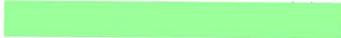


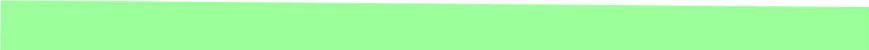


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 13 2013** Office: VERMONT SERVICE CENTER 

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 in its insurance domain. The petitioner will assign him to work primarily offsite at the offices 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 more than 60,000 employees worldwide and approximately 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 Insurance Domain, and that he would be working on the Broker Dealer Data Warehousing (BDDW) project for the petitioner's client [REDACTED]. The petitioner noted that the BDDW 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 on the Form I-129 petition that he would work onsite at the client site in Bloomington, Minnesota.¹

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 BDDW project for [REDACTED] during his thirteen months of employment with the petitioner's Indian affiliate.

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

While currently working on this project in India, [the beneficiary] has been working on a lead programmer role. He takes care of both Production support and & Business support activities for the project. He uses Informatica / PLSQL majorly for doing any bug fix or enhancements in the BDDW application. He also uses Mainframe tool for querying the Db2 tables and

¹ The AAO notes discrepancies regarding the work location of the beneficiary. In its letter of support, it claims that he will work onsite for [REDACTED] at its Bloomington, Minnesota location. However, on the Form I-129, the petitioner indicates in Part 5 that the beneficiary will work at [REDACTED] in New York, New York. Finally, in response to the RFE, the petitioner claims that the beneficiary will in fact work onsite for [REDACTED] at its Somerset, New Jersey office. 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).

doing any manual insert or update task. In case of any job failure or any production issue, he has to fix the issue well within time using Informatica tool. He also uses the Unix tool to good effect in case of any production issue for doing script analysis. He is responsible to analyze, coordinate discussions, code, and test and deliver solutions to the issues reported. He also uses SQL navigator extensively for working with Oracle tables for querying or data update purposes. Along with technical knowledge, he has acquired good domain knowledge on client's business rules, policies and procedures. He is currently leading a team of four people. He coordinates with Onshore for arranging knowledge transfer sessions for offshore. He is also responsible to educate the team members working with him to take up production & business support tasks.

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 BDDW project abroad, and described the duties to be performed in the United States as follows:

Performing Business Support Activities (40%)

- Working on various business support activities like working on tickets, change requests etc.
- Helping offshore in resolving various business related issues.

Working on Various Enhancements/Bug fixes (10%)

- Analyze the Business Requirements provided by the client.
- Working on Design/Build/Test/Deploy processes to implement the change.
- Generate Test Scenarios using [the petitioner's] proprietary tool called ADPART.

Onsite-Offshore coordination (30%)

- Allocate tasks to offshore team based on client's requirements and coordinating with the team.
- Reporting the progress of the project on a daily/weekly/monthly basis using C2.0, a [proprietary tool of the petitioner].
- Collect Project Metrics based on the progress.
- Reporting any deviations in the business flow of the application if any.

Working on Production Support activities (20%)

- Working on various production abends/issues and fixing the issues[.]
- Coordinating calls with AD team to involve them in case of the issue/abends and resolving it[.]

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 Broker Dealer Data Warehousing (BDDW) project for [REDACTED], which would cause [the petitioner] and MetLife significant economic inconvenience."

In addition, the petitioner stated that to serve as a programmer on the BDDW project, an individual must have advanced and special knowledge of various third-party technologies and processes, including tools such as Informatica, SQL Navigator, WinSQL, File-Aid, Putty, and Lotus Notes. The petitioner provided brief descriptions of these 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 [BDDW] project " and "not commonly held" throughout the company. The petitioner further noted that the beneficiary had acquired specialized knowledge of the petitioner's internally developed project management and software quality assurance tools, including Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS, and Prolite. 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.

Finally, the petitioner claimed that the beneficiary completed 62 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. Java Web Services (12 hours)
2. Basics of Sybase 12.5 (20 hours)
3. Training on Advanced Excel (4 hours)
4. Training on Unix Scripts/commands (8 hours)
5. Hippa Elearning course (2 hours)
6. MetLife Security Awareness course (2 hours)
7. Application related KT (8 hours)
8. KT on new Broker Dealer Application (6 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Technology degree in Electronics and Telecommunication Engineering. On his resume, the beneficiary lists his technical skills as: Windows XP, 2000 and Unix; DB2, PL/SQL, Lotus Script, formula language, Oracle, Informatica, Lotus Notes, and Domino. He states that he has 3.8 years of overall IT experience in the industry, and the resume includes a description of the BDDW project on which the beneficiary has been assigned since the start of his employment with the petitioner.

