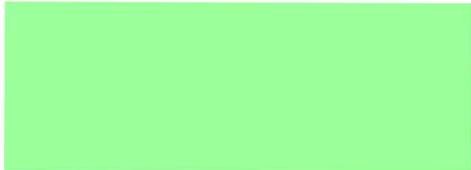




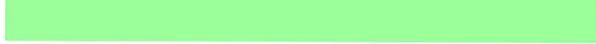
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JUN 24 2013** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its 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 motion 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 any motion to 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, recommended denial of the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review pursuant to 8 C.F.R. § 103.4(a). The AAO will affirm the director's decision and deny the petition.

The petitioner filed this nonimmigrant visa petition seeking to classify the beneficiary as an L-1B intracompany transferee with specialized knowledge 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 operates as a branch office of an Indian corporation qualified to do business in the United States. The petitioning company is engaged in the supply of software products and services in the global market. It seeks to employ the beneficiary in the position of Technology Lead for a period of three years. The petitioner indicates that it will assign the beneficiary to work at the Plano, Texas facilities of its client.

The director concluded that the petitioner failed to establish: (1) that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge; and (2) that the beneficiary's placement at the worksite of the unaffiliated employer is in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, pursuant to section 214(c)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004.

The director certified the decision to the AAO and advised the petitioner that it may submit a brief or other written statement for consideration within 30 days, pursuant to 8 C.F.R. § 103.4(a)(ii). As of this date, the AAO has not received a brief or statement from the petitioner, and the record will be considered complete.

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 subsidiary or affiliate.

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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

Finally, 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. Specialized Knowledge

The first issue addressed by the director is whether the petitioner has established that the beneficiary has been and will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

A. Facts and Procedural History

The petitioning company is engaged in the supply of software products and services in the global market. It employs over 116,000 employees worldwide and reports gross annual income of \$2.15 billion. The petitioner stated that it has ongoing contracts with over 450 major U.S. companies for software development, re-engineering, e-commerce and internet consulting, and software maintenance. The petitioner indicated that it seeks to assign the beneficiary to serve as Technology Lead based at the Plano, Texas facilities of its client, [REDACTED]. The petitioner indicated that the objective of the client project is "to support the [REDACTED] and the [REDACTED] processes . . . by providing a single application for the [REDACTED] to create and manage Contracts, Purchase Orders, and Allocation Instructions regardless of channel."

The petitioner indicated that the beneficiary's responsibilities as Technology Lead will include the following:

- Review Analysis
- Impact Analysis
- Architecture Designing
- Performance Tuning
- Technical troubleshooting
- Client interfacing.

The petitioner stated that beneficiary will use various third-party tools and technologies during the assignment, including AIX, Java 1.5, Websphere, MyEclipse and DB2.

In describing the beneficiary's purported specialized knowledge, the petitioner stated that it has "a complete set of proprietary processes, methodologies and tools for managing Application Development, Maintenance, and Package Implementation," developed based on the company's understanding of the "Global Delivery Model

(GDM)." The petitioner explained that such processes, tools and methodologies enhance the company's ability to develop, deploy and maintain applications globally within budgetary and time constraints. Briefly, the petitioner identified these tools as the following: Enterprise Architect Tool; J2EE Development Framework; IBM Rational Application Developer (RAD); Usage; IBM Rational Rose; InFlux Architecture Modeling Methodology; InFlux Performance Engineering (PE) Methodology; Infosys Java Architecture (InJArch); Product Quality Metrics (PQM); and Microsoft Visual SourceSafe (VSS). The petitioner indicated that its InJAarch framework is "a java based framework for J2EE platforms" based on model-view-controller (MVC) architecture.

The petitioner stated that it selected the beneficiary for the proposed position based on his "educational background, comprehensive technical training at [the foreign entity], exposure to our proprietary processes and methodologies," and eleven years of work experience, the last six years of which was gained with the petitioning company in India. The petitioner stated that the beneficiary acquired "vast process and quality knowledge" while working at the foreign entity, and has "rich knowledge" gained through training and project experience. The petitioner further stated:

This background makes the beneficiary the ideal candidate for the position and the background could only be acquired through direct on-the-job training and experience with [the company] and is, therefore, unavailable within the U.S. job market.

Knowledge and hands on usage of these specialized processes, standards, methodologies and practices at [the petitioning company] differentiates the beneficiary from others within [the company] who may have limited exposure and experience in these methodologies. This knowledge has been gained through hands on work experience at [the company] and the nuances of this can only be acquired by employees through hands on experience and not just through knowledge sharing / training sessions.

