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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 8 2013 Office: VERMONT SERVICE CENTER

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 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, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant 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, a corporation, is a computer software development and consultancy company, with an affiliate, The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity in the position of Systems Analyst, Testing, for an initial period of three years. The petitioner will assign the beneficiary to the worksite of the petitioner's client,

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she would be employed 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 asserts that the director failed to acknowledge and consider evidence that specifically described the beneficiary's specialized knowledge or the petitioner's explanations regarding the limited availability of such knowledge in the industry and within the petitioner's organization. Counsel submits a brief 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 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.

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

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

The petitioner and the beneficiary's foreign employer are members of a group of affiliated companies owned by , a publicly-traded U.S. company with more than 78,400 employees in its worldwide operations and gross annual income of $3.2 billion. The petitioner described the beneficiary's current and proposed job duties and purported specialized knowledge in a letter appended to the initial petition. The petitioner indicated that the beneficiary has been working in India, and will work in the United States, on an ongoing ' The beneficiary has worked for the foreign employer for three years and two months and she has worked on the project for a total of approximately 11 months.

Generally, the petitioner states that the which is used by as "a commercial solution for electronic capture of clinical trial protocols, specimen flow charts and time point's information, including specimen test plan information," as well as to track actions taken with respect to specimens (shipping, processing, testing) throughout their lifecycle. The system is designed to provide end users with access to search integrated information.

The petitioner provided the following description of the beneficiary's proposed duties as a Systems Analyst, Testing assigned to the project:

1. Requirements Analysis (20% of time spent)

- Analyze the Business Requirements Provided by the client.
- Identify the gaps, if any, in the requirements.

2. Onsite-Offshore coordination (20% of time spent)
   - Allocate tasks to offshore team based on client's requirements and coordinating with the team.
   - Reporting the progress of the project on a daily/weekly/monthly basis using C2.0, a [petitioner] proprietary tool.
   - Collect Project Metrics based on the progress.
   - Reporting any deviations in the business flow of the application if any.

3. Test Design: (30% of time spent)
   - Generate Test Scenarios from the requirements analysed [*sic*].
   - Generate Test Cases from Test.
   - Performing Requirement Traceability Matrix using Quality Center tool.

4. Test Execution: (30% of time spent)
   - Test the application against Business Requirements provided using Mercury Quality Center tool.
   - Log defects in Quality Center and tracking the same to closure.
   - Prepare Test Summary Reports on the actual results generated during Test Execution.

The petitioner stated that it has a long-term relationship with through ongoing projects, and that only a small fraction of its workforce of 50,000+ professionals is allocated to projects for this client. The petitioner noted that within that small fraction "there is further specialization," as "each project team focuses on its technology spectrum in light of each project's requirements, specifications and finance-specific and —specific knowledge set." The petitioner provided a list of platforms, programming languages, databases, data warehousing tools, application services, and other third-party systems used by its personnel in providing services to The petitioner noted that its project teams assigned to "necessarily develop a specific domain, i.e., an area of control or sphere of knowledge particular to that project."

The petitioner specified that, in order to serve as a Systems Analyst on the , an individual must have advanced and special knowledge of: Clinical Trial Management System (CTMS); Electronic Vocabulary (eVOC); Patient Data Acquisition Management (PDAM); Image-J (a Java-based image processing program developed at the National Institutes of Health); and LabWare Laboratory Information Management System (LIMS). The petitioner claimed that knowledge of these systems and technologies "is held only by certain individuals at Systems Analyst or higher level" on the project and not commonly held throughout the company.

