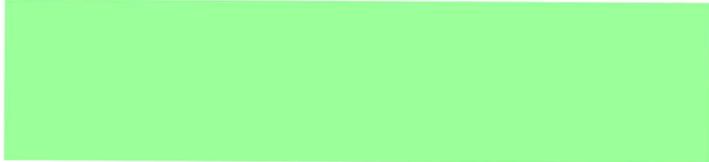


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: **JUN 27 2013** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:  
[REDACTED]

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, Cognizant Technology Solutions India Pvt. Ltd., located in India. It seeks to employ the beneficiary in the specialized knowledge position of technical lead, and intends to extend his employment at the offices of its client, [REDACTED] which recently merged with [REDACTED] for an additional two years.

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

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

### I. The Law

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

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

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

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

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

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

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

## II. The Issues on Appeal

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

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has approximately 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 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. [The petitioner] is **not** a staffing or placement company, nor an agent that arranges short-term employment. Because [the petitioner's] clients lack the expertise to develop their own complex IT solutions, the clients have engaged [the petitioner] to develop their IT solutions. Since our clients are not in the IT services sector in the U.S., the placement of [the petitioner's] employees at our clients' sites is not a form of staff augmentation for an IT provider.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that its professionals generally work as part of a "virtual team" at onsite client sites.

With regard to the beneficiary's position, the petitioner stated that he would be employed as a technical lead working on the Data Center Operations project for the petitioner's client, [REDACTED]. The petitioner noted that the Data Center Operations project on which the beneficiary would be working is the same project to which the beneficiary is currently assigned in the United States. Regarding the beneficiary's physical worksite, the petitioner claimed that he would work onsite at the client's location in Kenilworth, New Jersey.

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 has worked on the Data Center Operations project for [REDACTED] since September 2009. The petitioner further claims that the beneficiary has been involved in the project's entire life cycle, and that he has gained valuable experience working on projects for [REDACTED] as well as other projects within the petitioner's IT infrastructure services domain since the commencement of his employment with the petitioner's foreign affiliate in May of 2005. Regarding the beneficiary's role in the Data Center Operations project, the petitioner stated:

Data center is a highly sophisticated and complex module that requires consistent monitoring and analysis of process that must operate in cohesion. Data Center operates via a variety of hardware and software platforms that often require the regular exchange of application critical data. [The beneficiary] utilizes certain proprietary tools and clarification which include Audit Information System (AIS), VSS, Metrics and Time Sheet Professional (TSP). He has broader industry knowledge of Mainframes (IBM Utilities, DEBUGGER, Quikjob, REXX, FTP, Beta 92, CA 1-Tape Management System), System 32 backup, and Tivoli Storage Manager. He also holds specialized knowledge of systems in [REDACTED] and performs a key role in the running of all the Data Center operations and production processes. He works on troubleshooting various Windows server software / hardware issues and manages the entire server and hardwares of the system. He executes TSM administration functions to assist TSM group with the daily operation and is responsible for the maintenance of the TSM tape library and application. He troubleshoots the IBM 3584 libraries when problems arise and mounts backup tapes on servers, and ensures Tivoli TSM Libraries have the proper amount of scratch tapes and sent tapes to offsite. He works on Client tools like Infrastructure Central to monitor the status of all environmental devices in the datacenter and takes backups on IBM S32 systems and managing it.

He ensures quality by using quality assurance tools such as QView and Qsmart in order to update [company] Knowledge repositories regarding allocation of resources; updates eCockpit with project goals which are monitored against targets and also tries to prevent

common unwanted allocation/expenditure/mistakes. He also utilizes eMetrics (Cognizant internal tool) which is designed to collect and analyze project metrics and calculate project specifications.

The petitioner also stated that the project requires in-depth, project-specific knowledge, and that the beneficiary's knowledge cannot be easily transferred or taught to another individual. The petitioner concluded by stating that the beneficiary's absence would result in customer dissatisfaction and potential contract loss, along with adverse revenue impact.