Finally, the petitioner stated:

The beneficiary has extensively used [company] proprietary methodologies and tools like Enterprise Architect Tool, J2EE development Framework, IBM Rational Application Developer (RAD), IBM Rational Rose, InFlux Architecture Modeling Methodology, INFlux Performance Engineering (PE) Methodology, Infosys Java Architecture (InJarch), Product Quality metrics (PQM), Microsoft Visual Sourcesafe . . . and possesses specialized knowledge in requirement analysis and [company] proprietary tools and methodologies. The beneficiary has been working for various projects in this filed [*sic*] which enables him to leverage this experience from the current assignment.

* * *

This knowledge have [*sic*] been acquired by the beneficiary through training provided by the company, project experience, study of industry processes and standards, including customer

[s]pecific business processes and knowledge, training and work experience. Using a collection of models, methods, patterns, tools and frameworks, [the company's] [p]roprietary methodologies achieves [sic] a smooth translation of [redacted] into effective IT solutions. This specialized knowledge on all these technologies and verticals is now required onsite for the successful completion of the assignment.

The petitioner provided the beneficiary's detailed resume which describes nine client projects to which he has been assigned since being hired by the company, for a total of five different clients. Most recently, the beneficiary has been assigned in the role of "performance tuning architect" to the [redacted] project for the foreign entity's client, [redacted]. The beneficiary states that he utilizes knowledge of Windows 2000 server, Java 1.5, Spring Framework, iBatis, Struts, Dojo Framework, Oracle 10 and JProbe to perform his current duties.

The beneficiary indicates in his resume that his certifications include "[redacted] in [redacted] and [redacted]. Finally, the beneficiary lists 35 training courses he has completed, with most of the training lasting less than one day. The training included an introduction to the petitioner's project processes, [redacted]

[redacted] and [redacted]. The beneficiary also competed non-technical training including [redacted]

[redacted] and [redacted]. The resume does not specify whether all training was provided by the petitioner.

The director issued a request for evidence (RFE) in which he instructed the petitioner to provide additional evidence relating to the proposed position including: (1) a detailed description of the actions and duties the beneficiary will perform on a daily basis; (2) a list of proposed duties which require specialized knowledge; (3) an explanation as to why each duty requires a worker with specialized knowledge; (4) an explanation of the procedures, tools and methodologies the beneficiary will use for each duty and from which company each process, tool or methodology comes from; (5) information regarding how long it takes to train an employee to use the specific tools, procedures and methodologies the beneficiary uses to perform his duties; (6) the number of similarly employed workers within the organization who possess the same or similar knowledge; (7) an explanation as to how the beneficiary's training differs from the core training provided to other employees; and (8) a record from the petitioner's human resources department detailing the manner in which the beneficiary gained his specialized knowledge. The director advised the petitioner that the documentation should indicate the pertinent training courses the beneficiary completed, the duration of the courses, and certificates of completion. In response to the director's request, the petitioner re-submitted the beneficiary's resume and provided a letter which re-stated portions of the original letter submitted in support of the petition. The petitioner also provided a separate statement describing the beneficiary's proposed role and responsibilities for the client project:

As a Java Lead, [the beneficiary] is responsible for providing consultative inputs, design and manage the [redacted] technically from onsite for [redacted]. This role involves extensive technical expertise in the areas of [redacted] with wide exposure to various tools and technologies. He will act as a Java Lead from [the petitioner] for the entire [redacted] to support the environment round the clock to ensure high availability and resilient [sic].

The beneficiary is also responsible for the technology roadmap development and planning, cost analysis for the [redacted]. The role also involves interfacing with various client business teams to capture the specific needs and convert them to technology requirements.

The petitioner provided a description of the beneficiary's day-to-day duties, indicating that the beneficiary would devote 70 percent of his time to "technical solutions, consulting and architecting [sic]" including: designing, implementing and upgrading the technology in the [redacted] working with client teams and business lines to identify requirements analysis; providing technical solutions and recommendations; applying architecture-driven software development processes and methodologies throughout the software development life cycle to ensure business conformance and equipping the solution with the desired quality of service; and providing value added services such as reviewing impacts for the new release. The petitioner indicated that the remainder of the beneficiary's time would be allocated to project oversight management, client engagement, and business communications duties.

In response to the director's request that the petitioner identify the proposed duties that require the application of specialized knowledge, the petitioner listed the following tasks:

- Install and configuring My Eclipse, Websphere Application server and DB.
- Providing High level Architecture, reviewing detailed Design, doing POC for business critical components.
- Building common framework for the application (like logging, security, email).
- Helping deployment in heterogeneous environment.
- Using RAD that involves techniques like interactive development and software prototyping.
- Performance tuning and testing the application using tools like JProbe and Load Runner.

