



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 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 Systems Analyst, IT Infrastructure Services. The petitioner will assign the beneficiary to work primarily offsite at the Charlotte, North Carolina worksite of [REDACTED] for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, and that he has been and will be employed 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.

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 possesses specialized knowledge, and whether he was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has 60,000 employees worldwide, including 11,942 employees in the United States.<sup>1</sup> In a letter accompanying the initial petition, the petitioner asserted 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

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<sup>1</sup> In a letter of accompanying the initial petition, the petitioner asserted that it employs over 66,000 people worldwide, of which over 12,000 are employed in the United States.

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 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 proposed position in the United States, the petitioner stated that he would be employed in the specialized knowledge capacity in a Systems Analyst role on the ongoing Calypso Production Support project for the petitioner's client, [REDACTED]. The petitioner noted that the [REDACTED] Support project is the same project to which the beneficiary is currently assigned at the petitioner's offices in India. The petitioner stated that the purpose of the transfer was to bring expertise to the U.S. that is not commonly held throughout the petitioner. The petitioner stated that the beneficiary would apply the advanced and special knowledge he gained while working abroad on the [REDACTED] project.

The petitioner provided the following description of the [REDACTED] Production Support project and the beneficiary's duties abroad:

[REDACTED] project is an end of day and intraday batch monitoring operations project ensuring successful completion of application batches and generation of reports. It also includes monitoring health of production servers and applications. This project is responsible for Linux/Unix production server monitoring and administration. It provides Calypso batch support and supports user issues in a mission critical BFS [banking and financial services] environment. This project requires running user jobs via CA's Autosys, Calypso GUI and custom made interface. It also requires fixing a bends and overseeing issues with proper escalation to meet critical deadlines and Service Level Agreements (SLA's). It requires health checks to be done on various UNIX flavored production servers. System monitoring includes processes monitoring, log file analysis, performance analysis and troubleshooting system and network based issues.

It's a end of day and intraday batch Monitoring Operations project ensuring successful completion of application Batches and generation of reports and monitoring health of production servers and applications.

With regards to its client, [REDACTED] which owns [REDACTED] the petitioner stated that it has a “long-term relationship with [REDACTED] through on-going, multiple, and complex projects, many which [the petitioner] performs simultaneously.” The petitioner stated that “[a] small fraction of [the petitioner’s] world-wide force . . . is allocated to [REDACTED] projects” and that “[w]ithin that small fraction, there is further specialization. Each Wells Fargo project team focuses on its technology spectrum in light of each project’s requirements, specifications, and finance-specific and [REDACTED]-specific knowledge set.” The petitioner asserted that from project to project, the required technology spectrum “is quite disparate, involving any combination of technologies.” The petitioner stated: “[i]n providing solutions to [REDACTED] [the petitioner’s] project teams – and the constituent professionals allocated to each project – necessarily develop a specific domain, i.e., an area of control or a sphere of knowledge particular to that project.”

Regarding the beneficiary's specific job duties in the United States, the petitioner provided the following description:

1. **Calypso, Smiley2 and Autosys tools: (35%)**

- End of Day and intra day batch processing and monitoring.
- Running users job/risk report via Calypso application, Autosys and custom made software Smiley2.
- Log monitoring of script running via Autosys.
- Analyzing log for RCA and further escalation.

2. **Responds to Service Request: (30%)**

- Disk space clean up
- Book Adjustment
- Trade Diff cash flow script
- Cache clean up and GC (Garbage Collection)
- Addition of Risk reports
- Granting various access to users

3. **Terminal Service Monitoring: (20%)**

- Monitoring service running on Terminal servers.

- Disk space clean up on Terminal server.
- Ensure all services are running on Terminal servers.

#### **4. DB reorganization/Release Process: (15%)**

- Bring down environments for database reorganization and New Releases.
- Coordinate with DBA team and Users.
- Bring up and validate environments after DB reorganization and release.

