005, [REDACTED], Timesheet System, and [REDACTED]. He states that his two years of experience with the foreign entity have been in analysis, design, coding, and unit testing for various enhancements. The resume includes a description of each project to which the beneficiary has been assigned since joining the foreign entity, but it does not provide information regarding the technical environment of any of the projects.

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 that clearly shows 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.

² The dates the petitioner provided for this training course were June 25 through June 29, 2007. The beneficiary joined the foreign entity in March 2008. Moreover, it is noted that this course is listed twice on the list of training with the identical dates, both of which are prior to the beneficiary's employment with the foreign entity.

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 emphasized that, while the beneficiary has in-depth knowledge of the company's [REDACTED] project, "his specialized knowledge is not limited to this particular client" and "can be applied to multiple client projects within [REDACTED] which is an internal-facing domain within the petitioner." Specifically, the petitioner stated that the beneficiary's specialized knowledge includes the following components:

- The [petitioner's] business model including the coordination of onshore/offshore work.
- [The petitioner's] IP and related methods, including our internally-developed project management and software quality assurance tools (including [REDACTED]).
- [The petitioner's] project methodology, including the way in which project deliverables are set forth and accomplished, and our internal systems for ensuring client objectives are achieved within appropriate timeframes.
- Domain-related knowledge, including advanced and complex internal training, both in-class and hands-on related to [the petitioner's] unique, versatile, and highly scalable software systems and software development methodologies developed by [the petitioner's] software engineers specifically for [REDACTED]

As such, the petitioner stated that the beneficiary's skill-set "involves in-depth knowledge of [the petitioner's] business methods, specific, complex project management software, and [the petitioner's] unique industry-specific products." The petitioner reiterated that "it takes months of hands-on work experience at one of [the company's] development centers to master it." The petitioner concluded that "such combination of skills comprises highly specialized, advanced and complex knowledge which is not commonly held in the industry and can only be gained by working for [the petitioner], and, even within [the petitioner], is not widely held."

With respect to the beneficiary's proposed duties, the petitioner provided a similar overview to the one submitted in the initial letter of support, which omitted some tasks originally included and expanded on the list of duties to be performed. Specifically, the petitioner provided the following updated overview of the duties associated with the U.S. position:

Involved in End to End Project Implementation (25%)

- Prepares the project plan with the deadline date[.]
- Prepares the project estimation[.]
- Responsible for creating the Use Case diagrams based on the requirements[.]
- Responsible for tracking the project without schedule slippage and ensuring the delivery by coordinating with Offshore team[.]
- Responsible for developing the application components which used to interact with other application components in the system[.]

- Maintains the Risk Management sheet and provides the mitigation for the risk.
- Formulates the communication plan which needs to be sent to all the stake holders and users.
- Implements the change request[.]
- Checks on the functionality of the new enhancements that has been developed by the offshore team before delivering the same to [the petitioner].

Inputs Gathering (10%)

- Interacts closely with U.S. immigration user in [the petitioner] to get the required information on the new enhancements to be built in the [redacted] System[.]
- Prioritizing the requirements by interacting with the user[.]
- Interacts with the onsite team to understand the "as is" process and implement the same tool with the required features[.]

Development (25%)

- Develop a plan with list of new enhancements required based on the inputs gathered[.]
- Allocating task to the development team and ensuring the standards at the time of development.
- Set up regular discussion with the Immigration user on the progress of the enhancements[.]
- Ensuring the Change request to be finalized based on the US immigration rules and regulations[.]
- Ensuring the current tool development without affecting the process flows of the existing tools.
- Develop a migration tool to migrate the current data from the system to the [redacted] tool[.]
- Establishing real time interface with other internal Source Data Systems like [redacted] [.]
- Develop contingency report for the business to portray the visa status of the employees with the required details[.]

Testing (10%)

- New functionalities to be tested before delivery to the users in the staging server[.]
- Preparing the test case which will help the users to test the functionality[.]
- Providing [redacted] to the Business users on application navigational flows[.]
- Guides the business users while they are performing the UAT.

Pre Implementation Work (15%)

- Provides the class room training for the Onsite Users.

