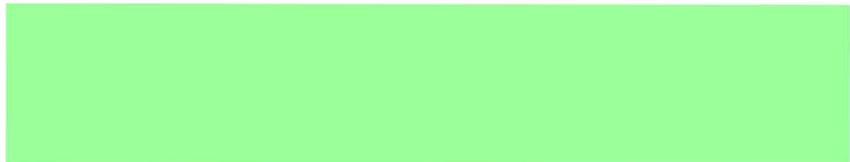
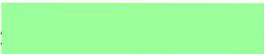




U.S. Citizenship  
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Services

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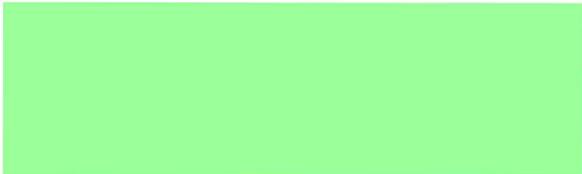


DATE: **JUN 27 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

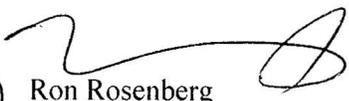


INSTRUCTIONS:

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 L-1B intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a computer software development and consultancy company with an affiliate, Cognizant Technology Solutions India Pvt. Ltd., located in India. It seeks to extend its employment of the beneficiary in the specialized knowledge position of “programmer analyst” at the offsite work location of its client, [REDACTED] a subsidiary of [REDACTED] California.

In a letter of support, the petitioner stated that it has over 61,000 employees worldwide, with more than 17,000 in North America. The petitioner averred that it “combine[s] a unique onsite/offshore delivery model infused by a distinct culture of customer satisfaction,” and claimed to be a “leading provider of information technology and business process solutions.”

The director denied the petition, concluding that the petitioner failed to establish that the conditions of the beneficiary’s proposed L-1B employment at the worksite of the unaffiliated employer are in compliance with the terms of the L-1 Visa Reform Act of 2004.

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 director’s finding was erroneous, and submits a brief and additional documentation in support of this contention.

### 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.<sup>1</sup> 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.

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

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<sup>1</sup> 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.

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.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

(F) 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 to the petitioning employer is necessary.

*See* section 412(a), Consolidated Appropriations Act, Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). 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. *Id.* at § 412(b).

## II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the placement of the beneficiary at the unaffiliated employer's worksite is not an arrangement to provide labor for hire in violation of section 214(c)(2)(F)(ii) of the Act.

The Form I-129, Petition for a Nonimmigrant Worker, solicits information specifically related to the proscriptions created by the L-1 Visa Reform Act. On the Form I-129 Supplement L, at Section 1 Question

13, the form asks if the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer. If the petitioner answers this question in the affirmative, the form then solicits information regarding: 1) how and by whom the beneficiary will be controlled and supervised; and 2) the reasons why placement at another worksite is necessary, including a description of how the beneficiary's duties relate to the need for his or her specialized knowledge.

The petitioner answered "yes," indicating the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer, and referred USCIS to an attached statement for the answers to the two questions.

In its support letter, the petitioner claimed that the beneficiary would assist its software development team on a project for Pacificare, a subsidiary of United Health. Regarding the nature of its relationship with United Health, the petitioner stated:

[The petitioner's] relationship with [its] clients, including [REDACTED] is that of independent contractor, and no other relationship exists, including employment, joint venture, or agency. In the context of [the beneficiary's] projected assignment, [REDACTED] is not a relevant employer (or even a token employer) for purposes of establishing what the job requirements are for the position. [The petitioner] is at all times fully responsible for the actions and omission of all its employees, whether or not such employees are working on site at a client facility.

(Emphasis in original).

The petitioner also provided an overview of the beneficiary's duties on the Pacificare project. Specifically, the petitioner stated that he would "utilize his in-depth knowledge of [the petitioner's] internally developed application infrastructure support processes to ensure the effective integration of technologies developed by [the petitioner's] team in India for its clients into the clients' U.S. operations."

