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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 19 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 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, , located in India. It seeks to employ the beneficiary in the specialized knowledge position of systems analyst, and intends to assign him to work primarily offsite at the offices of 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 approximately 78,400 employees worldwide and approximately 16,700 in the United States. In a letter of support appended to the petition, the petitioner indicated 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 IT business solutions on a project basis for companies that are <u>not</u> in the IT sector. [The petitioner] is **not** a staffing or placement

> company, nor an agent that arranges short-term employment. Because [the petitioner's] clients lack the expertise to develop their own complex IT solutions, the clients have engaged [the petitioner] to develop their IT solutions. Since our clients are not in the IT services sector in the U.S., the placement of employees at our clients' sites is not a form of staff augmentation for an IT provider.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that its employees "work as part of a 'virtual' team . . . at onsite client sites, who in turn focus on technical and account management at client locations." It further stated that it goes "far beyond" the established onsite/offshore model by offering an in-depth local management and consulting presence, comprised of onsite teams focused on the customer's business applications."

With regard to the beneficiary's position, the petitioner stated that he would be employed as a systems analyst working on the project for the petitioner's client, The petitioner explained that this project is the offshore team for middleware area, and that the objective of the project is to build a centralized global delivery model to maximize efficiency. The petitioner noted that the project on which the beneficiary would be working is the same project to which the beneficiary is currently assigned at the petitioner's offices in India. Regarding the beneficiary's physical worksite, the petitioner claimed that he would work onsite at the client's location in Marlboro, Massachusetts.

The petitioner explained that in providing solutions to 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 in the petitioner's insurance vertical and on various projects for nd other clients within the petitioner's banking and financial services (BFS) domain since he commenced his employment with the petitioner's Indian affiliate in November 2006.

The petitioner provided background information regarding the 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] is part of the middleware team for He is a part of L1 team and responsible for incident management, event management, change management and first level of resolution for any

issues. He [] holds responsibility in critical issues affecting the production environment. His profile includes the implementation of knowledge management. He is responsible for managing SunOne, Tomcat, Weblogic, and MQ instances for the hosted applications and performs L1 tasks for all the given technologies which include administration activities, application deployment and troubleshooting. He coordinates troubleshooting of issues and updates KEDB with the L2 team. He is responsible in aligning the service delivery model to operations maturity framework by enabling metrics based delivery and ticketing tool based approach to ensure high quality of service. He is involved with development and build of Weblogic and tomcat application components, up gradation of MQ components and application migration to Linux platform for [He works with the build team at to build and deploy the global ticketing tool for them.

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

Network Operations Center (30%)

- Handling all the critical issues affecting to the production environment
- Owning the complete incident management process
- Identifying the opportunities for technology and process automation

Knowledge Management Roll Out (15%)

- Designing the knowledge management workflow
- Implementing the knowledge management process in a phased manner
- Build the knowledge base and tracking the progress of knowledge management process to automate the recurring tasks

Service Now – Service Catalog Design (25%)

- Understanding and stream lining the current processes and tasks in order to include them in the service catalogue
- Collecting the requirements to design the service catalogue
- Developing the service catalogue in the service now

Release Management (15%)

- Identifying the tasks for middleware group during the release and change implementation
- Assigning the resources and coordinating the work between offshore and onsite team
- Improving the change and release management processes to reduce the risk in change execution

Linux migration project (10%)

- Collecting and understanding client requirements for new environment
- Building and developing the test platform and cases
- Upgrading the middleware components and perform HA testing for them
- Aligning the build knowledge base with the changes in infrastructure

The petitioner also stated that the beneficiary's "concentrated focus on the development and implementation of this client's technology cannot be passed on to another candidate due to the intense and lengthy time period required to become deeply proficient with business processes and related technology."

In addition, the petitioner stated that to serve as a systems analyst on the project, an individual must have advanced and special knowledge of various technologies and processes such as Weblogic, IBM WebSphere, MValent, Appmanager, Service Now, ChannelOne, and Messagebroker Tool Kit. The petitioner provided brief descriptions of these processes and noted that the knowledge required for the position is "highly technical knowledge" which is "held by only certain individuals at Systems Analyst or higher level on the project" and "not commonly held" throughout the company. The petitioner stated that the beneficiary gained in-depth knowledge of these processes while working on various projects for and further claimed that this knowledge is not generally known within the petitioning company or within the industry in general.