In addition, the petitioner stated that “in order to serve as Systems Analyst on the Project Name [sic] in the U.S.,” an individual must have advanced and special knowledge of the following technologies: Calypso, CA Autosys, “DataSynapseGridServer,” Smiley2 tool, Peregrine Service Center, SQL, Calypso’s Admin Monitor tool, and JBOSS Application Server (JBoss AS). The petitioner provided brief descriptions of the above technologies and noted that the knowledge required for the position is “highly technical knowledge” which is “held by only certain individuals at System Analyst or higher level on the [redacted] project” and “not commonly held” throughout the company.

The petitioner asserted that the beneficiary’s proposed position in the United States requires specialized knowledge because his “unique combination of formal education, professional experience with [redacted] Bank, practical and educational expertise cannot be transferred or taught to other candidates.” The petitioner asserted that the beneficiary “developed an advanced understanding of our proprietary internal development tools and worked on several key projects for [the company] abroad,” as a result of which the beneficiary is “uniquely well-versed in our Onsite/Offshore implementation methodology.” The petitioner stated: “Specifically, throughout [the beneficiary’s] employment with [the foreign entity], he has acquired specialized knowledge of our internally developed and internally-developed project management and software quality assurance tools, including Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS, and Prolite.” In addition, the petitioner asserted that the beneficiary has “advanced and specialized knowledge of [the petitioner’s] business model for managing client software development projects.” The petitioner asserted that an individual must have worked for the company for at least one year, must have experience using the company’s internally developed products, tools, services, techniques, management, and procedures, and must have completed “extensive” in-house training in order to perform the beneficiary’s proposed duties in the United States.

Finally, the petitioner claimed that the beneficiary completed 108 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 the beneficiary has completed:

1. **UnixShell Scripting**, 04/02/07-04/05/07, 12 hours;
2. **Advance Unix**, 07/27/09-07/31/09, 15 hours;

3. **Level 0 [Banking and Financial services]**, 09/10/09-09/14/09, 15 hours;
4. **Six Sigma Yellow Belt**, 06/09/09, 6 hours;
5. **IT IS Quality & Process Framework**, 08/21/08, 8 hours;
6. **Oracle 9i SQL & PL/SQL**, 5/21/09-05/25/09, 15 hours;
7. **Working with Clients – Client Lead**, 07/22/08, 8 hours;
8. **Presentational Skills**, 07/23/08, 8 hours;
9. **Calypso Training**, 12/14/09-12/18/09, 15 hours; and
10. **Code of Business Ethics**, 10/08/09-10/10/09, 6 hours.

The director found the initial evidence insufficient to establish eligibility, and consequently issued a request for 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 it has employed the beneficiary in a specialized knowledge capacity since March 12, 2007. The petitioner asserted that the beneficiary, while working on the [REDACTED] Support 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 explained that a team of eight off shore member supports the [REDACTED] Support, and that the beneficiary's specific role within this team is to take care of overnight risk report generation, maintain application health, maintain servers' health, and support the users of the application.<sup>2</sup>

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<sup>2</sup> In response to the RFE, the petitioner also provided an amended list of job duties for the beneficiary in the United States. The amended list does not appear to be entirely credible or relevant to the beneficiary of the instant petition. The first part of the list replicated the list of job duties previously provided, for a total of 100% of the beneficiary's time. The second part of the list, however, provided a new and different breakdown of the beneficiary's proposed duties in the United States, for a total percentage of 200% of the beneficiary's time. The amended list includes the following new duties: manage customer relationships with stake holders for respective applications, take regular feedback about off shore support from stake holders, prepare monthly KPI and SLA reports and discuss performance improvement with the customer, knowledge acquisition of new applications like New Risk Architecture, DG Monitor, Risk Valuation Framework from the existing support teams at onshore and passing on the knowledge of off shore team, providing shadow support for the above mentioned application, and modifying the trade information as per the traders' inputs and making sure that all overnight reports for respective Line of Businesses finish smoothly. These new duties were not previously listed for the beneficiary.

