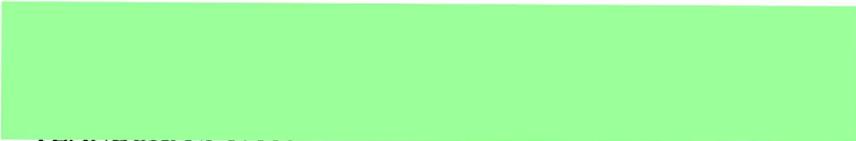




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 20 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 L-1B 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]. It seeks to extend the beneficiary's employment in the specialized knowledge position of systems analyst. The petitioner will assign the beneficiary to work primarily offsite at the workplace of the petitioner's client, [REDACTED] in [REDACTED] for two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been and will continue to 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 beneficiary possesses specialized knowledge and that the director used an overly restrictive standard for specialized knowledge in denying the petition that was inconsistent with law and United States Citizenship and Immigration Services (USCIS) policy. 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 Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary is, and will be, employed with the petitioner in a specialized knowledge capacity.

The petitioner states in the Form I-129, Petition for a Nonimmigrant Worker, that it has 60,000 employees worldwide, and nearly 17,000 employees in the North America. Further, the petitioner notes that its gross annual income is approximately \$2 billion. In a letter of support appended to the petition, the petitioner stated that it is a "leading e-business and applications outsourcer, providing software development and application management services to Fortune 1,000 companies." Regarding its business model, the petitioner stated the following:

It is important to note that [the petitioner] is not a placement company. Rather, [the petitioner] designs, engineers and implements business solutions on a project basis for companies that are not in the IT sector. All of our employees work directly for [the petitioner] on projects designed and built by our company, and under the supervision of one or more [petitioner] Project Managers. The projects are completely managed by [the

petitioner]. The projects are designed and directed by the [petitioner], using the company's proprietary management tools and methodologies.

(Emphasis in original).

With regard to the beneficiary's position, the petitioner stated that he would continue to be employed as a systems analyst working on [redacted] portal application at the client's location in Indiana. The petitioner explained [redacted] portal as a web portal to which various colleges and universities link to disseminate information on their programs and provide information on required resources. The petitioner noted that the beneficiary has been employed in this role since October 2007 and explained his duties as follows:

As a Systems Analyst on this project, [the beneficiary's] key technical activities from [the] [redacted] location are to analyze and to propose designs and approaches based off[f] the requirements. One of his main responsibilities is to use his knowledge and expertise to provide defect tracking and has taken an important role to create the defect tracking document. [The beneficiary] creates the network application framework in .net environment and coordinates with the offshore software development team for the deliverables. He troubleshoots and fixes the production tickets and is involved in coding and unit testing. [The beneficiary] works closely with [redacted] architects and formulates design for the product/individual modules and coordinates with the offshore software development team to make sure that the development is done as per requirements and design guidelines. He is involved in production support and uses an array of [petitioner] internal tools [such] as: eTracker for tracking application value management tasks; Prolite for project management activities and defect tracking; eMetrics, to collect project measurements and progress and calculate metrics based on this information; ICare, for logging complaints and problems regarding a particular support system; eCockpit, to measure and represent productivity, effort, schedule, requirements and defect density and software quality assurance tools such as Qview, ensure that [petitioner] teams are following our internal assurance standards and Qsmart, to automate quality assurance through powerful built-in work flow mechanisms, to review project activities.

The petitioner further stated that the beneficiary has been working on the [redacted] Web Portal re-engineering project and that he has been instrumental in the implementation, maintenance and testing of the application. For example, the petitioner asserted the following with respect the asserted specialized nature of the beneficiary's role in the United States:

[The beneficiary] has been involved in the entire life cycle of the initial phases of the [redacted] Web Portal Re-engineering project. He worked on test design, test plan preparation, and test execution during the [redacted] Web Portal Re-engineering project and hence has acquired the business knowledge of the project for the future leveraging during the upcoming implementation. His concentrated focus on the development and

implementation of this client's technology cannot be passed onto another candidate due to the intense and lengthy time period required for acquaintance with [REDACTED] business processes and related technology. [The beneficiary] is very familiar with the [REDACTED] [REDACTED] project and his technical expertise is an asset to both [REDACTED] and [the petitioner].