- Monitors whether the historical records from older system are migrated to [redacted] system properly.
- Prepares the training material for all the roles of users.
- Maintains the defect tracker and get the issues resolved with help of Technical team before [going] live.
- Coordinates with Auditing team to check the process flow configured in the system as per [the petitioner's] policy.

Post Implementation (15%)

- Resolve the issues if anything occurred in the live environment [.]
- Provides the class room training for onsite team members whenever there is a change in the process flow or when new team members are coming to the system.
- Streamlines the process flow for new change requests.
- Implementing patches in the production environment[.]

The petitioner further stated:

Since the users in the U.S. are the primary target audience of this project, there is a basic user acceptance testing (UAT) to be set up, explaining the complete working module of the new application. The old data maintained in the U.S. should be migrated to new tool based on the current petition status after finalizing to do the same by coordinating with U.S. users.

The associates who are working for [redacted] application should be aware of [the petitioner's] tools and standards as well as domain expertise. The visa processing application is a unique application area, and so the day-to-day changes in the Visa processing would [need] to be communicated to the team via the Business. Only someone who has been working with the application for a long time would [be] aware of all the process flow so the new enhancements can be developed without much change in the existing process flows. Also, the utilization percentage is to be maintained for the visa processing which will help [the petitioner] grow globally.

Automation of the current system related to immigration at [the petitioner] needs to be carried out at the earliest to efficiently manage the strong growth curve that the company possesses. [The beneficiary's] transfer to the U.S. to implement changes to the current system by using his experience in implementing a similar system offshore would be part of a critical exercise in achieving this objective.

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 provided a new list of the training courses completed by the beneficiary, demonstrating the completion of 170 training hours through the petitioner's "Academy." The petitioner stated that most of the beneficiary's knowledge has come from her experience working on past company projects since 2008. Nevertheless, the petitioner provided information regarding 170 hours of training the

beneficiary completed in the following areas: Microsoft.Net Advanced (24 hours); Project Training Management (8 hours); Business Ethic (10 hours); [REDACTED] (24 hours); Microsoft SQL Server 2008 Administration (32 hours); Microsoft.Net Framework Fundamentals (8 hours); Object-Oriented Programming in Microsoft.Net (8 hours); Relational Database Management System (RDBMS) (8 hours); Microsoft C#.Net (8 hours); and Application Development using Visual Studio Team System 2008 Environment (40 hours). The petitioner indicated that the beneficiary's training in Microsoft.Net Advanced, Microsoft SQL Server 2008 Administration, Microsoft.Net Framework Fundamentals, Object-Oriented Programming in Microsoft.Net, Relational Database Management System (RDBMS), Microsoft C#.Net, and Application Development using Visual Studio Team System 2008 Environment was Third Party/General Market Vendor Training.

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 specific training in SQL Server 2008 Administration and Microsoft Certified Professional was required. The petitioner further stated that training in the petitioner's tools, standards knowledge, and application components development knowledge is required. According to the petitioner, the minimum amount of time needed to train an employee is "one month for functional training; two months for technical training; and 2 months for domain training."

In addition, the petitioner claimed that any new resource assigned to the project in the beneficiary's place "will involve a lot of cost and time restraint," and "should have knowledge on multiple tools and products like SQL Server 2008 and Microsoft.Net 2005." The petitioner emphasized that the beneficiary "amply fits the definition of a key employee" because "his knowledge of the various technologies on which applications are built and his experience with the [REDACTED] sector combine to make this skill set hard to find." Finally, the petitioner mentioned that only three (3) out of 4,417 Systems Analysts in its U.S. workforce work in the [REDACTED] vertical, and that the beneficiary would be the only in-house systems analyst.

In summary, the petitioner stated that the beneficiary's expertise "encompasses [the petitioner's] unique methodologies and the specific [petitioner] industry specific domain, in addition to [the petitioner's] business product and technical processes knowledge, all of which may only be attained within [the company] by through direct work experience with [the petitioner's] IP/IT development projects for the client." The petitioner concluded that "such knowledge is neither common nor basic with [the petitioner] or the client."