The petitioner further explained as follows:

[redacted] application functional requirements are complex and are very critical for the success of their client business. [D]esigning such systems for availability and scalability requires highly technical skilled person. ... To manage and design this critical application, the beneficiary should possess [sic] strong expertise and experience in design, architecting [sic] and implementing a robust application. The management and technical experience helps in ensuring planning and implementation of optimal processes to improve productivity and operational efficiency and reduce the total cost of operations.

In response to the director's request that the petitioner identify which processes, procedures, tools and/or methods the beneficiary will use to carry out each of his duties, and the source of those processes, procedures and tools, the petitioner provided the following information:

Key Tools used

- Web Sphere Application Server – IBM
- DB2 – IBM
- JProbe – Quest
- RAD (Rapid Application Development) – IBM
- RSA (Rational Software Architect) – IBM
- Platforms – Microsoft Windows Vista and IBM AIX

The petitioner indicated that the beneficiary has spent eight years working with such technologies, and has more than two years of experience as a technical architect, giving him "in depth knowledge on the technology and providing technology solutions which will help converting the client business requirements to technology landscape."

Finally, in response to the director's request that the director explain how the beneficiary's training differs from the core training provided to other employees working for the company in similar roles, the petitioner stated "Nil." The petitioner did, however, list the beneficiary's key certifications, noting that he was certified as a [REDACTED] and [REDACTED] as a Certified Software Quality Analyst. The petitioner provided documentary evidence of the beneficiary's receipt of each of these certifications.¹

The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. In denying the petition, the director noted the record shows that the beneficiary has completed a total of no more than 26 days of in-house training during approximately six years of employment with the petitioner's organization, much of which appeared to involve general topics or tools that are common to the information technology industry. The director also acknowledged the beneficiary's certifications, noting that they were granted by third parties, and must also be considered to have conveyed general knowledge in the petitioner's industry. The director observed that, while the petitioner claimed that it has developed proprietary processes and procedures for project management, the petitioner failed to document how the beneficiary's knowledge or the processes and procedures themselves are

¹ The petitioner's response also included, without explanation, a job description for the position of "Onsite Coordinator" for a "[REDACTED] project to be undertaken for [REDACTED] in Marietta, Georgia. The evidence includes a project milestone plan, and a letter from the client indicating that 40 of the petitioner's personnel have been requested to work on the project at various client sites for a period of two years. The petitioner also submitted two employment letters dated 2003 and 2004, both of which are addressed by the foreign entity to an individual who is not otherwise named in the petition or supporting documentation. These documents have no apparent relevance to this petition.

substantially different from, or advanced in relation to, those used by any similarly employed and experienced worker.

In addition, the director noted that the project on which the beneficiary will work requires knowledge of and experience with technologies and software development techniques that are common throughout the IT industry. The director emphasized that some of the petitioner's claimed "proprietary" processes are in fact not the petitioner's own technologies, such as J2EE Development Framework and IBM Rational Rose. With respect to those processes which do appear to be internal processes developed by the petitioner, the director noted that the petitioner appears to provide essentially the same training in such processes to all similarly employed workers, thus the mere possession of such knowledge would not rise to the level of specialized knowledge.

As noted above, the director notified the petitioner that the decision would be certified to the AAO pursuant to 8 C.F.R. § 103.4(a) and advised it could submit a brief or written statement to the AAO within 30 days. The AAO has not received a brief from the petitioner and will adjudicate the petition based on the record before the director.

B. Analysis

Upon review, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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.

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. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge, or that the position requires such knowledge, will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act. The director's decision will be affirmed as it relates to this issue and the petition will be denied.

In examining the beneficiary's specialized knowledge, 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). As discussed above, the petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated or documented any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced Java architects employed by the petitioning organization or in the industry at-large. The petitioner failed to articulate, with specificity, the nature of the claimed specialized knowledge. 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)). Specifics are clearly 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 maintains that it has "a complete set of proprietary processes, methodologies and tools for managing Application Development, Maintenance and Package Implementation." However, when describing its purported methodologies, processes and tools, the petitioner listed primarily third-party technologies such as UML, J2EE development framework, IBM RAD and Rational Rose, InFlux Architecture Modeling and Performance Engineering Methodologies, and Microsoft Visual SourceSafe (VSS). The petitioner did not develop these technologies, which are widely used and must be considered general knowledge in the petitioner's industry. In response to the RFE, when asked to identify the processes, procedures, tools and/or methods the beneficiary will use to perform his proposed duties in the United States, the petitioner identified IBM's Web Sphere Application Server, DB2, Rational Application Developer, Rational Software Architect, Quest's JPROBE, and platforms including Microsoft Windows Vista and IBM AIX. The petitioner did not indicate whether or how the beneficiary would utilize any body of knowledge that could normally be gained only with the petitioning organization. While the AAO does not doubt that the petitioner has developed internal processes for project management and software development, the petitioner has not identified these processes with any specificity or documented them, and instead continually claims that third-party technologies are "proprietary" to the petitioning organization.