Consistent with the above, the beneficiary's resume submitted along with the I-129 Petition for a Nonimmigrant Worker indicates that the beneficiary worked for the petitioner's Indian affiliate as a developer/onsite coordinator focusing on [REDACTED] portal from September 2005 until his entry into the United States on October 2007. Based on beneficiary's previous role working remotely from India on the [REDACTED] portal project and now directly with the client in the United States, the petitioner asserts that the beneficiary developed a unique understanding of the petitioner's "onsite-offshore methodology," allowing him to understand the information the U.S. team needs to gather from the client and forward to the offshore team. Lastly, the petitioner stated that the beneficiary earned a Bachelor of Engineering degree in Information Engineering from the [REDACTED].

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 including, *inter alia*: (1) a more detailed description of the proprietary nature of the procedures used by the beneficiary; (2) a description of how the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry or within the organization, including documentary evidence to support any claims; (3) a more detailed explanation of exactly what equipment, system, product, technique, research, or service the beneficiary has specialized knowledge of, and whether such is used or produced by other employers in the United States and abroad; (4) a list of employees working under the beneficiary's direction, including percentages of time spent by each on their duties; (5) an explanation of how the duties the beneficiary will perform are different from those of other workers employed by the petitioner or other U.S. employers; (6) an indication of the pertinent training courses in which the beneficiary has enrolled while working for the company, including the number of hours spent in such training, any certificates of completion, and how such training differs from that provided to other employees who have worked for the petitioner for the same amount of time as the beneficiary; and (7) the minimum amount of time required to train another employee to fill the proffered position. In short, the director emphasized that the petitioner should submit evidence to differentiate the beneficiary's knowledge from his colleagues also employed in a highly technical field in order to establish it as special or advanced.

In response, the petitioner explained that the beneficiary had gained in-depth knowledge not generally known within, or outside, the company. The petitioner offered a more detailed description of the beneficiary's duties organized into the following general categories with percentages of time spent of each duty:¹

1. Coordinating with Offshore Team- 30%
2. Coordinating with Offshore Team- 30%²

¹ The petitioner also provided descriptions of each category that are reflected in the record.

² The AAO observes that the petitioner offered identical duty descriptions in the first two duty categories, such that 60% of the beneficiary's duties are offered as being devoted to "coordinating with the offshore team."

3. Requirements Analysis- 10%
4. Technical Design- 10%
5. Construction and Defect Fixing- 10%
6. Supervision of development and testing efforts- 10%
7. Build Master- 5%
8. Effort estimation and project reporting- 5%³

The petitioner also stated that the beneficiary was selected for the current assignment due to his extensive knowledge of the [redacted] portal project and that he holds advanced expertise in the [petitioner's] systems and processes that "is extremely difficult to replicate." In attempting to differentiate the beneficiary's knowledge from others within the company, the petitioner further elaborated on the beneficiary's experience by noting his involvement in the [redacted] portal project since its inception. The petitioner stated that this allowed him to "build servers from scratch" and gain "immense knowledge on application infrastructure, deployment, as well as the proxy firewall rules" required for the project's production support, upcoming implementation, and modification and enhancement phases. The petitioner further stated that the beneficiary worked on several other [redacted] projects in the past thereby developing an "intense and lengthy acquaintance with [redacted]" Additionally, the petitioner asserted that the beneficiary would act as the single technical point of contact on the project coordinating between the customer and offshore petitioner employees. Based on the foregoing, the petitioner maintained that the beneficiary amply fit the definition of a key employee. The petitioner noted that no other employee could be easily transitioned into the beneficiary's role without extreme difficulty and detrimental effect on their client relationship with [redacted]

The petitioner also provided information on training completed by the beneficiary noting he had completed 29 formal trainings and 634 hours of formal training while employed with the company. The petitioner summarized the beneficiary's training as follows:

[The petitioner] has the following training (both formal and in-house) needed for an individual to be able to adequately perform the duties of the proposed position: application business functionality, technologies and tools used in various modules in the project (40 hours); Windows Sharepoint Services and Sharepoint Portal Server 2003 (40 hours); MOSS (Microsoft Office Sharepoint Server) (40 hours); on the job training to acquire specialized knowledge of the technologies and tools required for the application development and maintenance of [redacted] project (one year). Additionally, the following is required: formal [petitioner] training received on Microsoft .Net technologies Visual Studio, C#, SQL server and tools Visio, VSS, Nunit; [the petitioner's] proprietary processes and tools ETracker, Prolite, Qview; and Banking and Financial services specific domain training (634 hours).

