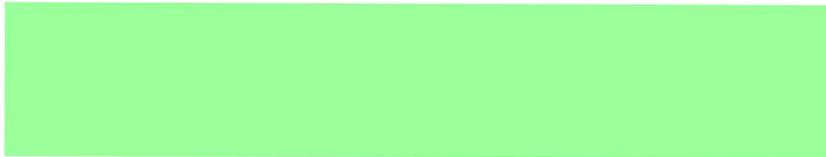
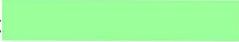


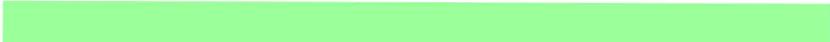
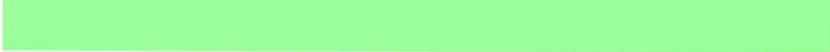


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 21 2013 Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

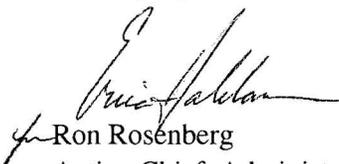
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner filed the nonimmigrant petition to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a computer software development and consultancy company with an affiliate, [REDACTED] located in India. It seeks to employ the beneficiary in the specialized knowledge position of programmer analyst in its insurance vertical, and will assign him to work primarily offsite at the offices of [REDACTED] for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed abroad or would be employed in the United States in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the record contains ample evidence establishing that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity. Counsel submits a brief and additional documentation in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(i)(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 (I)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has more than 60,000 employees worldwide and approximately 12,000 in the United States. In a letter of support appended to the petition, the petitioner averred that it is a "leading provider of custom information technology ("IT") design, development, integration, and maintenance services primarily for 'Fortune 1,000' companies." Regarding its business model, the petitioner stated as follows:

[The petitioner] designs, engineers, and implements business solutions on a project basis for companies that are not in the IT sector. Generally, [the petitioner] does not provide staff augmentation for clients in the IT service sector. Rather, [the petitioner's] employees work directly for [the petitioner] on projects designed and built by our company, and under the direct and primary supervision of one or more [project managers for the petitioner] who typically oversee projects onsite. All projects are completely managed by [the petitioner].

Accordingly, the petitioner is not a placement company, nor an agent that arranges short-term employment.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that the company "typically assigns U.S.-based client site project leaders who have an advanced level of knowledge of [the petitioner's] proprietary tools and systems, as well as experience in key roles on other projects in which [the petitioner's] onsite/offshore methodology was implemented."

With regard to the beneficiary's position, the petitioner stated that he would be employed as a programmer analyst working on the [redacted] project for the petitioner's client, [redacted]. The petitioner noted that the [redacted] project is the same project to which the beneficiary is currently assigned at the petitioner's offices in India. Regarding the beneficiary's physical worksite, the petitioner claimed on the Form I-129 petition that he would work onsite at the client site in Los Angeles, California.

The petitioner explained that in providing solutions to [redacted] its project teams and the constituent professionals allotted to each project would develop a specific domain, also referred to as "an area of control" or "sphere of knowledge," particular to a specific project. The petitioner further stated that, from project to project, the technology spectrum is quite disparate and may involve any combination of technologies including application servers, products and data warehouse tools, databases, languages, multiple platforms, and other complex systems.

According to the beneficiary's resume submitted in support of the petition, the beneficiary commenced his employment with the petitioner's Indian affiliate in December 2006, and he began working on the [redacted] project for [redacted] in July 2009. His resume indicates that he previously worked on a related project for [redacted] from November 2008 to June 2009.

The petitioner provided background information regarding the [redacted] 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 an active team member in [redacted] team in [redacted] project which develops new requirements or change requests in [redacted] application. He is handling 4 to 5 new enhancements for each month to implement in [redacted]. He is having the responsibility of designing the complex [redacted] and identifying viable business as well as technical solutions to them. He is developing the [redacted] using [redacted] tool in [redacted] framework and then once it is unit tested properly he is checking in those changes in [redacted] repository tool. He is also responsible for doing design, coding and test cases review of his peer team members to ensure good quality of deliverables. He is logging all those review comments in [redacted] a [proprietary tool of the petitioner] to keep track until it is closed. He is also doing system integration testing once the related [redacted] are developed and unit tested and will be logging defects identified in [redacted] center and keeps track of defect until it is fixed

and passed. He is also responsible for giving support to Application functional testing which is done by business users. He is also fixing any defects logged by business users during functional and regression testing in quality center. He is also responsible for fixing up any emergency defects occurring in production environment. He is also involved in production table cleanup activities. He is also responsible for analyzing daily production logs and [REDACTED], [REDACTED] interface Error records which is business critical for other dependent downstream application to work properly. He is also part of [REDACTED] reduction activity team which monitors daily [REDACTED] consumption by [REDACTED] application and does necessary changes to reduce the consumption. He is also attending daily triage calls with business users to discuss the defects and clarifications required for defect fixes.