The petitioner indicated that the beneficiary has been assigned to the offshore project team for the project for a total of approximately 11 months as a programmer analyst, filling the role of "application lead." The petitioner described her duties as follows:

> [The beneficiary] is involved in various . Currently she is working on release. In each release, she is involved in analysis of

requirements and design specification. She coordinates on a daily basis with the onsite/development team for project related activities and issues. She is also involved in preparation of test scenarios, test cases, test estimation, test specification and test summary report. Further she is also involved in test execution using HP Quality Center, database testing using SQL Navigator and project document management in VSS. Apart from this, she is doing project status/efforts tracking in C2.0, project risk tracking in Risk portal and project metrics reporting. Being the application lead, she has trained the team mates and has conducted knowledge sharing sessions on basic flow involved in

The petitioner explained that the beneficiary was chosen for transfer to the United States because she has "developed an advanced understanding of our proprietary internal development tools and worked on several key projects for [the petitioner] abroad," because she is "uniquely well-versed in our Onsite/Offshore implementation methodology," and because she "has shown her ability to develop application modules and utilize our internal tools."

In addition, the petitioner stated that the beneficiary's particular knowledge and skills can only be gained within the petitioning organization, and cannot be easily transferred or taught to another individual as "extensive training, both formal and hands-on, is required to perform the specialized job duties." Specifically, the petitioner stated that the position requires at least one year of employment with the company and "experience utilizing [the petitioner's] internally-developed products, tools, services, techniques, management, and procedures to design, develop and integrate various components of the IT infrastructure." Further, the petitioner stated that the position requires "completion of extensive formal training programs through which covers the company's internally developed technology and the methods in which these technologies are used.

With respect to the beneficiary, the petitioner stated that she has acquired specialized knowledge of the company's project management and software quality assurance tools, including "Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS and Prolite, to develop key enhancements and maintain the business systems used by [the petitioner] for information technology infrastructure being implemented at The petitioner further stated that the beneficiary acquired "advanced and specialized knowledge of [the petitioner's] business model for managing client software development projects," and emphasized, with respect to the company's project management software, "it takes months of hands-on work experience at one of [the petitioner's] development centers to master it at the level which makes the incumbent even minimally qualified to perform the duties of [the beneficiary's] U.S. assignment."

The petitioner indicated that the beneficiary has undergone specific training to advance her technical knowledge and to ensure her understanding of the project. Specifically, the petitioner stated that the beneficiary completed 101 training hours as part of a formal training program and also acquired specialized knowledge through "informal trainings, knowledge transfer sessions and on the job experience using [the petitioner's] systems and tools while providing solutions to the client." The petitioner identified the following training courses:

1. Oracle 9i SQL & PL/SQL (20 hours)
2. Validation Testing (5 hours)
3. SQL Training (10 hours)
4. Automation QTP Training (12 hours)

5. Understanding of Merkury LoadRunner Basics (1 hour)
6. Six Sigma Yellow Belt (4 hours)
7. Working with Prolite (4 hours)
8. Communication Foundation Course (8 hours)
9. Life Sciences (3 hours)
10. Level 0: Communication (35 hours)[1]

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Engineering degree in Bio-Technology. On her resume, the beneficiary listed six courses she completed through the petitioner's including CORE Java, Life Sciences L0, Life Sciences LST, Validation Testing, Life Sciences L1 and ISTQB Certification. The beneficiary lists her technical skills as: Windows XP, Java, C, MS SQL, Mercury Test Director 8.0, Mercury Quality Center 9.2, and Microsoft VSS version control tool. She states that her three years of experience with the foreign entity have been in "testing" including test design, test execution, defect management and test process management. The resume includes a description of each project to which the beneficiary has been assigned since joining the foreign entity, but it does not provide information regarding the technological environment of any of the projects. The beneficiary joined the foreign entity less than one year after graduating with her bachelor's degree and she lists no other employment.

The director issued a request for evidence (RFE) in which he instructed the petitioner to provide: (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, including an explanation of why specialized knowledge is required; (3) the processes, procedures, tools, and/or methods the beneficiary will use for each duty and the company from these processes, procedures, etc. derives; (4) the amount of time required to train an employee to use these specific tools, procedures, tools and/or methods; (5) the number of workers who possess this knowledge and are similarly employed by the organization; and (6) an explanation of how the beneficiary's training differs from the core training provided to the company's other employees.

The director further requested a record from the petitioner's human resources department detailing the manner in which the beneficiary gained her specialized knowledge and advised that such documentation should include the names of training courses, their duration, the number of hours spent taking each course, completion dates, and certificates of completion.