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 BDDW – MetLife 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, noting most of the beneficiary's knowledge has come from his experience working on past company projects since December 2008. Nevertheless, the petitioner provided a new list of the training courses completed by the beneficiary, which included several additional training courses not included on the original list: (1) Information Security Awareness (4 hours); (2) Core Values and Standards of Business Conduct (4 hours); (3) insurance Overview (10 hours); (4) Etracker (15 hours); (5) MetConnect (10 hours); (6) Wisdom Tree (10 hours); (7) eMetrics (10 hours); and (8) Activity Tracker (10 hours). The addition of these new courses brings the amount of total training hours to 119.²

Finally, the petitioner stated that there are 1,192 programmer analysts in its U.S. workforce, and 119 of these employees work in its Insurance vertical. The petitioner also indicated that it would require two months of intense training for another individual to be able to perform the duties the beneficiary was currently performing for the BDDW 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

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 BDDW project and the processes and procedures used on this project appeared to be related more to internal 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.

² The AAO notes that seven of the eight courses newly-added to the training list were completed prior to the petition's filing; therefore, it is unclear why they were not previously included in the beneficiary's training history.

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 BDDW 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 various aspects of the BDDW project, the description of the proffered position includes no specific reference to similar details. Instead, the description is entirely nonspecific. Moreover, the petitioner interchangeably claims that the beneficiary has worked with both its insurance vertical as well as its business and financial services (BFS) vertical, thereby creating contradictions regarding the nature and level of experience he possesses and the exact focus of his assignment in the United States. Second, the petitioner repeatedly uses technical and abbreviated terms in the breakdown of duties 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, 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 either the petitioner's BFS vertical, its insurance 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 BDDW project, a programmer analyst must have "advanced and special knowledge" of various technologies and processes, including tools such as Informatica and File-Aid, proprietary tools of the petitioner, as well as more common third-party technologies such as SQL Navigator and Lotus Notes tool.

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 lists the BDDW project for MetLife on his resume yet indicates that the project was executed using knowledge of third-party technologies such as Windows XP and Unix as well as DB2, PL/SQL, Lotus script and formula language for his work on the BDDW project.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the BDDW 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 Informatica and Cognizant 2.0. The petitioner claimed that the beneficiary's knowledge of these internal tools, as well as various hardware and software platforms which are used in the BDDW project, has allowed him to play a major role in the BDDW project. The petitioner concludes that the beneficiary's concentrated focus on the development and implementation of the client's technology cannot easily be passed to another programmer. The record, however, contains no documentation, such as internal handbooks or promotional materials, which document the existence of these internal processes and platforms 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 MetLife. 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

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the beneficiary on the BDDW 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 February 2009 and February 2010, the beneficiary underwent formal training in the processes identified above. However, the AAO notes that in support of the petition, the petitioner claimed the beneficiary underwent 62 hours of formal training between August 2009 and December 2009. In response to the RFE, the petitioner claimed for the first time that the beneficiary actually had 119 hours of training, claiming that the beneficiary began taking courses in February of 2009 and had completed an additional eight formal training courses, seven of which had been completed prior to the filing of the petition.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). In this matter, it is unclear why the petitioner, who claims that the training completed by the beneficiary constitutes the basis of his special and advanced knowledge, would omit nearly half of the beneficiary's training history from the evidence supporting the petition. The AAO is skeptical regarding the true nature and extent of the beneficiary's training, since the record contains no evidence, other than an internal training certificate listing only four of the sixteen courses the petitioner claims were completed by the beneficiary, to establish that the beneficiary actually completed the formal training claimed by the petitioner.

Nevertheless, the training list included minimal courses in proprietary or client-specific processes. This minimal information, coupled with the petitioner's claim in response to the RFE that it would take two months to train another employee to perform the beneficiary's duties, suggests that an individual with similar education and experience could easily learn the nature of the beneficiary's position in a short period of time. The record reflects that the beneficiary was immediately assigned to the BDDW project for [REDACTED] upon commencement of his employment with the petitioner, thereby demonstrating that extensive experience and training was not a prerequisite to work on this project as the petitioner repeatedly claims. 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 insurance and/or BFS 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).

Again, 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 no

training in December 2008 when he was hired, and the record contains conflicting accounts of the training he received thereafter (between 62 hours and 119 hours). Moreover, most of the courses he allegedly completed do not appear to constitute or contribute to specialized knowledge as contemplated by the regulations. 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 [REDACTED]/BDDW 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 insurance vertical or BFS 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.

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.