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 acknowledged the petitioner's claim that the beneficiary completed 170 hours of training, but emphasized that a large percentage of the training completed was in third party processes, procedures and tools which are readily obtained in the petitioner's 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. The record indicates that the beneficiary has performed essentially the same duties for the petitioner's affiliate since receiving his first project assignment in March 2008 and that he will continue to perform the same duties in the United States. These duties, as described in the beneficiary's resume, include "analysis, design, coding, and unit testing for various enhancements," as well as "generate test plan and test cases for new system testing" and "imparting system knowledge to the new team members." While the beneficiary's assignment to this project, as well as his brief assignment to the [REDACTED] project, has required him to provide these testing services for the various tools involved, the petitioner did not identify the technological environment or claimed specialized knowledge skill-set associated with the [REDACTED] project or with the beneficiary's specific duties. Instead, the description of duties is entirely nonspecific.

In fact, in response to the RFE, the petitioner emphasized that "the beneficiary's specialized knowledge is not limited to this particular client." Instead, the petitioner stated that the beneficiary's specialized knowledge "can be applied to multiple projects within [REDACTED] which is an internal-facing domain within [the petitioner]." As such, the petitioner did not establish whether or how the beneficiary's prior experience working on the [REDACTED] project instilled him with specialized knowledge required for the proffered position in the United States. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

While the petitioner has made varied claims regarding the beneficiary's specialized knowledge, it has not consistently explained the nature or specifics of the claimed knowledge, consistently 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 reach a favorable comparison between the knowledge possessed by the beneficiary and the knowledge generally held by systems analysts working in the petitioner's [REDACTED] vertical, and other systems analysts working in the same industry segment. 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).

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 systems analyst specializing in the petitioner's [REDACTED] 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. The petitioner specifies that the beneficiary had approximately two years of experience assigned to the [REDACTED] project in India and attempted to define the knowledge requirements specific to this project in several different ways. Initially, in its letter in support of the Form I-129, the petitioner unequivocally stated that in order to serve as a Systems Analyst on the [REDACTED] project, a systems analyst must have "advanced and special knowledge" of [REDACTED] and [REDACTED] three of the petitioner's internally developed tools. The petitioner emphasized that this knowledge is possessed only by persons working at a systems analyst or higher level position on the [REDACTED] project. At the same time, the petitioner indicated one must have at least one year of experience working for the petitioner or its affiliates in order to gain specialized knowledge of such processes and procedures, and did not state the capacity in which one must be employed to gain this requisite knowledge. Finally, the AAO notes the petitioner's claim that applications such as [REDACTED] are applied in its daily operations, thereby suggesting that all of its employees, regardless of the specific project to which they are assigned, have the same or similar knowledge of this application.

While the AAO notes that knowledge of these systems may in fact only be attainable through employment with the petitioner, there is insufficient evidence that the beneficiary's knowledge of the petitioner's intellectual property is more specialized and advanced than other systems analysts or other similarly-trained employees of the petitioner, or that a similarly-trained systems analyst could not readily learn these internal processes once commencing employment with the petitioner. For example, the petitioner's overview of the beneficiary's training identifies minimal coursework in the three essential applications identified above. In fact, the record indicates that the beneficiary has only received training in [REDACTED] and claims that this 24-hour formal in-house training was administered 17 months after the beneficiary began working on the [REDACTED] project. The AAO further notes that, despite the submission of numerous certificates demonstrating the beneficiary's completion of third party training, there is no similar documentation of his completion of [REDACTED] training as claimed by the petitioner. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

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 systems analyst 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)).

C. Training

Turning to the training history of the beneficiary, it is noted that the petitioner fails to explain how the beneficiary was able to effectively work on the [REDACTED] Project for 1.5 years prior to receiving training in the [REDACTED] application. The AAO notes that the first phase of the [REDACTED] tool, according to the petitioner, went "live" in 2008, thereby further indicating that significant accomplishments were obtained by the beneficiary on that project without the mandatory [REDACTED] training that the petitioner claims is so essential. Moreover, the beneficiary was immediately assigned to the [REDACTED] project when he was hired by the foreign entity without receiving any type of formal training. These discrepancies, coupled with the absence of documentation indicating that the beneficiary ever received formal, in-house training in [REDACTED] and [REDACTED], undermines the petitioner's claim that the beneficiary has specialized knowledge of these applications, or that a similarly-trained or educated systems analyst in the industry could not readily assume the duties performed by the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Since the record indicates that the processes identified above are used in the petitioner's day-to-day operations, and absent evidence demonstrating that the beneficiary has received formal training in these processes, the AAO finds that the beneficiary's knowledge of these internal applications is akin to those of other systems analysts within the petitioner's organization or could readily be learned by systems analysts in the general industry.