In response, the petitioner explained that the beneficiary, while working on the project in India, "has accumulated project and technology specific expertise that is advanced and special," and "not commonly held throughout [the petitioning company]." The petitioner noted that she "gained her advanced and special knowledge by performing requirement studies and by developing and implementing several highly sophisticated application support modules."

The petitioner emphasized that, while the beneficiary has in-depth knowledge of the company's projects for "her specialized knowledge is not limited to this particular client" and "can be applied to multiple client projects within Life Sciences." Specifically, the petitioner stated that the beneficiary's specialized knowledge includes the following components:

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[1] The dates the petitioner provided for this training course were January 2 through January 5, 2004. The beneficiary joined the foreign entity in March 2007.

- The [petitioner's] business model including the coordination of onshore/offshore work.
- [The petitioner's] IP and related methods, including our internally-developed project management and software quality assurance tools (including Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS and Prolite).
- [The petitioner's] project methodology, including the way in which project deliverables are set forth and accomplished, and our internal systems for ensuring client objectives are achieved within appropriate timeframes.
- Domain-related knowledge, including advanced and complex internal training, both in-class and hands-on related to [the petitioner's] unique, versatile, and highly scalable software systems and software development methodologies developed by [the petitioner's] software engineers specifically in the Life Sciences vertical.

With respect to the beneficiary's proposed duties, the petitioner provided the same position description that was included in its initial letter. The petitioner added the following information regarding the beneficiary's current duties, which are described as substantially similar to those she will perform in the United States:

> In a typical workweek, [the beneficiary] prepares a testing project plan based on the timelines and discussion with project stake holders. To start with, she performs the business requirement analysis. Her knowledge in the clinical domain helps her categorize requirements and raise clarifications. After all the clarifications are resolved, she sets up the project in HP Quality Centre 9.2.
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> In the project's test case design phase, she prepares test scenarios and test cases. She uses her ORACLE and SQL knowledge for preparation of the queries. In the test case execution phase, HP Quality Centre 9.2 is used for both executing the test cases and defect tracking until closure. SQL Navigator is used for executing queries. She uses VSS for version control.
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> In addition to above activities, she is also responsible for the daily onsite coordination, task allocation to the team members and reporting the daily status. In addition, she has performed the project status and efforts tracking in C2.0, project risk tracking in Risk portal and project metrics reporting. Her domain and application knowledge has helped her teammates on the basic flow involved in the application.
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> [The beneficiary] has been working on [the petitioner's] projects for client for the past 32 months. She has good domain knowledge and understands well Standard Organization Practices to perform system and integration testing. During her deputation, she would be responsible for performing System and Integration Testing for the application. She has been responsible for testing this application for last 13 months and has worked in several releases of the same, including She has excellent application knowledge, having worked in three successive releases.

The petitioner stated that any new resource assigned to the project in the beneficiary's place "will take time to understand the client process and policies," and "should have knowledge on multiple tools and products like Oracle, SQL, HP Quality Centre 9.2 and VSS, which is uncommon in the field." The petitioner emphasized

that the beneficiary is a "key employee" because "her knowledge of the various technologies on which application are built and her experience with the Life Sciences sector combine to make this skill set hard to find." The petitioner stated that the beneficiary would be the only company employee working onsite at in connection with the project and would help the onsite and offshore teams collaborate more closely.

The petitioner went on to further describe the beneficiary's training, noting that most of the beneficiary's knowledge has come from her experience working on past company projects since 2007. Nevertheless, the petitioner provided information regarding 380 hours of training the beneficiary completed in the following areas: Oracle 9i – Level 1 (20 hours); Software Development Engineering (60 hours); Java (140 hours); ANSI SQL (32 hours); Software Engineering at Cognizant (4 hours); Software Testing (24 hours); Advanced Java (40 hours); Software Quality Management System (4 hours); Debugging Techniques (8 hours); UML (8 hours); Prolite (4 hours); Communicate Right (8 hours); Six Sigma Yellow Belt (4 hours); Automation QTP Training (12 hours); Validation Testing (5 hours); and Level 0 Life Sciences (2 hours).[2] The petitioner explained that the beneficiary's training in Automation QTP and Validation Testing was "non-Academy" training related to her assignment to the Merck account.