The petitioner submitted a letter from the beneficiary's project manager and immediate supervisor, [REDACTED] who stated that the beneficiary was assigned to a project entitled "[REDACTED]" at the Pacificare segment of [REDACTED]. The letter further stated that the beneficiary's duties included "providing 24/7 on call production support, development, system configuration and development support for a mission critical behavioral health claims processing systems" as well as creating periodic reports and offshore team coordination for the production support activities.

In addition, the petitioner provided a copy of an Amended and Restated Master Services Agreement (MSA) between the petitioner and [REDACTED] which states that the unaffiliated employer desires to procure certain additional services and that the petitioner desires to provide those services to the unaffiliated employer pursuant to the terms and conditions of the MSA. The MSA did not provide any further detail regarding the nature of the services, but indicated that these consulting services would be outlined in one or more "Engagement Agreements" entered into by the parties from time to time. Appendix L of the agreement

provided a list of Engagement Agreements as of the effective date. Although the titles of the projects encompassed by such agreements were submitted, the record contains no copies of engagement agreements or details regarding any specific project(s) they outline.

Finally, the petitioner proffered an affirmation or statement from Mr. [REDACTED] Cognizant's General Counsel and Senior Vice President, which attempts to summarize the language of the master service agreements and the manner in which it supervises off-site employees.

The director issued a Request for Evidence (RFE), advising the petitioner that it provided insufficient evidence concerning the location where the beneficiary will work, the product or service to which the beneficiary will be providing specialized knowledge, and the conditions of employment. The director requested that the petitioner provide, *inter alia*, evidence to establish: (1) that the beneficiary will be controlled and supervised principally by the petitioner; (2) the location where the beneficiary will work; and (3) that the placement of the beneficiary at the client's worksite is not merely to provide labor for hire. Specifically, the director stated that the evidence could include: (1) a more detailed explanation of the contracted for services to be provided to the unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer; and (4) copies of press released that discuss the product or service to be provided to the unaffiliated employer by the petitioner.

In response, the petitioner provided: (1) a detailed letter addressing the director's queries; (2) the onsite organizational chart for the unaffiliated employer's work location; (3) the same affidavit of [REDACTED] submitted with the initial petition; and (4) training certificates demonstrating the training history of the beneficiary.

The director ultimately denied the petition finding that the petitioner failed to establish that beneficiary's placement at the unaffiliated employer's worksite is in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, as required by section 214(a)(F)(ii) of the L-1 Visa Reform Act. The director noted that the petitioner's claimed proprietary project management methodologies, tools and processes appear to be similar to those developed and used by other companies in the IT consulting field. Furthermore, the director concluded that the specialized knowledge that the beneficiary possesses appears to be only "tangentially related to the performance of the proposed offsite activity" due to the fact that his knowledge relates to development, testing, and maintenance of the unaffiliated employer's products rather than the petitioner's own software, firmware or hardware products. On appeal, counsel for the petitioner contends that the director's decision was based on a misapplication of law and that the director did not consider all the facts in evidence. Specifically, counsel contends that the director's conclusion regarding the legal terms "work for hire" and "labor for hire" was erroneous.

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the placement of the beneficiary at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the Act.

However, upon review of the director's decision, the AAO finds that the reasons given for the denial are conclusory and provide little specific discussion of the evidence entered into the record. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof. *See* 8 C.F.R. § 103.3(a)(1)(i). The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, the AAO will fully address the petitioner's evidence herein.

The L-1 Visa Reform Act amendment was intended 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); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at [http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fef82ef&wit\\_id=4f1e0899533f7680e78d03281fef82ef-0-3](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fef82ef&wit_id=4f1e0899533f7680e78d03281fef82ef-0-3) (accessed on May 21, 2013).

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; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

If the petitioner fails to establish either of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

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. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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.