The AAO will not consider the new job duties. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or 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 petitioner differentiated the beneficiary from other employees because of his “hands on knowledge of proprietary homegrown [REDACTED] tools and applications” including Smiley 2, which the petitioner described as “a customized front end for managing batch jobs belonging to different line of businesses for Wachovia, a tailored version of [REDACTED] platform as well as hosts of scripts developed by [REDACTED] to automate day to day production tasks.” Furthermore, the petitioner asserted that the beneficiary has acquired “hands on knowledge of the proprietary tools and procedures like escalation metrics for different technology groups and line of businesses. The petitioner asserted that this knowledge can only be gained from working on “this project for this specific client for a substantial amount of time.”

The petitioner went on to further describe the beneficiary's training and experience, noting that most of his knowledge has come from his experience working on past company projects since March 12, 2007. The petitioner then provided a new list of training courses completed by the beneficiary, as follows:

1. Informix, 04/02/07-04/05/07 (20 hours);
2. Working with Clients, 07/22/08 (8 hours);
3. Presentation Skills, 07/23/08 (8 hours);
4. Interpersonal and Coordination, 08/01/08 (8 hours);
5. Goal Setting, 08/02/08 (8 hours);
6. IT IS Quality & Process Framework, 08/21/08 (8 hours);
7. Workshop on Service Delivery, 08/22/08 (8 hours);
8. Project (Vertical and Horizontal), 05/02/09 (4 hours);
9. Occupational Health and Safety Assessment Series, 05/05/09, (4 hours);
10. Code of Business Ethics, 05/05/09 (4 hours);
11. Acceptable Use Policy, 05/05/09 (4 hours);
12. Delivery Manager Track RBT, 05/05/09 (4 hours);
13. Six Sigma Yellow Belt, 06/09/09, 8 hours;
14. Level 0: Banking and Financial Services, 06/18/09-06/23/09 (20 hours)
15. Advance Unix, 07/26/09-07/31/09 (40 hours); and
16. Core Values and Standards of Business Conduct, 12/22/09 (4 hours).

The addition of these new courses brings the beneficiary's amount of total training hours to 160.

The petitioner further asserted that in order to adequately perform the duties of the proposed position in the United States, an individual must undergo classroom and hands-on training as follows:

1. Advanced Unix – 25 Business Days;
2. Basic SQL – 7 Business Days;
3. MS Office – 48 Hours;
4. CA Autosys (Advanced Unix Scheduler) – 30 Business Days;
5. Datasynapse Grid Management – 2 Business Days;
6. Aqua Data Studio – 2 Business Days;

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the position offered to the beneficiary when the petition was filed merits the requested classification. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

7. Calypso – 20 Business Days;
8. Smiley2 – 20 Business Days;
9. Basic Banking and Financial awareness – 7 Business Days;
10. Environment knowledge on Rates/SCP/CDBO/MARS – 40 Business Days; and
11. ITIL V2 (Incident Management, Problem management and service level management) – 15 Business Days Hours [sic].

The petitioner then asserted that through the beneficiary's training and work experience, he has gained "valuable exposure to UNIX, SQL, MS Office, CA Autosys, Datasynapse Grid Management, Aqua Data Studio, Calypso and Smiley 2."

Finally, the petitioner stated that "[t]here was not a specific time and date in which [the beneficiary's] knowledge was considered to be 'specialized.' However, due to his vast experience with the project over the past two and a half (2 ½) years, [the beneficiary] possesses the hands on knowledge that is not only required, but necessary . . . [sic]." Although specifically requested by the director, the petitioner failed to state the amount of time required to train another employee in the required processes essential to the Calypso Production Support 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 Wachovia (Wells Fargo).

To response to the RFE, the petitioner submitted a new letter from the foreign entity listing the beneficiary's specific job duties abroad, as follows:

- End of day and intraday batch Monitoring Operations;
- Autosys jobs monitoring, checking logs for errors, reporting, starting/stopping jobs & taking care of failed jobs;
- Responsible for production support and database administration team management, training, skills transfer, knowledge management, quality metrics, and customer satisfaction. Running user batches via custom made interface Smiley2;
- Direct multiple teams in customer focused support and technology delivery for 500+ Calypso fixed income, derivative, and foreign exchange users for the front, middle, and back office trade lifecycle;
- Resolve user, infrastructure, and execution time issues working on various monitoring tools and coordination of business and technology subject matter experts utilizing an ITTL framework;
- Coordinating with application development team during the release and making sure that grid & data-server is working after the release;
- Supporting huge volume of risk reports (Batch) belonging to different lines of businesses and updating the status of the batch to the respective stake holders;
- Bringing down/up Calypso environment during database reorganization and doing validation of environment and validation of Calypso environment after Server/SAN mainframe; and
- CA AutoSys and Job Scheduling Activities and Validation that all jobs start as scheduled time to meet various businesses and SLA needs.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, and that he has been and will be employed in a capacity requiring specialized knowledge. In denying the petition, the director concluded that the record lacked evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the company. The director concluded that the petitioner failed to establish when the beneficiary reached a level of expertise that constitutes specialized knowledge, thus failing to establish that he has been working in a specialized knowledge capacity for at least one full year prior to the filing of the instant petition. The director also concluded that the beneficiary's value appeared to be related to him having knowledge of Wells Fargo Bank's internal processes, procedures, and methodologies, and thus he is further ineligible for the classification sought.

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 employment in a specialized knowledge capacity abroad and the specialized knowledge capacity of the proposed position. Counsel asserts that the director "failed to understand [the petitioner's] entire client service model," in which the petitioner develops customized, "highly sophisticated and complex systems" for its clients. Counsel emphasizes that Calypso is the petitioner's system, not Wells Fargo Bank's system. Counsel thus argues that the beneficiary's knowledge relates to the petitioner's, not the client's, internally developed products, processes, procedures, and methodologies. Counsel asserts that in order to perform the job duties, the beneficiary will need to utilize "his advanced banking and financial services domain expertise, as well as formal training in [the company's] methods of developing IT solutions for the banking industry . . . [such as] Level 0/Banking and Financial Service, Basic Banking and Finance, Environment knowledge, and ITIL V2, and those he acquired through hands-on training working on Calypso project in India." Counsel also asserts that the beneficiary will need to use his "advanced knowledge" of the company's "internally-developed method of delivering IT support." Counsel asserts that the director utilized a new, more limited standard for "specialized knowledge" that is not supported by the law, case law, or existing Service policy.

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary possesses specialized knowledge, and that he 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(I)(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(I)(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 has been 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 has and 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 beneficiary's position abroad and his proffered position does not establish that the beneficiary possesses specialized knowledge, or that he has been and will be employed in a specialized knowledge capacity. The petitioner indicated that the beneficiary has and will perform job duties that are commonly performed by systems analysts or other similarly employed individuals in IT industry, such as: batch processing and monitoring, running users job/risk report, log monitoring of script running, disk space clean up, cache clean up and garbage collection, granting various access to users, maintaining applications and servers health, and supporting the users of the application. The petitioner's description of duties, therefore, does little to establish that the beneficiary's duties abroad and his proposed duties in the United States require specialized knowledge. 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)).

### B. Proprietary Tools And Methodologies

In the instant matter, the petitioner asserts that the beneficiary's proffered position in the United States require knowledge of the petitioner's internal processes and procedures. In particular, the petitioner claims that in order to perform the proffered duties, the beneficiary must apply his "advanced and special knowledge" he gained while working for the [REDACTED] Support project in India, which utilizes the following technologies: [REDACTED] CA Autosys, "DataSynapseGridServer," Smiley2 tool, Peregrine Service Center, SQL, [REDACTED] Admin Monitor tool, and JBOSS Application Server (JBoss AS). The petitioner has also claimed that an individual must have specialized knowledge of the company's "Onsite/Offshore implementation methodology" and the company's "business model for managing client software development projects." On appeal, counsel asserts that in order to perform the proffered job duties, the beneficiary must utilize "his advanced banking and financial services domain expertise," and his "advanced knowledge" of the company's "internally-developed method of delivering IT support" particularly for the banking industry.