The petitioner identified "the total amount of training required to fill the proffered position" as the following: 8 hours of training in SQL, four hours of Validation Training, two hours of Life Science Domain Training, two hours of training in Software Testing, and two hours of "GxP Training." The petitioner reiterated that as a result of her experience on the CASI project, the beneficiary gained "valuable exposure to Oracle, SQL, HP Quality Centre 2.0 and VSS, which are vital to the success of this project."

The petitioner mentioned that only 97 out of 4,417 Systems Analysts in its U.S. workforce work in the Life Sciences vertical. The petitioner described the beneficiary as "an instrumental contributor to design, development and testing of all project modules within this area for and stated that she has been involved in the entire life cycle of the initial phases of the project. The petitioner emphasized that there would be an "intense and lengthy time period required to attain [the beneficiary's] level and complexity of expertise with business processes and related technology."

The petitioner summarized its response by stating that the beneficiary's expertise "encompasses [the petitioner's] unique methodologies and the specific [petitioner] industry specific domain, in addition to [the petitioner's] business product and technical processes knowledge, all of which may only be attained within [the company] through direct work experience with [the petitioner's] IP/IT development projects for the client." The petitioner concluded that "such knowledge is neither common nor basic with [the petitioner] or the client."

The director denied the petition on August 2, 2010, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that it will employ her in a capacity requiring specialized knowledge. In denying the petition, the director acknowledged the petitioner's claim that the beneficiary completed 380 hours of training, but emphasized that a large percentage of the training completed was in third party processes, procedures and tools such as Oracle, Java, ANSI SQL and UML, all of which are readily obtained in the petitioner's industry. Further, the director emphasized that the petitioner initially indicated

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[2] The petitioner indicated that the beneficiary completed her training in on December 6, 2006, more than three months prior to her hire date with the foreign entity.

that the beneficiary completed 101 hours of training, and failed to provide an explanation for the significant difference in the two training summaries provided in the record.

In addition, the director observed that the petitioner indicated that the beneficiary assumed a specialized knowledge position in March 2007, immediately upon joining the organization, thus suggesting that no specialized training is actually required for the position. The director noted that the beneficiary's role would primarily involve maintaining the client's systems, while her use of the petitioner's proprietary tools and methods would be incidental to the duties of the position. The director acknowledged the petitioner's claim that the acquisition of knowledge in internal company tools is specialized within the organization, but emphasized that the petitioner has filed "a multitude of petitions with the USCIS in which the beneficiaries are well versed in one or more of these systems."

On appeal, counsel for the petitioner asserts that the beneficiary's U.S. assignment qualifies as one requiring specialized knowledge under existing legal standards and agency guidelines. Specifically, counsel asserts that the beneficiary's assignment involving the requires "specialized, distinctive and sophisticated knowledge of [the petitioner's] products, processes and management."

Counsel contends that the director failed to understand the petitioner's business model, in which the petitioner acts as a vendor of highly sophisticated and complex custom systems to meet its client's needs, and which are different from any products offered by its competitors. Counsel further suggests that the director mistakenly believed that system. Counsel asserts that is in fact the petitioner's system, custom-developed by the petitioner for since the client is not in the software development business. As such, counsel asserts that the position requires advanced special domain knowledge of the petitioner's IT solutions for the healthcare industry; advanced special knowledge of the company's global client service methodology; and advanced expertise with the company's internally-developed tools and platforms designed in support of both the domain knowledge of IT solutions for the healthcare industry and its global client service methods. Counsel asserts that since the beneficiary will be working with the petitioner's system using its advanced and complex internally-developed tools and procedures, such internal knowledge cannot be considered "merely incidental" to the duties to be performed.