Further, and more importantly, the petitioner did not explain how, when, or whether the beneficiary himself acquired "advanced and special knowledge" of these systems or why such knowledge is required to perform the duties of a systems analyst for the [REDACTED] project. As noted above, the beneficiary worked on the [REDACTED] project for approximately 1.5 years before receiving training in [REDACTED], knowledge of which the petitioner claims is essential to perform the beneficiary's duties. The petitioner fails to explain, however, how [REDACTED] and [REDACTED] are applied in the execution of the beneficiary's project duties, which is significant since the first phase of the project was launched only two months after the beneficiary commenced work on the project. Moreover, counsel contends that Phases 2 and 3 were launched shortly thereafter. Therefore, it is apparent that the beneficiary, with less than one year of experience with the petitioner and no formal training in any of the three processes the petitioner claims is essential to perform the duties associated with the project, was able to participate in the launch the first 3 phases of the [REDACTED] tool. Consequently, the AAO discounts the petitioner's claim that one must have at least one year of experience working with the petitioner in general before being qualified to work on the [REDACTED] project, since the beneficiary was clearly able to work on and launch the first phase of the project with only two months of experience and no formal training from the petitioner. Moreover, the AAO further discounts the claims that specialized knowledge of [REDACTED] and [REDACTED] is required, since the record is devoid of sufficient evidence that the

beneficiary received formal training not readily available to other systems analysts or similarly-employed persons with the petitioner. Although the AAO acknowledges the petitioner's claim that hands-on experience also contributed to the beneficiary's specialized and advanced knowledge, the petitioner provides no information regarding the manner in which such knowledge was gained or why other systems analysts would not gain the same knowledge during their day-to-day duties. Since the petitioner indicates that the beneficiary's specialized knowledge can be applied to "multiple projects" and is not restricted solely to the [REDACTED] project, it is unclear, therefore, why the remaining 4,417 systems analysts employed by the petitioner would not also have the same knowledge that could be applied interchangeably to the petitioner's various projects.

The AAO also notes significant discrepancies regarding the beneficiary's training history. In the initial letter of support, the petitioner claimed that he had 138 hours of formal training with the petitioner as follows:

1. Application Development using Visual Studios Team System 2008 Environment (40 hours) from June 25 to June 27, 2007;
2. [REDACTED] (24 hours) from July 15 to July 17, 2009;
3. Microsoft SQL Server 2008 Administration (32 hours) from July 16 to July 22, 2009;
4. Business Ethic (10 hours) on February 2, 2010; and
5. Application Development using Visual Studios Team System 2008 Environment (40 hours) from June 25 to June 27, 2007.

There are several problems with this training chart. First, the "Application Development using Visual Studios Team System 2008 Environment" course is listed twice with the exact same dates (June 25 to June 27, 2007), which would generally prompt the AAO to discount the second, duplicate listing of this course and the corresponding 40 hours of training. However, a closer review of this course and the dates of training indicates that the beneficiary could not possibly have received this training, since his employment with the petitioner did not commence until March of 2008. Further, there is no indication that this training was provided by a third party prior to the beneficiary's employment with the petitioner, since the petitioner clearly indicates that the courses listed represent formal training offered in-house by the petitioner's affiliate in India. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In response to the RFE, the petitioner provides additional evidence that conflicts with the claimed training offered to the beneficiary. Specifically, the petitioner claims that, contrary to the initial letter of support, the beneficiary has received 170 hours of formal training, but simultaneously indicates that almost all of this training was provided by third parties. Additionally, the AAO notes that the "Application Development using Visual Studios Team System 2008 Environment" course from June 2007 is omitted and numerous courses have been added, yet no explanation for these changes in the beneficiary's training history is offered.

In the newly-submitted chart, the petitioner claims that the beneficiary has received the following in-house training:

1. Project Management Training (8 hours) on March 29, 2010;
2. Business Ethics Training (10 hours) on February 2, 2010; and
3. [REDACTED] (24 hours) from August 17 to August 19, 2009.