In addition, the petitioner stated that the beneficiary would be using a variety of applications/databases/tools, including: Audit Information System (AIS), VSS, Time Sheet Professional (TSP), Data Base Management, SOP, Metrics, Infrastructure Central, Identity Manager, Windows 98/NT/2000, and XP, in addition to various internal tools of the petitioner. Finally, the petitioner provided an overview of the training completed by the beneficiary. Specifically, the petitioner claimed that he completed the following courses:

- Tivoli Storage Manager (2 weeks)
- Tivoli Workload Scheduler (2 weeks)
- Exchange Server 2003 (1 week)
- IT Infrastructure Library (1 week)

The following courses relate to proprietary/internal tools of the petitioner:

- Qsmart (16 hours)
- Enterprise Service Architecture (8 hours)
- Etracker (16 hours)
- Qview (16 hours)
- eMetrics (8 hours)
- Time Sheet System (4 hours)

The petitioner's supporting evidence included the beneficiary's detailed resume, a copy of the beneficiary's diploma and transcripts demonstrating that he holds a bachelor's degree in industrial electronics, and a copy of the Master Services Agreement between the petitioner and Schering-Plough. The petitioner claimed that the beneficiary received internal training in the usage of the tools and processes described above. On his resume, the beneficiary lists his technical skills as follows: IBM x3550, 3560 Series blade servers, Dell Power Edge series, HP servers, Windows 98/NT/2000/XP and 2003 server, Microsoft SQL 2000/2005/2008, Microsoft Exchange Server 2003, Microsoft Exchange Server 2007, SCCM 2007, SMS 2003, VMWARE, IIS 6.0, Cisco and Nortel switches.

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, since the filing of the petition, the beneficiary had commenced working on a project entitled [REDACTED] and claimed that this project is the project to which the beneficiary will be assigned in the United States. The petitioner indicates that the beneficiary's role in the project is that of SMS / SCCM/ VMware technology specialist and onsite coordinator. The petitioner also emphasized the beneficiary's experience in its life sciences vertical as being critical to his work on this project, and it provides an overview of this new project which is summarized below:

1. Managing [REDACTED] SCCM / SMS environment including production, test and UAT (25%)
2. Keeping SCCM environment healthy (10%)
3. Using VMWARE technology (25%)
4. Deploying System Center Operations Manager server (10%)
5. Coordinator role between [REDACTED] network team and [the petitioner's] offshore and management team (20%)
6. Process implementation and quality assurance (10%)

The petitioner went on to further describe the beneficiary's training, noting most of the beneficiary's knowledge has come from his experience working on the Data Center Operations project as well as from related company projects in the healthcare vertical since the commencement of his employment. Nevertheless, the petitioner provided an updated list of training it claims the beneficiary has completed, which totals 641 hours. Specifically, the petitioner lists the following courses:

1. VMWARE (36 hours)
2. Microsoft – System Center Configuration Manager 2007 (18 hours)
3. Microsoft – Exchange Server 2007 (18 hours)
4. CISCO (160 hours)
5. IT Infrastructure Library (9 hours)
6. DB2 Basics (24 hours)
7. Operating Systems (4 hours)
8. Computer Basics (4 hours)
9. Networking essentials (40 hours)
10. Database Concepts SDA (4 hours)
11. Windows 2000 Servers (24 hours)
12. Unix Fundamentals (40 hours)
13. IT Helpdesk (8 hours)
14. IT Operations (8 hours)
15. Desktop Administration (8 hours)
16. Oracle Administration (32 hours)
17. MS Exchange Server 2003 (24 hours)
18. BS 15000 Training (32 hours)
19. Testing techniques (4 hours)

20. LINUX (32 hours)
21. Microsoft Project (32 hours)
22. MS Exchange Server 2003 (16 hours)
23. Windows 2003 Active Directory (32 hours)
24. ELM for Learners (4 hours)
25. Code of Business Ethics (4 hours)
26. Core values and standards of Business Conduct (4 hours)
27. eTracker (4 hours)

In summary, the petitioner claimed that the beneficiary's special and advanced knowledge may only be attained within the petitioner through direct work experience with the petitioner's process and tools and through project work for its clients such as Schering-Plough and Merck along with similar training to that of the beneficiary.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that it will employ him in a capacity requiring specialized knowledge. In denying the petition, the director noted that the beneficiary's knowledge of the multiple projects and the processes and procedures used on these projects appeared to be related more to internal client 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 working for the petitioner and in the industry in general.

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 insufficient to establish that the beneficiary possesses specialized knowledge. In its response to the director's request for further evidence, the petitioner provided an entirely new description of duties, noting that the beneficiary's proposed assignment and related duties in the United States had changed since the filing of the petition. In sum, the initial description of duties for the Data Center Operations project, according to the petitioner, was no longer applicable to the proposed position, and instead the duties associated with the IT IS M&O project for Merck were the relevant duties to be examined in this analysis.