The petitioner also indicated that the beneficiary received two Microsoft certifications in "developing web applications using C#" and "customizing portal solutions with Microsoft Sharepoint Products and

³ The AAO notes that the duties offered by the beneficiary amount to 110%, not 100% as asserted.

Technologies,” and another certification titled “Level 0 certification in the fundamentals of banking and finance.”

Lastly, the petitioner stated that the beneficiary supervises three employees including three programmer analysts tasked with developing application code and performing unit testing. The petitioner also noted that there was one other foreign national working at the [REDACTED] location in Indiana, an assistant project manager. The petitioner further asserted that there were 3,443 similarly employed systems analysts with the organization and 589 within the banking and finance vertical within which the beneficiary works.

The director denied the petition, concluding that the record did not establish that the beneficiary was or would continue to be employed in a specialized knowledge capacity. The director reasoned that the petitioner did not clearly document how the beneficiary’s knowledge of processes and procedures of the company was substantially different from, or advanced, in relation to other individuals similarly employed. Further, the director determined that the beneficiary’s asserted expertise in petitioner technologies and processes did not constitute specialized knowledge as it appeared readily available and used by many other petitioner employees.

On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge as defined by statutory law, case law, and USCIS guidance and policy, stating that the director applied an overly restrictive standard of specialized knowledge. Counsel states that the petitioner has sufficiently documented the beneficiary’s knowledge of [REDACTED] portal, a software application specifically developed for [REDACTED] and his unique knowledge of the petitioner’s tools, methods and client management processes is sufficient to qualify the beneficiary as acting in a specialized knowledge capacity. Further, counsel asserts that the director erred in concluding that the beneficiary’s skills were widely held within the petitioner’s organization, noting that only a few key employees possess the beneficiary’s in depth level of knowledge. Lastly, the petitioner also provided an additional support letter for the beneficiary from the company’s in house immigration attorney that reiterates many of the assertions previously set forth on the record.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary is 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.

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.

Certain contradictions in the duty descriptions provided for the beneficiary cast doubt on whether the beneficiary acts in a specialized knowledge as asserted. For instance, in the original duty description provided in support of the I-129 Petition for a Nonimmigrant Worker, the beneficiary's technical role is emphasized. The petitioner notes that the beneficiary is responsible for designing and proposing approaches based off the client's requirements. Further, the description notes that "one of his main responsibilities is to use his knowledge and expertise to provide defect tracking and [that he] has taken an important role to create the defect tracking document." The original duties only mention briefly the beneficiary's coordination with offshore contacts working on the project. However, in response to the director's RFE, the petitioner submitted duties for the beneficiary that reflect a full 60% of the beneficiary's duties being devoted to "coordinating with the offshore team," including passing along documentation and requirements from the client and helping the greater team understand proposed approaches necessary to implement the application. Additionally, the duties highlight the beneficiary assigning tasks to offshore petitioner employees, including fixing defects and reviewing the work of the offshore team. In sum, the duties provided in response to the director emphasize the beneficiary acting as a liaison and single point of contact between the client and the petitioner team located in India whereas the original duties suggest his completion of mostly technical tasks related to defect repair and development. As such, the petitioner has submitted differing duty descriptions on the record, suggesting that the petitioner exaggerated the beneficiary's duties in response to the director's RFE in an attempt to elevate their importance and specialized nature. 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. 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. 582, 591-92 (BIA 1988). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot 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 position offered to the beneficiary when the petition was filed merits classification as specialized. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

B. Proprietary Tools And Methodologies

With regard to the specific claims on appeal, both counsel and the petitioner continually assert that the beneficiary's position requires project specific knowledge the beneficiary has gained through working on the [REDACTED] portal project since September 2005. The petitioner states that there are only a few petitioner employees, and in some cases no such employees, who possess the specialized knowledge and level of experience required to perform the duties of the position.