#### A. Supervision and Control

The director did not dispute the claim that the petitioner will supervise and control the beneficiary's work. The petitioner initially stated that the beneficiary's work would be supervised and controlled by its Assistant

Projects Manager, [REDACTED] which was supported by the letter from Mr. [REDACTED] submitted with the initial petition. In addition, in response to the RFE, the petitioner submitted an organizational chart showing that the beneficiary's work will be directly supervised and controlled by Mr. [REDACTED]. As the director conceded the issue in the denial, the AAO will not assess whether the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of section 214(c)(2)(F)(i) of the Act.

B. Specialized Knowledge Specific to the Petitioning Employer

The petitioner, however, failed to provide relevant and probative evidence regarding its provision of a product or service at the unaffiliated employer's worksite for which specialized knowledge specific to the petitioning employer is necessary.

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. Section 214(c)(2)(F)(ii) of the Act. 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. *Id.*

The director noted Paragraph 4.1 of the MSA, entitled "Definition of Work Product," in which it stated that copyrightable products such as software created in the course of the agreement would be deemed "work made for hire." The director concluded that, based on this clause, the beneficiary's placement at the [REDACTED] site was essentially labor for hire. On appeal, counsel contends that the director misinterpreted this term as utilized in the MSA as being synonymous with labor for hire, and submits sufficient evidence in support of the contention that "work made for hire" in an intellectual property context applies to copyrighted material created in the course of employment.<sup>2</sup>

Upon review, the AAO agrees that the director's treatment of this term was misplaced with respect to the issue in this matter. As used in the context of an intellectual property clause of the MSA, the phrase "work made for hire" does not serve as a conclusive basis to evaluate whether the services of the beneficiary constitute labor for hire under section 214(c)(2)(F)(ii) of the Act.

However, for the reasons set forth below, the petitioner has failed to establish 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. The petitioner is required to provide sufficient evidence to corroborate its claims that this beneficiary's assignment at the unaffiliated employer's worksite requires the application of his claimed specialized knowledge. Here, the petitioner has not met that

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<sup>2</sup> The phrase "work for hire" is defined by *Black's Law Dictionary* 1744 (9th Ed. 2009) as:

A copyrightable work produced either by an employee within the scope of employment or by an independent contractor under a written agreement. . . . If the work is produced by an independent contractor, the parties must agree expressly in writing that the work will be a work for hire. The employer or commissioning party owns the copyright.

burden.

First, the petitioner primarily relies on the letter from [REDACTED] to establish eligibility under this section. While the author of the letter is highly credible, the letter itself creates a conflict when it states: "Generally, [the petitioner] does not provide staff augmentation for clients in the IT service sector." See [REDACTED] letter at page 3, paragraph 7. By using the modifier "generally," the statement implies that it might provide staff augmentation services under some circumstances. The AAO also notes that [REDACTED] is not a "client in the IT service sector." Instead, the client in this case is in the healthcare services sector, leaving the question open as to whether the petitioner might provide offsite staff augmentation services in this case.

The AAO does observe that the petitioner generally presents itself as a provider of services to non-IT industry segments, placing great emphasis on its specialized "verticals" within the company. While company documentation suggests that it does not provide "staff augmentation" in the most general sense, the petitioner's reliance on Mr. [REDACTED] "summary" or synopsis, rather than the original documents themselves, creates some doubt as to the actual content of the critical agreements.<sup>3</sup> In other words, the evidence that would best illuminate the manner in which it supervises off-site employees would be the specific project documents themselves. See 8 C.F.R. § 103.2(b)(2) (discussing submission of secondary evidence and affidavits).

Second, the petitioner's Amended and Restated MSA submitted with the initial petition fails to provide any description of the actual project to which the beneficiary will be assigned or otherwise describe the beneficiary's role in the provision of services to the unaffiliated employer. The petitioner asserts in the letter accompanying its initial submission that the beneficiary will "utilize his in-depth knowledge of [the petitioner's] internally-developed application infrastructure support process to ensure the effective integration of technologies developed by [the petitioner's] team in India for its clients into the clients' U.S. operations."