Finally, the petitioner claimed that the beneficiary completed 240 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. IBM MQ (40 hours)
2. SunOne (16 hours)
3. Weblogic (32 hours)
4. ITILV3 (6 hours)
5. Tomcat (40 hours)
6. Solaris (8 hours)
7. J2EE Architecture (24 hours)
8. Six Sigma Yellow Belt (8 hours)
9. Linux (16 hours)
10. BEA Weblogic (40 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Science degree in Engineering. On his resume, the beneficiary lists his technical skills as: Sun Sparc & Intel; Suse Linux 9 & 10; Solaris 10 and Rhel 4; Apache 1.3 & 2.0; Tomcat 5.0, 6.0; Weblogic 9 & 10; SunOne 6.1 and MQ 6; Request Tracker; Service Now; Mercury Test Directory;

Serena; IBM Tivoli; Appmanager; Qpasa; Appwatch & mValent. He further states that he has more than 3.5 years of overall IT experience. The resume also includes a description of the project and other projects to which the beneficiary has been assigned since the start of his employment with the petitioner's foreign affiliate.

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 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 also supplemented the previously-submitted description of the beneficiary's proposed duties in the United States with specific references to processes and technologies the beneficiary would implement.

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 the project as well as from related company projects in the banking and financial services ("BFS") vertical since the commencement of his employment with the foreign entity in 2006. Nevertheless, the petitioner provided a new list of the training courses completed by the beneficiary, which included a number of additional training courses not included on the original list. Specifically, the petitioner claimed that the beneficiary completed significant coursework through the petitioner's internal "academy" as follows:

1. Acceptable Use Policy (2 hours)
2. Level 0: Banking and Financial Services (4 hours)
3. Administration of Solaris System (8 hours)
4. Core Java (24 hours)
5. Code of Business Ethics (2 hours)
6. Cognizant Quality Policy (8 hours)
7. ITIL V2 (56 hours)
8. ITIL V2 (8 hours)
9. Oracle (40 hours)
10. UNIX Fundamentals (24 hours)
11. IT Operations (8 hours)
12. Windows 2000 (48 hours)

13. Networking Essentials (32 hours)

The AAO notes that the new total for hours of coursework after the response to the RFE is 360, as opposed to the original claim of 240 hours.

Finally, the petitioner stated that there are 3,773 systems analysts in the U.S. workforce, and 721 of these employees work in its BFS vertical. The petitioner also indicated that the beneficiary's technical training and experience cannot easily be transferred, and would require another individual to have at least one year of work experience with the petitioner and experience with its internal processes and procedures in order for them to be qualified to perform the beneficiary's proposed duties.

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 , along with completion of training that is comparable to that completed by the beneficiary.

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 project and the processes and procedures used on this project appeared to be related more to internal procedures than to the petitioner's proprietary tools and processes. The director concluded by stating that the beneficiary's knowledge did not appear to be distinguishable from other similarly-employed individuals in the industry.

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

III. Analysis

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

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

§ 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

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

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

A. Description of Job Duties

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

The description of duties that the petitioner provided for the proffered position is entirely vague and generic. First, the AAO notes that the description does not appear to apply specifically to the project, the claimed overseas source of the beneficiary's specialized knowledge. While the description of the overseas position clearly conveys that the beneficiary worked on the project, the description of the proffered position includes no specific reference to similar details despite the petitioner's submission of additional details about the U.S. position in response to the RFE. Instead, the description is entirely nonspecific. Second, the petitioner repeatedly uses technical and abbreviated terms in the breakdown of duties and training, such as HA and MQ, 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 systems 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 systems analyst specializing in either the petitioner's 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 AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). 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 stated that in order to serve as a systems analyst on the project, a systems analyst must have "advanced and special knowledge" of various internal and external processes.