Counsel contends that the proffered position necessarily requires "extensive preparation and analytic, programming and software development skills that are distinct and only a handful of professionals within the occupation possess such advanced skills and preparation." Counsel asserts that the beneficiary's knowledge satisfies the dictionary definition of "special" because it involves knowledge and skills that are distinct from those of other software development specialists who are not familiar with [the petitioner's] complex software systems which have been custom developed for its clients."

III. Analysis

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that she 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.

Here, the petitioner appears to claim that the beneficiary is qualified based on her special knowledge of the company's products, services, techniques and methodologies that cannot be gained outside the petitioner's organization.

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 capacity of the beneficiary, USCIS will look to the petitioner's description of the job duties. *See* 8.C.F.R. § 214.2(l)(3). The petitioner must submit a detailed job description of the services performed, or to be performed, sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses, or that the position requires, "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 beneficiary's proffered positions is entirely vague and generic. First, the description does not appear to apply specifically to the project, the claimed overseas source of the beneficiary's specialized knowledge, but rather could describe any software testing position for any project undertaken by the petitioning company or in the industry in general. The position description fails to

identify the technological environment in which the beneficiary will work, and indicates only that she will use the "Mercury Quality Center tool," a third-party technology used for software testing, and C2.0, an internal system used for project status reporting, in order to carry out her duties.

In response to the RFE, the petitioner re-submitted the same vague position description, and added a narrative description of the beneficiary's current typical workweek, indicating that she would perform essentially the same duties in the United States. The petitioner explained that the beneficiary uses Oracle and SQL for preparation of queries, HP Quality Centre 9.2 for executing test cases and defect tracking, SQL Navigator for executing queries, VSS for version control, and C2.0 for project status and efforts tracking. While the petitioner stated in response to the RFE that "knowledge of tools and products like Oracle, SQL, HP Quality Centre 0.2 and VSS" is "uncommon in the field," the petitioner offered no evidence to support such claim. The AAO notes that all of these technologies are in fact common third-party technologies that are widely known within the information technology industry.

As discussed below, the petitioner has identified other internal tools, processes and methodologies in the record as proprietary to the company; however, the petitioner has not associated them with the beneficiary's current or proposed job duties, and thus the petitioner has not established whether or how they are actually required to perform the duties of a Systems Analyst, Testing for the project. The evidence of record indicates that the beneficiary has performed essentially the same duties for the petitioner's affiliate since receiving her first project assignment approximately six months after joining the company, and that she will continue to perform the same duties in the United States. While all of the beneficiary's project assignments have required her to provide these testing services to the petitioner's client, the petitioner did not identify the technological environment or claimed specialized knowledge skill-set associated with each project or with the beneficiary's specific duties, but rather describes a typical software testing position that requires knowledge of the widely available technologies described above.

The petitioner's description of duties, therefore, does little to clarify exactly what, if any, body of special or advanced knowledge is required for performance of the role of systems analyst, testing, 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'l Comm'r 1972)).

B. The Claimed Specialized Knowledge

With regard to the petitioner's specific claims regarding the beneficiary's specialized knowledge, the AAO emphasizes that such claims have changed and evolved throughout the record of proceeding.

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 current

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

The petitioner specified that the beneficiary had approximately 11 months of experience assigned to the project in India but it failed to provide a consistent explanation of the specialized knowledge requirements for this particular project. Initially, in its letter in support of the Form I-129, the petitioner unequivocally stated that in order to serve as a Systems Analyst on the , a systems analyst must have "advanced and special knowledge" of CTMS, eVOC, PDAM, ImageJ and LabWare LIMS. The petitioner emphasized that this knowledge is possessed only by persons working at a systems analyst or higher level position on the At the same time, the petitioner indicated that ImageJ is a program developed at the National Institutes of Health while LIMS was developed by LabWare. It is reasonable to believe that both of these systems are in fact available outside of the as they were not developed by the petitioner or its client. The petitioner did not address whether CTMS, eVOC and PDAM are specific to the petitioner, to its client, or to the project, or whether they are systems commonly used in the field. As such, the AAO cannot conclude that any of these systems is particular to the beneficiary's specific work experience or training, that knowledge of these systems can only be gained through work with the petitioner, or that such knowledge could not be easily transferred to a similarly experienced systems analyst working in the same industry segment.