The petitioner, however, failed to provide any evidence such as a statement of work, engagement agreement, work order, letter from the unaffiliated employer, or press release discussing the product or service to be provided to substantiate the claim that the beneficiary will be required to use the petitioner's proprietary technologies and methodologies in the performance of the contracted services. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Third, the petitioner failed to provide the requested evidence in response to the director's RFE. As stated above, the director specifically asked for evidence to establish that the beneficiary "will enter the United

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<sup>3</sup> Both the Freedom of Information Act and the Trade Secrets Act provide for the protection of a petitioner's confidential business information when it is submitted to USCIS. See 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905. Although a petitioner may always refuse to submit confidential commercial information if it is deemed too sensitive, the petitioner must also satisfy the burden of proof and runs the risk of a denial. Cf. *Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).

States to render services in a capacity that involves specialized knowledge" at the unaffiliated employers worksite. The RFE provided an opportunity to submit this essential evidence, explaining that the petitioner's evidence could include: (1) a more detailed explanation of the contracted services to be provided to the unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer; and (4) copies of press releases that discuss the product or service to be provided to the unaffiliated employer by the petitioner. In response, the petitioner submitted a copy of the previously submitted statement from [REDACTED] along with evidence of the beneficiary's training history and the onsite organizational hierarchy. The petitioner failed to submit any additional evidence as requested in response to the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In conclusion, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any of its 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 IT services to the unaffiliated employer.

The evidence submitted fails to establish that the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act. Accordingly, the appeal will be dismissed.

#### **IV. Employment in a Specialized Capacity**

Beyond the decision of the director, the remaining issue is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and will be employed in a capacity requiring specialized knowledge in the United States.

In order to establish eligibility, the petitioner must show that the individual 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 or prongs. 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.

In its letter of support, the petitioner provided an overview of the beneficiary's duties on the [REDACTED] project. Specifically, the petitioner stated that he would "utilize his in-depth knowledge of [the petitioner's] internally developed application infrastructure support processes to ensure the effective integration of technologies developed by [the petitioner's] team in India for its clients into the clients' U.S. operations." These processes and systems included the following:

- [REDACTED] [the petitioner's] internally-developed system for logging complaints and problems regarding a particular module, which allows [the petitioner] to better solve issues its customers are having with the software developed and delivered to them by [the petitioner];
- eTracker, Qview, Qsmart, eMetrics, eCockpit, and ProLite, which are software quality assurance tools developed by [the petitioner] to allow its specialized knowledge employee [to] monitor and repair software that was developed for a customer.

The petitioner further stated that, as part of its unique Application Infrastructure Support Process (AMS), its employees are required to stay on a client site at all times in order to effectively implement and utilize its internally-developed processes. The petitioner, however, fails to provide any evidence to support its assertion that utilizes these technologies or that the knowledge of these technologies is required for the position. 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)).

In addition, the director requested evidence to establish that the beneficiary would be working in a specialized knowledge position in the United States. The director stated that submitted evidence could include: (1) a more detailed explanation of the specialized knowledge duties the beneficiary will perform in the United States including the percentage of time required to perform the duties; (2) the number of workers the beneficiary would supervise in the United States, along with their job titles and descriptions; (3) an explanation as to how the beneficiary's duties differ from other employees in the U.S. and abroad, and how

the petitioner had functioned to date without his services; and (4) the impact on the petitioner's business if the petitioner is unable to obtain the beneficiary's services.

In response, the petitioner submitted a detailed letter that included a list of the beneficiary's specific duties along with the percentage of time he would devote to each. The petitioner also submitted an onsite organizational chart and an overview of the beneficiary's training history in list form.