The petitioner emphasizes that the beneficiary possesses special and advanced knowledge of the [REDACTED] Production Support project and the technologies needed for the project. However, other than asserting that the beneficiary has an advanced and special knowledge of the above project and its related technologies, the petitioner has not articulated with any specificity how the beneficiary's knowledge rises to that of "advanced and special knowledge." The petitioner also provided no specific explanation or detail regarding the beneficiary's level of knowledge in the company's "Onsite/Offshore implementation methodology," its "business model for managing client software development projects," or in the "banking and financial services domain." This lack of explanation, coupled with the beneficiary's common job duties, shed little light on what specialized knowledge of the petitioner's internal processes and procedures, if any, the beneficiary possess and are actually required to perform the job. 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.

In addition, the record contains no objective documentation, such as internal handbooks or promotional materials, which document the existence of these "proprietary" or "internal" technologies the petitioner claims form the basis of the beneficiary's special and advanced knowledge. The petitioner provided no evidence that CA Autosys, DataSynapseGridServer, Smiley2 tool, Peregrine Service Center, SQL, JBOSS Application Server (JBoss AS), Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS, and Prolite are truly proprietary to the petitioner or are internal tools.<sup>3</sup>

Regardless, the beneficiary's knowledge of and experience with some of the petitioner's proprietary or internal tools, processes and methodologies, by itself, constitutes specialized knowledge. By itself, simply claiming that knowledge is proprietary or internal will not satisfy the statutory standard. *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982) (by itself, work experience and knowledge of a firm's technically complex products, even if proprietary, will not rise to the level of "special knowledge"). It is reasonable to expect all IT consulting firms to develop internal tools, methodologies, procedures, and business models that are different in some way from its competitors. The petitioner did not adequately explain how its processes and

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<sup>3</sup> The petitioner specifically identified the Smiley2 tool as one of "legacy [REDACTED] proprietary processes and applications."

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. Therefore, it cannot be concluded that its 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. In fact, the petitioner's 2009 Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, 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."

Similarly, the beneficiary's knowledge of the specific [REDACTED] project and of [REDACTED] "proprietary homegrown tools and applications," by itself, does not constitute specialized knowledge. Any experienced systems analyst or similarly employed individual within the petitioning organization would reasonably possess project-specific knowledge and knowledge of a specific client's internal processes and methodologies. The fact that other workers may not have the same combination of experience with a particular project and client as the beneficiary is not enough to establish that the beneficiary possesses specialized knowledge and is employed in a specialized knowledge capacity. In fact, the petitioner stated that it has multiple and complex ongoing projects with [REDACTED], and that each of its [REDACTED] project teams focus on disparate technology spectrums in light of each project's specific requirements. The petitioner specifically stated that each project team, and the constituent professionals allocated to each project, "necessarily develop a specific domain, i.e., an area of control or a sphere of knowledge particular to that project." The petitioner's statements support the conclusion that the beneficiary is no different from its other similarly employed individuals within the petitioning organization, in that all team members tend to focus on different technologies and areas of knowledge based upon each project's and client's particular requirements.

### C. Training

Turning to the training history of the beneficiary, the AAO first observes that the petitioner provided conflicting and inconsistent information regarding the beneficiary's claimed training. For example, with the initial petition, the petitioner claimed that the beneficiary completed 108 hours of formal training, including: Six Sigma Yellow Belt, 06/09/09, 6 hours; Advance Unix, 07/27/09-07/31/09, 15 hours; Level 0 [Banking and Financial services], 09/10/09-09/14/09, 15 hours; Code of Business Ethics, 10/08/09-10/10/09, 6 hours; Calypso Training, 12/14/09-12/18/09, 15 hours; and UnixShell Scripting, 04/02/07-04/05/07, 12 hours.

In response to the RFE, however the petitioner claimed that the beneficiary completed 160 hours of formal training, including: Six Sigma Yellow Belt, 06/09/09, 8 hours [different number of hours than previously claimed]; Advance Unix, 07/26/09-07/31/09 (40 hours) [different dates and for a different total amount of time as previously claimed]; Level 0: Banking and Financial Services, 06/18/09-06/23/09 (20 hours) [different dates and for a different total amount of time as previously claimed]; Code of Business Ethics, 05/05/09 (4 hours) [different dates and for a different total amount of time as previously claimed]; and Informix, 04/02/07-04/05/07 (20 hours) [occurring on the same days as the beneficiary's purported 12 hour training in UnixShell Scripting]. In addition, according to the initial training record, the beneficiary

completed 15 hours of [REDACTED] but the same [REDACTED] training course was not included in the beneficiary's training record submitted in response to the RFE.