Additionally, 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 project for on his resume, yet indicates that the project was executed using knowledge of third-party technologies such as Weblogic 9.2 and Mercury Test Directory.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the 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 Prolite and QView. 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 project, has allowed his to play a major role in the project. The petitioner concludes that his concentrated focus on the development and implementation of the client's technology cannot easily be passed to another systems analyst. 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 Moreover, despite the petitioner's submission of the beneficiary's completed training courses, there is no record of training being administered in any of these claimed internal processes. The training history does, however, demonstrate significant training in third party tools, knowledge of which the petitioner claims is essential to performing the duties of the proffered position. This lack of documentary evidence, coupled with the non-specific description of the duties to be performed in the United States, shed little light on the exact requirements for the beneficiary on the 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 November 2006 and May 2010, the petitioner claims that the beneficiary underwent formal training in the processes identified above. The AAO notes that the petitioner provides two conflicting accounts of the beneficiary's training: i.e., claiming he underwent 240 hours of training in its initial letter of support then subsequently amending this claim to a total of 360 hours.

In the initial letter of support, the petitioner claimed that he had 240 hours of formal training with the petitioner as follows:

1. IBM MQ (40 hours)
2. SunOne (16 hours)
3. Weblogic (32 hours)
4. ITILV3 (6 hours)
5. Tomcat (40 hours)
6. Solaris (8 hours)
7. J2EE Architecture (24 hours)
8. Six Sigma Yellow Belt (8 hours)
9. Linux (16 hours)
10. BEA Weblogic (40 hours)

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 360 hours of formal training. In the chart, the petitioner claims that the beneficiary has received the following in-house training through the petitioner's academy:

1. ITILV3 Foundation (8 hours)
2. Acceptable Use Policy (2 hours)
3. Level 0: Banking and Financial Services (4 hours)
4. Administration of Solaris System (8 hours)
5. Linux (16 hours)
6. Core Java (24 hours)
7. Six Sigma Yellow Belt (8 hours)
8. J2EE Architecture (24 hours)
9. Weblogic (40)
10. Code of Business Ethics (2 hours)
11. Cognizant Quality Policy (8 hours)
12. ITIL V2 (56 hours)
13. ITIL V2 (8 hours)

14. Oracle (40 hours)
15. UNIX Fundamentals (24 hours)
16. IT Operations (8 hours)
17. Windows 2000 (48 hours)
18. Networking Essentials (32 hours)
19. Tomcat (40 hours)
20. Solaris (8 hours)
21. J2EE Architecture (24 hours)
22. Six Sigma Yellow Belt (8 hours)
23. Linux (16 hours)
24. BEA Weblogic (40 hours)

Upon review, the AAO finds this evidence contradictory and confusing. First, it is noted that the list of courses submitted in response to the RFE is significantly different from the list of courses submitted with the initial letter of support, and omits courses, such as Tomcat, SunOne, and IBM MQ, originally included on the list. Moreover, while the AAO recognizes that a beneficiary may continue training after a petition is filed, the newly-submitted list incorporates courses allegedly taken prior to, not subsequent to, the petition's filing. In addition, the petitioner provides no explanation for the vast discrepancies between the original list of training provided. 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).

Even if the beneficiary's training history was firmly established, the record contains insufficient evidence to establish that the beneficiary actually completed the formal training claimed by the petitioner. For example, the petitioner submits an internal training certificate that provides only a basic listing of the courses claimed in the response to the RFE. Additionally, while the petitioner submits some certificates of completion from third party vendors, these certificates represent courses taken in third-party products and the record does not contain a certificate for every course claimed by the petitioner. The record is devoid of sufficient evidence, therefore, to corroborate the petitioner's claim that the beneficiary actually completed the claimed 240 or 360 hours of formal training. 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.

Regardless, the training list submitted in response to the RFE included minimal, if any, courses in proprietary or client-specific processes. This minimal information raises questions regarding the true nature of the beneficiary's claimed special and advanced knowledge. The record reflects that the beneficiary has been assigned to various projects within the petitioner's BFS vertical since the commencement of his employment with the foreign entity, thereby demonstrating that extensive experience and training was not a prerequisite prior to working on the current project and related projects. Absent evidence from the petitioner outlining the manner in which systems 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 systems analysts in the 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 systems analyst position since the date he was hired by the foreign entity. Moreover, most of the courses he allegedly completed do not appear to constitute or contribute to specialized knowledge as contemplated by the regulations. Finally, 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 projects within the petitioner's BFS vertical.

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 systems analyst working in the petitioner's BFS vertical, either compared to systems analysts working for the petitioner or compared to other systems 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 systems 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 systems 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.