Further, the petitioner did not explain how, when, or whether the beneficiary herself acquired "advanced and special knowledge" of these systems or why such knowledge is required to perform the duties of a Systems Analyst, Testing for the . Neither the petitioner's description of the project nor its descriptions of the beneficiary's duties contains any reference to these systems. The beneficiary's resume indicates that she had some exposure to CTMS on two short projects which comprised a total of four months. The beneficiary's training records make no reference to any of these systems identified by the petitioner as essential to the proffered U.S. position. Overall, the evidence of record fails to corroborate the petitioner's initial claim that knowledge of CTMS, eVOC, PDAM, ImageJ and LabWare LIMS are actually required for the position, that the beneficiary has "advanced and special knowledge" of these systems, or that knowledge of such systems rises to the level of specialized knowledge within the petitioner's company or within the industry as a whole. When the director asked that the petitioner further clarify the beneficiary's claimed specialized knowledge and knowledge required for the U.S. position, the petitioner failed to mention any of these systems in its response, and does not reference them on appeal, despite its initial claim that such knowledge is an absolute requirement for the position. As noted above, the petitioner claimed in response to the RFE that the beneficiary utilizes "knowledge in the clinical domain," HP Quality Centre 9.2, Oracle and SQL knowledge, SQL Navigator, and Microsoft VSS to carry out her day-to-day duties.

While not all systems analysts have knowledge in the "clinical domain," the petitioner did not specify what specific knowledge the beneficiary possesses in this domain or how software and systems developed for end-users in this domain differs from software developed for end-users in other industries, such that the domain-specific knowledge is critical to the performance of application testing duties. Further, notwithstanding the petitioner's initial claim that only a systems analyst who had worked on the project would have the knowledge to perform the proposed duties in the United States, the petitioner later stated in response to the RFE that the beneficiary's specialized knowledge "is not limited to this particular client" and "can be applied

to multiple client projects within Life Sciences." If this were the case, then it would be reasonable to believe that other systems analysts working with other clients in the Life Sciences domain would possess knowledge that can be applied to client projects within the same domain, including projects. Overall, the petitioner did not adequately support a claim that a combination of experience in the life sciences or clinical domain, experience with projects, and familiarity with software testing using third-party tools and products such as HP Quality Center 2.0, Microsoft VSS, Oracle, and SQL qualifies as "specialized knowledge."

The AAO acknowledges that the petitioner does claim to have proprietary, internally developed tools and technology, including "solution accelerators and frameworks" which "accelerate the process of building, deploying and managing custom applications or packaged solutions created by third-party vendors." The petitioner did not identify any specific "solution accelerator or framework" used in the Life Sciences vertical in general or for projects in particular. The petitioner vaguely stated that "operates via a variety of hardware and software platforms that often require the regular exchange of application critical data," without identifying these platforms or any solutions or frameworks developed by the petitioner. The petitioner also stated that the beneficiary possesses knowledge of "our internally-developed project management and software quality assurance tools (including Qview, eTracker, Qsmart, eMetrics, eCockpit, TSS and Prolite)." The petitioner did not attempt to explain how the beneficiary utilizes these tools to carry out her day-to-day duties as a systems analyst or provide evidence of her training or experience in these tools. 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'l Comm'r 1972)).

On appeal, counsel asserts that the beneficiary's knowledge of itself is proprietary to the petitioner, that it was custom-developed by the petitioner for the client, and that it is "not is not in the software development business." The record contains a description of the purpose and function of and a description of the beneficiary's role as a systems analyst responsible for carrying out testing of various versions of It does not contain evidence that the petitioner's software development team developed the system, statements of work related to any which would identify the product or service deliverables, or other evidence to support counsel's claim. The AAO observes that the petitioner's annual report, at p. 13, indicates that a portion of the petitioner's business involves the development of software applications and other technology deliverables, and states that "our customers usually own the intellectual property rights in the software and other deliverables we develop for them." Further, the petitioner, according to its statements and company documentation in the record, also provides stand-alone software testing services to clients. Based on the evidence submitted, it is not possible to determine whether or to what degree the petitioner contributed to developing or whether the petitioner was contracted simply to test the product. Regardless, the beneficiary's role, based on the petitioner's description, is limited to testing activities using industry-standard technologies, techniques and tools to perform the key functions of her position.