Regarding the beneficiary's proposed transfer to the United States, the petitioner stated that the purpose of the transfer is 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 abroad, and described the duties to be performed in the United States as follows:

Requirements Gathering (20%)

- Analyze the BRI (Business requirements Identification) received from business users.
- Identify the application impacts with in [REDACTED] application as well as other dependent downstream applications because of this change.
- Identify high level test scenarios for the requirements proposed.
- Prepare the high level estimates for the BRI based on [petitioner] specific complexity point estimation methodology.

Design (30%)

- Detailed technical as well as functionality level Analysis on requirements or change requests.
- Arriving at proper solutions to technical/business issues.
- Preparing TRD (Technical Requirements Documents) and FSD (Functional specification document) for changes proposed to identify exact implementation.
- Identifying whether any data model or infrastructure changes are required for the enhancements.

Onsite-Offshore coordination (20%)

- Allocate tasks to offshore team based on client's requirements and TRDs/FSDs prepared and coordinating with the team.
- Clarify any issues raised by offshore team regarding TRD/FSD
- Reporting the progress of the project on a daily/weekly/monthly basis using [REDACTED] a [proprietary tool of the petitioner].

Production Support (20%)

- Fixing up and emergency defects or issues happening in Production environment.
- Monitoring daily production activities like executing daily batches, reports etc.
- Monitoring real time interfaces like [REDACTED] and [REDACTED] and solving day to day issues.
- Manage production database by doing necessary clean ups and ad hoc requests.

Deployment (5%)

- Doing daily deployments in TEST environment for business users to test the requirements changes.
- Participating in daily triage call with business user to discuss the daily defects and doing prioritization of defects.

Test Execution (5%)

- Test the application against Business Requirements provided using tools like ProLite, eMetrics.
- Log defects in [REDACTED] and tracking the same to closure.
- Prepare Test Summary Reports on the actual results generated during Test Execution.

The petitioner also stated that the beneficiary's knowledge "cannot be easily duplicated," and that it is "not possible to easily or quickly train a U.S. worker to undertake the proposed job duties in the United States."

In addition, the petitioner stated that to serve as a programmer on the [REDACTED] project, an individual must have advanced and special knowledge of various third-party technologies such as [REDACTED] proprietary [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

The petitioner provided brief descriptions of these tools and noted that the knowledge required for the position is "highly technical knowledge" which is "held by only certain individuals at Programmer Analyst or higher level on the [REDACTED] project" and "not commonly held" throughout the company. The petitioner further noted that the beneficiary had acquired specialized knowledge of the petitioner's internally developed project management and software quality assurance tools, including [REDACTED]. The petitioner stated that the beneficiary gained in-depth knowledge of these various tools while working on the [REDACTED] project as well as other projects within the petitioner's insurance vertical, and further claimed that this knowledge is not generally known within the petitioner or outside of the petitioner in the industry in general.

Finally, the petitioner claimed that the beneficiary completed 902 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. Entry-level training (JAVA/J2EE) (360 hours)
2. Foundation course on Insurance and [REDACTED] Insurance (4 hours)

3. Next Gen Framework (248 hours)
4. Clear Case (35 hours)
5. WSAD (15 hours)
6. Struts Framework (40 hours)
7. Webservices, Messaging Queues (24 hours)
8. EJB (40 hours)
9. PMD (16 hours)
10. XSTREAM (50 hours)
11. DOS Framework (6 hours)
12. Rational Application Developer (RAD) (8 hours)
13. [REDACTED] (20 hours)
14. Spring, Hibernate, and Drools (30 hours)
15. Prolite (2 hours)
16. Harvest (4 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Engineering in Electrical and Electronics Engineering. On his resume, the beneficiary lists his technical skills as: Windows XP; C; Java; J2ee; EJB 2.0; Oracle 10g DB; DB2; Aqua Data Studio; AQT; Eclipse; Oracle JDeveloper; Oracle SQL Developer; SDE; RAD7.0; Mercury Quality Control 9.0; SOAP UI; Clear Case; Harvest; JSP; Servlets; HTML; XML; Struts framework; and Web services. He states that he has more than three years of overall IT industry experience.

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 [REDACTED] project in India, "has accumulated project and technology specific expertise that is advanced and special." The petitioner noted that he "gained his advanced and special knowledge by performing requirement studies and by developing and implementing several highly sophisticated application support modules."

The petitioner went on to further describe the beneficiary's training, noting most of the beneficiary's knowledge has come from his experience working on past company projects since the beginning of his employment abroad. Nevertheless, the petitioner restated the beneficiary's training, emphasizing that the beneficiary's special and advanced knowledge may only be attained within the petitioner through direct work experience with the petitioner's processes and tools and through project work for its clients such as [REDACTED]

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

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

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 [REDACTED] project, the claimed overseas source of the beneficiary's specialized knowledge. While the description of the overseas position clearly conveys that the beneficiary worked on various aspects of the [REDACTED] project, the description of the proffered position includes no specific reference to similar details. Instead, the description is nonspecific. Second, the petitioner repeatedly uses technical and abbreviated terms in the breakdown of duties yet provides no explanation or further information regarding the nature of these terms or how they apply to the claimed specialized knowledge of the beneficiary and its application to the project in the United States. The pervasive use of acronyms and technical terminology, without explanation, does not assist the AAO in determining eligibility.