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 for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the

petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather negated its original claims and proposed an entirely new position with new duties for the beneficiary. Specifically, the initial petition requested approval for the beneficiary to work onsite at the offices of ██████████ New Jersey, on the Data Center Operations project. In response to the RFE, the petitioner claimed for the first time that contrary to the statements in the initial petition, the beneficiary would now be working on the ██████████ project for ██████████ in ██████████ New Jersey. The information provided by the petitioner in its response to the director's request for further evidence sought to amend the petition and add a new position with new duties for the beneficiary. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition for the Data Center Operations project.

Although the initial description of the position clearly conveyed that the beneficiary has worked on the Data Center Operations project, the petitioner repeatedly uses technical and abbreviated terms in the breakdown of duties and training 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.

Moreover, the description of duties is generalized and fails to specifically identify how the beneficiary's alleged expertise and knowledge was required and would be used. The petitioner's description of duties, therefore, does little to clarify exactly what knowledge is required for performance of the role of technical lead, 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 in the U.S., as well as 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 technical lead specializing in the IT infrastructure or life sciences industry.

One question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies, by itself, constitutes specialized knowledge. The AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the

petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects. Initially, in its letter in support of the Form I-129, the petitioner stated that in order to serve as a technical lead on the Data Center Operations project, an individual must have advanced and special knowledge of various internal and external processes.

Additionally, the petitioner provided the beneficiary's resume for the record. The AAO notes that while the beneficiary may in fact use the petitioner's internal tools to track his project activities, there is insufficient detail with regard to the nature in which these tools are used, and the level of knowledge required to use them. For example, the beneficiary lists eTracker, eCockpit, Qview and Prolite as internal tools used in the Data Center Operations project for [REDACTED]. However, the record contains no evidence, other than the petitioner's statements, to demonstrate how and in what manner these internal processes will be utilized in carrying out the project. Moreover, the beneficiary also indicates on his resume that numerous third-party processes and tools were also utilized for this project, thereby rendering it impossible, absent additional, specific evidence, to determine the level and amount of special or advanced knowledge of these tools required to perform as a technical lead on this project.

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 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)).

The petitioner claimed that the beneficiary's knowledge of the internal tools listed above, as well as various hardware and software platforms which are used in the Data Center Operations project, has allowed him to play a major role in the project. Moreover, the petitioner claims that an individual must have significant experience working with these internal tools and processes in order to perform the duties of the proffered position. 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 technical lead. 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].

[REDACTED] In addition, despite the listing of training received by the beneficiary which was submitted in support of the claim that his knowledge is specialized, there is minimal evidence of training being administered in any

of these claimed internal processes. This lack of documentary evidence, coupled with the non-specific description of the duties to be performed in the United States, shed little light on the exact requirements for the beneficiary on the Data Center Operations project in the United States and whether specialized knowledge of these, or any similar processes or procedures, will actually be required. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

### C. Training

Turning to the training history of the beneficiary, the AAO notes that since the commencement of his employment with the petitioner, the petitioner claims that the beneficiary underwent formal training in the processes identified above. The AAO notes that the petitioner provides two conflicting accounts of the beneficiary's training: i.e., claiming he underwent 641 hours of training in at least 27 different areas in contrast to the approximately 7 weeks of training claimed in four areas with the initial petition.

As previously stated, 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 provides no explanation for the major discrepancies in the initial account of the beneficiary's training and the more detailed version submitted by the petitioner in response to the RFE. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review, the AAO finds this evidence insufficient to establish that the beneficiary possesses specialized knowledge. The record reflects that the beneficiary has been assigned to various projects for the petitioner's clients since the commencement of his employment, thereby demonstrating that extensive experience and training was not a prerequisite prior to working on the current project and related projects. Absent evidence from the petitioner outlining the manner in which technical leads 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 technical leads 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).

Moreover, most of the courses the beneficiary allegedly completed do not appear to constitute or contribute to specialized knowledge as contemplated by the regulations. Finally, the petitioner does not articulate or document how specialized knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. Instead, the petitioner repeatedly asserts that knowledge is gained while working in a hands-on manner on various client projects, including the [REDACTED] projects.

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 integration 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 technical lead, either compared to technical leads working for the petitioner or compared to other technical leads 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 technical leads 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 technical leads 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.

Regardless of the findings above, the AAO again emphasizes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The petitioner's attempt to amend the petition in response to the RFE was not proper and thus has not been considered. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E) instead require that the petitioner "file an amended or new petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment . . . ."

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.