The only overlap between the beneficiary's claimed specialized knowledge and the petitioner's description of the proposed position is the beneficiary's use of an internal system called to report project progress. is described in the record as a "Web 2.0 based knowledge-sharing and project

management platform" that enables the petitioner's employees, business partners and clients to collaborate worldwide. The petitioner states that it is comprised of in-house project and process management tools, Microsoft software including Outlook and Project, "instant messaging, wikis and semantic search capabilities." However, it is reasonable to expect all IT consulting firms to develop internal tools, methodologies, procedures and best practices for documenting project management, technical life cycle and software quality assurance activities. The petitioner's annual report at p. 2, paragraph 2 provides an overview of the IT services industry, and emphasizes that IT service providers with globally distributed workforces "must have the methodologies, processes and communications capabilities to enable offshore workforces to be successfully integrated with on-site personnel." The petitioner did not attempt to explain how its processes and methodologies differ significantly from those utilized by other IT companies. The petitioner has not specified the amount or type of training its technical staff members receive in the company's tools and procedures and therefore it cannot be concluded that processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's failure to provide a consistent and well-documented explanation of what, exactly comprises the beneficiary specialized knowledge, 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 project in the United States and whether specialized knowledge, 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 director correctly noted that the petitioner provided inconsistent information regarding the amount of formal training the beneficiary completed during her tenure with the foreign entity. At the time of filing, the petitioner claimed 101 hours of training, and in response to the RFE, the petitioner indicated that the beneficiary completed 380 hours of training. Both training records included one entry indicating that the beneficiary completed internal training with the foreign entity months or years before she joined the company, in 2004 or 2006, respectively Although the director cited these inconsistencies in his decision, on appeal, counsel asserts that the director placed too much emphasis on the beneficiary's formal classroom training and failed to acknowledge her period of hands-on training completed afterwards. Counsel does not acknowledge the inconsistency noted by the director, but does appear to adhere to the "more than 100" hours of training referenced in the petitioner's initial letter. 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).

Critically, the petitioner's response to the RFE plainly stated that the proffered position requires a total of 18 hours of training including: eight hours of SQL training, four hours of Validation Training, two hours of Life Science Domain Training, two hours of Software Testing training, and two hours of "GxP Training." Therefore, regardless of how much training the beneficiary actually completed, the petitioner indicates that all of the training required for the proffered position could be completed in a single work week. Based on this information, the petitioner has not supported its claim that the position requires an employee with an

advanced or specialized body of knowledge that is different from that held by other systems analysts specialized in software testing.

Neither description of the beneficiary's training history indicates a lengthy period of training in company processes, tools, technologies or methodologies. The only company tool referenced is but the petitioner indicates that the beneficiary completed this training more than three months prior to her hire date. The training records indicate that the beneficiary was trained in Java, Oracle, ANSI SQL, software testing, software quality management, UML, and debugging techniques, i.e., the basic skills necessary to perform the duties of a software tester. The record reflects that the beneficiary joined the company with a bachelor's degree in the life sciences and no stated or documented prior experience in the software development or testing field but was assigned to a client project performing essentially the same duties as those offered in the United States within a few months.