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

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies used by the petitioner for the management of [REDACTED] portal application. In its letter in support submitted with the Form I-129, the petitioner noted the beneficiary's knowledge of the following petitioner tools: Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS and Prolite. Further, the petitioner indicated his knowledge in the following additional technical applications: IIS 6.0/7.0, Microsoft.NET 1.1/2.0/3.0, Visual SourceSafe, SQL Server 2000/2005, C# 1.1/2.0/3.0, Sharepoint 2007 (MOSS), Sharepoint Portal Server 2003 (SPS), WSS 2.0/3.0, XML, XSLT, HTML, AJAX, amongst other applications specific to working on the [REDACTED] portal project.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their used in relation to [REDACTED] portal. However, it is reasonable to expect all information technology 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 information technology 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." Indeed, the director was well aware of the importance of differentiating the beneficiary's knowledge from his colleagues both within, and outside, the organization when she asked in the RFE that the petitioner provide a description of how the knowledge possessed by the beneficiary was not general knowledge held commonly throughout the industry or within the organization. Additionally, the director requested a more detailed explanation of exactly what equipment, system, product, technique, research, or service the beneficiary has specialized knowledge of, and whether such is used or produced by other employers in the United States and abroad. Despite the director's requests, the petitioner did not explain how its processes and methodologies differ significantly from those utilized by other information technology 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 the offered 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 with no prior experience with the petitioner's tools and methodologies. In fact, the petitioner states in an additional support letter submitted on appeal that a new employee would have to work for the petitioner for only one year to have adequate knowledge of the petitioner's internally developed products, tools, services, techniques, and management and procedures to qualify for the current project. The petitioner further noted that there were 3,443 similarly employed systems analysts with the organization and 589 within the banking and finance vertical within which the beneficiary works. The fact that there are so many systems analysts working for the petitioner, and that it would only take approximately one year to garner the beneficiary's knowledge of the petitioner's processes and tools, suggests many other systems analysts have knowledge of and are regularly utilizing the petitioner's internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. As such, the petitioner has not sufficiently established that the beneficiary's knowledge of the petitioner's proprietary processes is unique within the company or the industry. 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 has unique knowledge of proprietary tools developed by the petitioner specifically relevant to [REDACTED] portal application. The petitioner noted the beneficiary's involvement in the project from its inception and indicated that this allowed him to gain unique knowledge of technologies specifically customized for this client necessary to coordinate the implementations, installations, upgrades and maintenance. The record, however, contains no evidence documenting the existence of these internal processes the petitioner claims form the basis of the beneficiary's special and advanced knowledge, and which it claims are essential to the performance of duties for [REDACTED]. Also, the petitioner has not adequately explained the beneficiary's knowledge in relation to the [REDACTED] portal application. In fact, the record suggests that various other software professionals within the company hold this knowledge since the beneficiary coordinates with a team located in India. Further, the beneficiary's resume states that he worked on a [REDACTED] portal team from September 2005 through October 2007. Again, the beneficiary's involvement with a team of software professionals engaged on the specific [REDACTED] project suggests that many others hold knowledge of the utilization of the company's processes and procedures for the development and maintenance of the [REDACTED] application. Despite being specifically requested by the

director, the petitioner does not provide probative explanations or supporting evidence necessary to establish how the beneficiary's knowledge differs from his peers with apparent knowledge of the [REDACTED] including his three subordinates and those who previously worked on the [REDACTED] portal project. The petitioner merely states that the beneficiary is only one, or one of a few, holding such knowledge. 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 December 23, 2004 and December 7, 2008, the beneficiary completed 29 formal trainings accounting for 634 hours of formal training while employed with the company. However, the petitioner specifies on appeal that it would likely take only one year to train a systems analyst to reach the level of the beneficiary, despite previously noting that the beneficiary's knowledge would be "extremely difficult to replicate." Also, the petitioner states that 589 systems analysts are employed in the banking and financial services vertical within the company. Further, 16 of the beneficiary's 29 courses were completed prior to the beneficiary's assignment to the [REDACTED] portal project approximately nine months after his employment, including 390 of the total 634 training hours. As such, the record reflects that the well more than half of the beneficiary's training was provided as part of an initial training period applicable to all systems analysts. In fact, the petitioner's Form 10-K for 2008 states, "We have implemented an intensive orientation and training program to introduce new employees to the Process Space software engineering process, our other technologies and our services." Absent evidence from the petitioner outlining and how such training differs from that provided to other systems analysts working for the petitioner, the AAO must conclude that other systems analysts in the banking and finance 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).