The petitioner vaguely states that the beneficiary possesses "vast process and quality knowledge" as a result of working at the foreign entity, and indicates that he gained such knowledge through "training provided by the company, project experience, study of industry processes and standards, including customer specific business processes and knowledge, training and work experience." While the beneficiary has six years of experience with the foreign entity, the petitioner has not established that he has undergone extensive training in any company methodologies, or received any training that would be considered special or advanced compared to that held by any other similarly-experienced software professional in the industry. The beneficiary's self-prepared training summary indicates that he completed only one half-day of training in the petitioner's project processes.

Where asked to explain how long it takes to train an employee to use the tools, procedures and methods required for the proposed position and how many workers possess the same knowledge, the petitioner stated "nil" and provided no further explanation. Specifically, the petitioner indicated that the beneficiary is qualified for the position because of his experience performing similar work for various clients, and eight years of experience working on similar technologies. As the petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures, or clearly identified its internal tools and procedures, it cannot be concluded that its processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced software 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Based on the evidence submitted, it appears the petitioner's internal processes and project implementation practices can be readily learned on-the-job by

employees who otherwise possess the requisite technical and functional background in the information technology field.

The AAO acknowledges that the beneficiary would perform high-level technical work as the technology lead for the assigned project, but an advanced knowledge of third-party software does not lead to a conclusion that the beneficiary possesses specialized knowledge of the petitioner's products or an advanced knowledge of the petitioner's processes and procedures. The petitioner specified that the beneficiary's key knowledge applicable to the proposed U.S. assignment relates to IBM WebSphere application server, DB2, JProbe, IBM Rational Rose and Rapid Application Development and IBM AIX.

In order to meet the plain language of the statutory definition of "specialized knowledge," the petitioner must establish that some qualities of its own products, processes, or procedures require this employee to have knowledge that is not generally found in the industry. This has not been established in this matter as all of the beneficiary's claimed specialized knowledge relates to these third-party technologies.

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. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced project leader specializing in software quality control and testing matters, or that he has received special training in the petitioning company's products, methodologies or processes which would separate him from any other worker employed within the industry at-large.

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 petition will be denied.

III. L-1 Visa Reform Act

Assuming *arguendo* that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition. One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. See 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003).

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised

principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; unsupported assertions of the employer will not suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. at 534.

If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

Here, the petitioner indicates that the beneficiary will work at the Plano, Texas facility of its client, [REDACTED] and report to a manager in the petitioning company. The director specifically addressed whether the petitioner has established that the beneficiary's placement at the client's worksite is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act. As discussed below, the petition fails to meet the requirements of this section of the Act.

In denying the petition, the director observed that "a majority of the beneficiary's purported specialized knowledge hinges upon his acquired knowledge of [the] client's internal processes."

Upon review, the AAO affirms the director's decision. The petitioner has not established that the beneficiary's placement at the unaffiliated employer's worksite is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

As discussed above, the petitioner has not established that the design and implementation of information systems for the client requires knowledge that is specific to the petitioning company. Specifically, the petitioner has not shown that any of the software or systems to be developed and implemented will require the application of the petitioner's own technologies. The evidence of record does not support a conclusion that the beneficiary will be implementing, developing, maintaining, or supporting systems or software developed by the petitioning company, or providing a service that other information technology companies with comparable capabilities could not provide. The primary purpose of the assignment is for the beneficiary to support and enhance the performance of the client's merchandising systems to streamline the processes for managing contracts, purchase orders and logistics. To do so, he will rely on his knowledge of Java, Websphere, MyEclipse and DB2.

It is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that requires knowledge specific to the petitioner. Here, the petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

The AAO acknowledges that the petitioner indicates that it has been retained to provide specific project-related work and not merely general IT support or programming services. The petitioner has not provided a copy of its contract or services agreement with the client specifying the exact nature and scope of the services to be provided, and thus there is insufficient evidence to support this claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In conclusion, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any technology products or that the beneficiary's offsite employment requires any specialized knowledge specific to the petitioner's operations. Instead, the limited evidence in the record related to the nature of the contract indicates that the petitioner is providing general consulting services to the unaffiliated employer. The fact that such services appear to be delivered on a large-scale "project" basis is insufficient to preclude a finding that such services essentially constitute "labor for hire."

Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved.

IV. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. The director's decision will be affirmed and the petition will be denied.

ORDER: The petition is denied.