The petitioner has not provided any explanation for the above inconsistencies. Furthermore, the inconsistencies in the beneficiary's training records bear even greater significance when it is considered that many of the discrepancies involved critical training courses that form the basis of the specialized knowledge claims. For instance, one of the discrepancies involved the beneficiary's training in Advanced Unix, which was one of the training courses the petitioner claimed an individual must undergo in order to adequately perform the duties of the proposed position. Other discrepancies involved the beneficiary's training in [REDACTED] and Level 0: Banking and Financial Services, both of which the petitioner claimed were critical to performing the duties of the particular [REDACTED] Production Support project. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The petitioner claimed that an individual must undergo informal, classroom and hands-on training in order to adequately perform the duties of the proposed position, including 25 business days in Advanced Unix, 20 business days in Calypso and Smiley2, 7 business days in Basic Banking and Financial Awareness, and 40 days in Environment knowledge on Rates/SCP/CDBO/MARS. However, the petitioner submitted no documentation regarding the beneficiary's informal training. As such, the petitioner failed to establish that the beneficiary actually completed the requisite training – both informal and formal- that the petitioner claimed were necessary in order to gain the specialized knowledge. 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)).

A review of the beneficiary's training record shows that the majority of the beneficiary's completed trainings were on generic topics such as Working with Clients (8 hours), Presentation Skills (8 hours), Interpersonal and Coordination (8 hours), Goal Setting (8 hours), or third-party technologies such as Advance Unix (40 hours). These subjects do not appear to constitute or contribute to specialized knowledge as contemplated by the regulations. Based on the above, most of the petitioner's "proprietary processes and tools" appear to be 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.

Despite the petitioner's claims that an individual needs to complete "extensive formal training programs" in order to perform the proffered duties, the record reflects that the beneficiary has completed 108, or at the most 160, formal training hours.<sup>4</sup> The record also reflects that the significant majority of the beneficiary's training courses were completed within one year of the date of filing. Furthermore, the petitioner failed to specifically state the amount of time required to train another employee to fill the proffered position, as requested by the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds

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<sup>4</sup> 160 formal training hours can be completed in approximately 20 business days.

for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). All of these factors undermine the petitioner's claim that an individual needs "extensive formal training programs" in order to perform the proffered duties. Overall, the amount and timing of the beneficiary's training courses suggests that the required knowledge to perform the proffered duties is easily transferrable to other similarly-employed individuals.

#### 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 and work experience, either compared to systems analysts working for the petitioner or compared to other analysts 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 [REDACTED] "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). The 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

demonstrate that he possesses knowledge that is common among systems analysts in the information technology 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 client projects will utilize the internal tools, processes, and methodologies of both the petitioner and the client. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of these tools, processes, and methodologies is advanced in comparison to that possessed by others employed by the petitioner, or that the tools, processes, and methodologies used by the petitioner or its clients are substantially different from those used by other technology consulting companies, such that knowledge of such processes alone constitutes specialized knowledge.

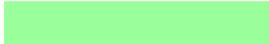
The AAO observes that the petitioner has been unable to specify when it began to employ the beneficiary in a specialized knowledge capacity. In response to the RFE, the petitioner claimed both that it has employed the beneficiary in a specialized knowledge capacity since March 12, 2007 - when his employment with the foreign entity began - and that there was "not a specific time and date in which [the beneficiary's] knowledge was considered to be 'specialized'." If the beneficiary has been employed in a specialized knowledge capacity since March 12, 2007, this further supports the conclusion that the beneficiary was not employed in a specialized knowledge capacity abroad for the requisite amount of time. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-92.

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.*

In summary, the petitioner failed to 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 in a general manner that such knowledge can only be gained by working for the petitioning organization. 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



(b)(6)

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appeal will be dismissed.

**ORDER:** The appeal is dismissed.