Based on this document, the beneficiary has received a total of 42 hours of formal training from the petitioner's Indian affiliate during his 25-month tenure with the company. It is noted that his first formal training, administered in [REDACTED], was not offered until 1.5 years after his employment commenced, and the remaining training in project management and business ethics, which appear from the course descriptions provided to be general courses that could be offered in any business environment, are not project specific to [REDACTED] or the petitioner's business operations in general. Furthermore, these courses were not offered to the beneficiary until approximately 20 years after his employment with the petitioner commenced.

Additionally, the remaining training identified in response to the RFE, which is supported by documentation in the form of training certificates issued to the beneficiary, is in various Microsoft application development platforms such as SQL and .Net, which are platforms readily available to the general public. The AAO notes also that, in response to the RFE, the petitioner claimed that "new resources" that could potentially be assigned to the [REDACTED] project must have knowledge of these tools and projects. Curiously, there is no longer an assertion by the petitioner that a systems analyst assigned to the [REDACTED] project be versed in [REDACTED] or [REDACTED].

In denying the petition, the director focused on the third-party training administered to the beneficiary, and concluded that the beneficiary's knowledge of these various Microsoft platforms could not be deemed special or advanced knowledge since training in these platforms was readily available to anyone who wished to invest the time. The AAO agrees with the director's findings.

Specifically, a review of the new training history for the beneficiary submitted in response to the RFE demonstrates that he received 128 hours of third-party training in Microsoft platforms, which again are tools and products offered globally to the general public and not restricted specifically to employees of the petitioner or software professionals in general. Consequently, the AAO cannot accept an unsupported assertion that it is uncommon for a software professional such as the beneficiary to be knowledgeable of widely-used technologies such as SQL and .Net and that it would be assigning a new resource to the [REDACTED] process would involve "a lot of cost and time restraint," particularly since the beneficiary was immediately assigned to the [REDACTED] project when his employment commenced with the petitioner. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Neither the petitioner's description of the [REDACTED] project nor its description of the beneficiary's duties contains any reference to these petitioner's proprietary systems or the various third party platforms discussed above. The beneficiary's training records make no reference to two of the three systems identified by the petitioner as essential to the proffered U.S. position, and indicate that training in the third system was not provided to the beneficiary until he had been working on the project for 1.5 years. Moreover, the beneficiary's resume also does not refer to the petitioner's internal processes when describing his duties on the [REDACTED] project. Instead, it identifies ".Net 2005," "C#," and "SQL Server 2005" as programming

languages used on the project, which the AAO has determined are platforms readily available to software professionals in general. Although the record indicates that the beneficiary received third party training in these languages, the record also indicates that his third party training in these languages was not provided until March of 2009 and July of 2009. Again, this indicates that, despite requiring knowledge of these languages as the petitioner claims, the beneficiary was able to work on the [REDACTED] project for approximately one year prior to receiving third party training in these platforms. This fact, coupled with the beneficiary's immediate assignment to the [REDACTED] project, again establishes that basic training in the field of information technology without specialized training from the petitioner enabled the beneficiary to perform the duties associated with the [REDACTED] project.

Overall, therefore, the evidence of record fails to corroborate the petitioner's initial claim that knowledge of [REDACTED] and [REDACTED] are actually required for the position or the supplementary claim that knowledge of various Microsoft platforms is required for the petition, that the beneficiary has "advanced and special knowledge" of any of these processes or systems, or that knowledge of such processes or systems rises to the level of specialized knowledge within the petitioner's company or within the industry as a whole. Again, when the director asked that the petitioner further clarify the beneficiary's claimed specialized knowledge and knowledge required for the U.S. position, the petitioner abandoned the claim that the beneficiary was required to have specialized knowledge of its intellectual property, and instead emphasized knowledge in general programming languages widely shared by similarly trained and employed individuals in the petitioner's company and the industry in general. Moreover, despite the director's specific focus on third party training and the absence of specific documentation relating to the petitioner's own internal processes or procedures, counsel for the petitioner does not mention any of these on appeal despite the claims throughout the record that such knowledge is an absolute requirement for the position.

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 systems analyst working in the petitioner's [REDACTED] vertical, either compared to systems analysts working for the petitioner or compared to other systems analysts providing 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.

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 systems analyst 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 systems analysts assigned to 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.

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.