Further, the petitioner has not specified clearly how the various courses completed by the beneficiary contribute to his specialized knowledge. In fact, some of the trainings relate to practical topics and do not indicate specialized knowledge, such as: Communicate Powerfully (16 hours), Written Communication (16 hours), Six Sigma Yellow Belt (6 hours), Basics of Project Management (4 hours) and Cross Cultural Adaptability-US (24 hours). Various other courses suggest introductory level topics that any systems analyst would complete, such as: Principles of Software Engineering (4 hours), Cognizant Quality System (8 hours), Client Server Concepts (4 hours), Essence of Databases (4 hours), Programming Languages (4 hours), Data Structure & C⁴ (4 hours), Networking Essentials (4), Essence of Program Design (4 hours), Operating System Concepts (4 hours), Software Testing (16 hours), Vista Migration (4 hours)⁵ and Data Modeling Workshop (16 hours). Although other courses of apparently greater technical complexity are provided by the beneficiary, 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 through his training. Additionally, the training table provided by the petitioner notes that the beneficiary received training on

⁴ The petitioner elaborated that the training instructed the student on "[Petitioner] methodology and best practices for organizing sets of data in a particular system."

⁵ The petitioner notes that the course involved an introduction to Vista, a new Microsoft Windows application.

petitioner proprietary processes and tools such as Prolite, eTracker, ASP.NET, ADO.NET, and C#. The AAO does not doubt that these internal proprietary processes of the petitioner are highly effective and valuable to the petitioner, but as previously noted, the petitioner asserts that customized versions of standard practices are commonly used in the industry. As such, the record does not demonstrate that these processes could not be readily learned by employees who otherwise possess the requisite technical background and experience for the current project. In fact, many of petitioner's proprietary practices are offered as relevant to allowing effective coordination between petitioner employees in the United States and aboard suggesting that the use of the processes and tools is common within the petitioner. For these reasons, the petitioner has not established that the beneficiary's knowledge of its processes and procedures constitutes specialized knowledge.

D. Preponderance Analysis

The petitioner submitted lengthy and detailed statements in support of the petition and in response to the RFE which provide extensive detail regarding the nature of its business operations, and the project to which the beneficiary is assigned. However, the petitioner has not explained, or documented sufficiently, how the beneficiary's knowledge differs from his colleagues both within, and outside, the petitioner's organization as necessary to establish it as special or advanced.

On appeal, counsel asserts that the director applied an overly restrictive standard for specialized knowledge by requiring that the beneficiary's knowledge be advanced in relation to the rest of the petitioner's workforce or be narrowly held within the organization. Counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS to assert that comparing the beneficiary to his colleagues is overly restrictive, noting that the memo states that "advanced knowledge need not be narrowly held throughout the company." See James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum).

The AAO does not find counsel's argument persuasive. 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 alone 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 company or the industry. In fact, the AAO notes that the Puleo Memorandum referenced by counsel also states the following:

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.

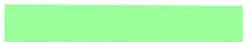
As such, USCIS requiring a petitioner establish a beneficiary's knowledge as unique as compared to his colleagues within, and outside, the company is not an overly restrictive standard, but an accepted means of determining whether a beneficiary's knowledge of company processes and procedures is set apart from elementary or basic knowledge. 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 submitted by the petitioner does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by others employed by the petitioning organization in similar roles or professionals employed elsewhere in the industry. 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. Although the petitioner notes that the beneficiary has an "intense and lengthy acquaintance with [REDACTED]" a close relationship with a client or a better understanding of a client's needs is not alone sufficient to establish specialized knowledge. In fact, the beneficiary's role is consistent with the petitioner's "Two-in-a-Box" client relationship model, explained in the petitioner's 2007 annual report, whereby petitioner managers work at the client site and their counterparts offshore to coordinate business requirements and deliverables. As such, the petitioner's assertion that the beneficiary gained intimate knowledge of the petitioner's "onsite-offsite methodology" is not convincing. Given the petitioner's business model, there are undoubtedly many other petitioner employees that work at client sites who previously worked offshore and thereby understand the logistics and processes involved in such a dynamic. Therefore, 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 record suggests that others hold this knowledge and the petitioner failed to provide independent and objective evidence to sufficiently establish the beneficiary's knowledge is beyond that of typical systems analysts working for the petitioner. 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. 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 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

(b)(6)



Page 14

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.