According to the petitioner, the beneficiary would be providing support services and user training for the petitioner's internally-developed Facets system, a comprehensive managed care administrative software platform. It further stated that he would primarily be working with the operations team to provide maintenance to the Facets, EClaims and Enterprise Eligibility (EE) applications. The petitioner further stated that the beneficiary would be working as an individual contributor on the Facets project and would not be supervising or managing other employees. Finally, the petitioner claimed that the beneficiary is the only person who supports the Facets, EClaims, EE applications in this vertical, and thus his job duties could not be entrusted to a party that does not have extensive experience with the petitioner's internally-developed processes, procedures, and products.

The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their implementation in the Pacificare/United Health project. However, the petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures. The petitioner provides no evidence establishing that the beneficiary has received extensive training in any of these processes, nor has it demonstrated that his knowledge and experience with these processes is more special or advanced than other programmer analysts employed in the petitioner's healthcare vertical.

Moreover, the record does not contain a resume for the beneficiary outlining his work/project history or the amount of time he has been working on the United Health care project and with the Facets, EClaims, and EE applications. Absent such evidence, it cannot be concluded that the beneficiary possesses special or advanced knowledge of these processes, nor can it be determined that knowledge of these processes is particularly complex or different such 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. For example, as noted above, the only evidence of training received by the beneficiary in one of the petitioner's internally-developed processes is the claim that he completed a one-day course on Prolite. Clearly, a one-day training course is sufficient to train an individual in such a process and, therefore, suggests that such knowledge is easily transferrable to other employees of the petitioner. 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 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 healthcare vertical, either compared to programmer analysts working for the petitioner or compared to other programmer analysts providing consulting services in the same industry segment.

Based on the petitioner's representations, 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. Despite the director's RFE, the petitioner failed to demonstrate that the beneficiary's education, 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. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(D) and (l)(3)(iv).

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.

Furthermore, the petitioner failed to establish that the beneficiary was employed in a specialized knowledge position with the foreign employer. In the petitioner's initial letter of support, the petitioner stated that the beneficiary has undergone extensive formal and hands-on training during the course of his employment. The petitioner, however, fails to submit sufficient evidence establishing that the beneficiary in fact received such training, or how many hours of training he received. Moreover, the record contains no evidence regarding the length of time the beneficiary has been employed on the [REDACTED] project.

The AAO notes the training certificate submitted in response to the RFE, which is a list of the training courses completed by the beneficiary. Such courses included principles of software engineering, COBOL programming, DB2, C# Basics, and assertive communication skills. There is no evidence that the beneficiary received formal training regarding Facets, EClaims, EE, or any of the other internally-developed processes of the petitioner such as PComm, eTracker, Qview, Qsmart, eMetrics, or eCockpit, knowledge of which the petitioner claims is so critical for performance of the duties of the proffered position. The training list does, however, indicate that the beneficiary completed a one-day training course in ProLite on August 30, 2006.

Without further explanation, the record does not support a finding that this training would provide the beneficiary with an advanced level of knowledge of the processes and procedures of the company, or, a special knowledge of the company product and its application in international markets. As discussed briefly above, the petitioner has not submitted evidence that these tools, while claimed to be exclusive to the petitioner, are of significant complexity, that they require a significant period of training or experience to

perform at the beneficiary's level, or that they would otherwise not be easily transferrable to others with experience in the beneficiary's field. Rather, it appears that a similarly-experienced worker could go through similar training and be available to perform the requested duties after a short period of training. Therefore, as the petitioner's claim is largely based on the beneficiary's familiarity with these internal tools and methodologies, the petitioner has not sufficiently documented that the beneficiary's training and experience resulted in his possession of specialized knowledge. Again, despite the petitioner's claim that extensive formal and hands-on training is required to perform the duties of a programmer analyst for the petitioner, it has submitted no evidence to corroborate this assertion. 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.

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary was employed abroad in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

#### IV. Conclusion

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.