The petitioner's description of duties, therefore, does little to clarify exactly what knowledge is required for performance of the role of programmer analyst, or how such knowledge will be applied. Specifics are plainly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner fails to adequately articulate or document the manner in which the beneficiary has been and will be employed in a specialized knowledge capacity. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

B. Proprietary Tools And Methodologies

With regard to the specific claims on appeal, both counsel and the petitioner continually assert that the proffered position requires project-specific knowledge that the beneficiary gained in India and experience with the petitioner's internal processes and procedures. They conclude that the duties of the proffered position could not be performed by the typical skilled programmer analyst specializing in either the petitioner's insurance vertical or in the 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 unequivocally stated that in order to serve as a programmer analyst on the [REDACTED] project, a programmer analyst must have "advanced and special knowledge" of various technologies and processes, including tools such as [REDACTED], eTracker, and Prolite, as well as various third-party technologies.

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 [REDACTED] project for [REDACTED] on his resume yet indicates that the project was executed using knowledge of third-party technologies such as Java and J2EE. Furthermore, the petitioner emphasizes the importance of a number of [REDACTED] proprietary technologies as opposed to its own proprietary processes and tools.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the [REDACTED] project. However, it is reasonable to expect all IT consulting firms to develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. The petitioner's Annual Report at page 2 provides an overview of the IT consulting industry, and explains that "IT service providers must have the methodologies, processes and communications capabilities to enable offshore workforces to be successfully integrated with on-site personnel." The petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies. The petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced 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 [REDACTED]. 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 [REDACTED] project, has allowed him to play a major role in the [REDACTED] project. The petitioner concludes that the beneficiary's concentrated focus on the

development and implementation of the client's technology cannot easily be passed to another programmer. The record, however, contains no documentation, such as internal handbooks or promotional materials, which document the existence of these internal processes and platforms the petitioner claims form the basis of the beneficiary's special and advanced knowledge, and which it claims are essential to the performance of duties for [REDACTED]. 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.

The lack of documentary evidence clearly outlining the nature of the requirements of the position and the manner in which it relies upon proprietary processes and tools, 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 [REDACTED] project in the United States and whether specialized knowledge of these, or any similar processes or procedures, will actually be required.

C. Training

Turning to the training history of the beneficiary, the AAO notes that since the beginning of his employment with the petitioner's Indian affiliate in December 2006, the beneficiary apparently completed 902 hours of in-house training.

Despite the large number of hours devoted to formal training, the training lists submitted into the record do not establish that the beneficiary possesses specialized knowledge. Specifically, both lists included minimal, if any, courses in proprietary or client-specific processes. Moreover, the petitioner repeatedly indicates that its proprietary process, [REDACTED] will be used by the beneficiary in the course of his duties, yet there is no indication that he ever received training in this process. This minimal information suggests that an individual with similar education and minimal industry experience could easily learn the nature of the beneficiary's position in a short period of time. Absent evidence from the petitioner outlining the manner in which programmer analysts are trained and the length of time required to become, as the petitioner claims, an "expert" in these processes, the AAO must conclude that other programmer analysts in the retail 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).

The record appears to indicate that the beneficiary has been fully performing the duties of the programmer analyst position since the date he was hired by the foreign entity. Moreover, much of the training the beneficiary received during the course of his employment abroad is in third-party processes and technologies. 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 the [REDACTED] project.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in software testing technologies and appropriate functional or domain background for the project to which they

will be assigned. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

D. Preponderance Analysis

The petitioner submitted lengthy statements in support of the petition and in response to the RFE which provide extensive detail regarding the nature of its business operations. However, it simultaneously provided varied claims with regard to the beneficiary's specialized knowledge that have not consistently explained the nature or specifics of the claimed knowledge, documented when or how he acquired such knowledge, or explained why such knowledge is necessary to the performance of his proposed job duties in the United States. As such, the evidence as a whole does not allow the AAO to conclude that the beneficiary possesses special knowledge by virtue of his training as a programmer analyst working in the petitioner's insurance vertical, either compared to programmer analysts working for the petitioner or compared to other programmer analysts providing consulting services in the same industry segment.

All employees can be said to possess unique skill or experience to some degree. Moreover, the proprietary qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

On appeal, counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. In the present matter, the most pertinent memorandum is the Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum). The Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at page 4.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among programmer analysts in

the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

It is reasonable to conclude, and has not been shown otherwise, that all programmer analysts assigned to client projects must use the same tools to record and track project activities. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is advanced in comparison to that possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other technology consulting companies, such that knowledge of such processes alone constitutes specialized knowledge.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.