On appeal, counsel asserts that the director failed to acknowledge that the beneficiary received "well over a year of extensive training" before assuming a position as "application lead" on a project. Specifically, counsel states that the beneficiary spent "seven months of work at [the foreign entity] acquiring basic knowledge of [the company's] internal processes and methods," and then "was placed on a seven-months project developing [the petitioner's] systems for at [the foreign entity]." Counsel states that this project provided her with "unique, specialized hands-on training, combined with very specific classes and training courses," related to the petitioner's methods, technologies and tools. Counsel claims for the last two years, the beneficiary has been employed in a specialized knowledge capacity, "leading the development of of products at [the foreign entity]." Counsel concludes by stating that the beneficiary "underwent a year of hands-on training" which "gave her advanced and specialized knowledge of [the company's] unique tools, processes and client management procedures developed specifically for the healthcare vertical."

The petitioner did not identify a specific period of on-the-job training completed by the beneficiary. In it is initial letter, the petitioner stated that the beneficiary "has served on [company] projects since her India employment began." While the petitioner did indicate that the proposed position requires both class room and hands-on training, it stated that the total amount of training required to fill the proffered position is 18 hours. Further, the petitioner's description of the beneficiary's employment history with the foreign entity did not characterize any period of employment as a period of hands-on training. The petitioner's initial letter indicated that the beneficiary performed the following duties as a team member assigned to her first project for a period of seven months:

> She was involved in analysis of requirement and various design documents. She was involved in daily coordination with onsite coordinator & development team for project related activities. Further she was also involved in test design activities which included test scenarios and test case writing. She was also involved in test execution activity that included test case execution in Test Director and defect logging and tracking till its closure. She was also involved in preparation of estimates. Apart from these activities, she was also doing project document management in VSS and project metrics reporting. At the end of the project, she prepared a lesson learn document & KT document which was very useful for the knowledge sharing between new project members. She was also involved in training the new team members.

While the beneficiary's role has been designated "application lead" rather than "team member" on subsequent projects, her job description is essentially the same for all projects throughout her three years of employment with the foreign entity. The petitioner never stated prior to the denial of the petitioner that the beneficiary completed over one year of training, even when specifically requested by the director to identify "how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized." Again, the petitioner replied that the required training is 18 hours, and, despite counsel's claims otherwise on appeal, it appears that the beneficiary has fully performed the duties of a programmer or systems analyst specialized in software testing since her first project assignment.

The petitioner claims that 97 systems analysts are employed in the Life Sciences vertical in the United States. The record also suggests, based on the petitioner's statements, that an individual can complete the training required for the beneficiary's specific project assignment in less than one week, thereby suggesting that such knowledge is easily transferrable to other similarly-trained employees of the petitioner. Further, based on the petitioner's claim that the beneficiary's knowledge is readily transferrable to other client projects within the Life Sciences vertical, the AAO must conclude that others within the vertical have received similar training and perform duties similar to the beneficiary's.

Overall, based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are customized versions of standard practices used in the industry that can be readily learned on-the-job by employees who otherwise possess the requisite technical background in software testing technologies and appropriate functional or domain background for the project to which they will be assigned. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

D. Preponderance Analysis

The petitioner submitted lengthy statements in support of the petition and in response to the RFE which provide extensive detail regarding the nature of its business operations. However, it simultaneously provided varied claims with regard to the beneficiary's specialized knowledge that have not consistently explained the nature or specifics of the claimed knowledge, documented when or how she acquired such knowledge, or explained why such knowledge is necessary to the performance of her 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 system analyst working in the petitioner's Life Sciences vertical, either compared to system analysts working for the petitioner or compared to other system analysts providing consulting services in the same industry segment.

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

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

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

Id. at page 4.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among programmer analysts in the information technology consulting field. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal processes and methodologies. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Therefore, while the petitioner has made varied claims regarding the beneficiary's specialized knowledge, it has not consistently explained the nature or specifics of the claimed knowledge, consistently documented when or how she acquired such knowledge, or explained why such knowledge is necessary to the performance of her proposed job duties in the United States. As such, the evidence as a whole does not allow the AAO to reach a favorable comparison between the knowledge possessed by the beneficiary and the knowledge generally held by systems analysts working in the petitioner's Life Sciences vertical, and other systems analysts working in the same industry segment.

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

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

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

IV. Conclusion

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

ORDER: The appeal is dismissed.