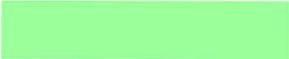


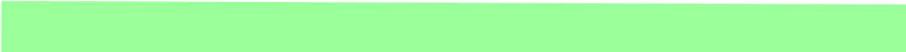
(b)(6)



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



Date: **JUN 29 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:

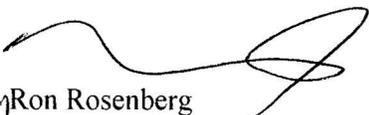


INSTRUCTIONS:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1101(a)(15)(L). The petitioner operates a computer software development and consultancy business, and states that it is an affiliate of the beneficiary's current employer, located in India. It seeks initial employment of the beneficiary in the specialized knowledge position of "systems analyst" at the offsite work location of its client, [REDACTED] CT.

In a letter of support, the petitioner stated that it has over 55,000 employees worldwide, with more than 10,000 in the United States. The petitioner averred that it uses an "integrated on-site/offshore model" and claimed to be a "leading provider of custom information technology design, development, integration, and maintenance services."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been and would be employed in a capacity requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that USCIS applied a highly restrictive standard for specialized knowledge that is not supported by law, the regulations or agency guidelines. Counsel submits a detailed brief in support of these assertions.

### 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 parent, subsidiary, or affiliate of the foreign employer.

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

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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.

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 Issues on Appeal

The sole issue addressed by the director 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on October 28, 2008. The petitioner stated that the beneficiary has been working for the foreign entity since April 2005 as a systems analyst in the [REDACTED], where he is responsible for "developing designs, analysis documents and coding for the requirements sent by the end user; adding new features, creating batch and online components; performing unit testing, system testing support, user acceptance testing support." The petitioner stated that the

beneficiary will continue to serve as a systems analyst assigned to the same client, [REDACTED] Connecticut location.

In a letter dated October 20, 2008, the petitioner explained that the proffered position "requires someone with specialized knowledge of [the petitioner's] internal products and processes, and the distinctive and customized ways in which they are applied to the systems development needs of our client." The petitioner further stated that the position requires "advanced knowledge of the technologies used in our company's unique on-site/offshore approach to the development of specialized applications and systems solutions for clients." Finally the petitioner stated that the beneficiary "possesses crucial specialized knowledge needed for the successful continuation of the project on which he is currently working."

The petitioner described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that the company "typically assigns to the client site its most experienced and qualified professionals who have an advanced level of knowledge of the client's industry, [the company's] proprietary tools and systems, as well as experience in key roles on the same or similar projects in which [the petitioner's] onsite/offshore methodology was implemented."

The petitioner explained that the project to which the beneficiary has been and would be assigned is "to maintain and enhance [REDACTED] a complex system which takes care of the small group of applications." The petitioner noted that the project "involves operations and maintenance of legacy systems, [REDACTED] sub system responsible for producing different contracts for the health care policies, as well as responding to requests from other departments of [REDACTED] The petitioner explained that it has a long-term relationship with [REDACTED] through multiple, ongoing projects, and emphasized that "each [REDACTED] project team focuses on its technology spectrum in light of each project's requirements, specifications, and finance-specific and [REDACTED] specific knowledge set."

The petitioner further described the beneficiary's proposed position as follows:

- Analyze the internal systems currently used at [REDACTED]
- Interact with end users to gather requirements for upcoming maintenance and enhancement activity in these systems.
- Coordinate the development activity for the project with the offshore team in India, including conducting deep dive sessions on project requirements; scheduling walk-through for offshore team members;
- Prepare and review system specification document;
- Review technical specification, code and unit test log prepared by offshore.
- Support UAT and System testing, trace defect logged by testing team, code movement to production once the testing is over.
- Draw on advanced and specialized knowledge of a host of proprietary internal tools, including E-tracker for Application Value Management, Metrics, to collect, consolidate and analyze project metrics, and assist in the efficient calculation of quantifiable project specifications, Q-view for quality assurance, Q-Smart to automate quality assurance through powerful built-in workflow mechanisms, RAMS

for resource allocation and management, Timesheet for keeping track of the number of hours worked on each module.

The petitioner described the beneficiary's qualifications for the position as follows:

[The beneficiary] is responsible for developing designs, analysis documents and coding for the requirements for the requirements sent by the end user; adding new features, creating batch and online components; performing unit testing, system testing support, user acceptance testing support. In addition to the experience acquired by working directly on the [redacted] [the beneficiary] has received a total of 450 hours of supplemental training with [the foreign entity] in various field including COBOL, CICS, JCL, VASM.

The petitioner stated that the beneficiary "qualifies as a 'key resource' because: (1) he has developed an advanced understanding of our internal proprietary internal development tools; (2) he has worked on key projects for [the petitioning organization] abroad; (3) as a result of his work on significant projects abroad, he is unusually well-versed in our Onsite/Offshore implementation methodology; and (4) he has in-depth familiarity with the workflow, procedures, and standards applicable to the current project."

The petitioner further explained the need for the beneficiary's specific services, noting that he was introduced to the petitioner's Insurance vertical and its projects in April 2005 and has worked exclusively on the [redacted] since that time. The petitioner stated:

To keep the project on track, the [redacted] in the United States requires the skills of a Systems Analyst who is highly skilled in metrics generation tools. This individual serves as the U.S.-based coordinator of offshore activities, responsible for tracking work being performed overseas and coordinating those efforts with the client and the U.S.-based project activities. [The beneficiary's] [redacted] experience abroad involves extensive use of metrics tools such as E-Tracker and SLA metrics, and their implementation with U.S.-based [redacted]

The petitioner indicated that the beneficiary "has acquired and used specialized and advanced knowledge in the application of a variety of technologies to the specific demands of the [redacted] including the following:

- ENDEVOR – A tool in UHG Mainframes, which is used to track the history of changes done to the COBOL programs . . .
- COBOL/DB2/IMS – Most of the UHG application programs are created using COBOL language and IMS/DB2 database system. . .
- FILE-AID – This is used to significantly reduce the time required to perform the day-to-day date file manipulation tasks such as creating and modifying test data, reading files and resolving data problems.
- Abend-aid – a third part debugging tool used in the UHG Mainframes. Abend-Aid is used to intercept and analyze application program failures to provide comprehensive fault diagnostics. . .

- REXX – A tools used for automation purposes in [REDACTED] projects.
- [REDACTED] Application/SCM Tools – Depth knowledge in various SCM tools like VSS, Test director, ADR and sound knowledge in various [REDACTED] applications like Renewal, Rating, Billing, etc.

The petitioner emphasized that the beneficiary's knowledge in these areas surpasses that of most of his peers and is not readily available in other candidates. In addition, the petitioner stated that the beneficiary has knowledge of the petitioner's proprietary products and processes, their application in international markets and their specific application to the [REDACTED] t. Specifically, the petitioner stated that the company has developed internal tools and procedures used by company employees to generate project metrics, track day-to-day issues faced in a project, track and manage project tasks and activities, automate software qualify assurance and maintain a knowledge repository for the project. The petitioner indicated that expertise with such tools "can only be gained through role-based exposure to the internal processes of each tools as applied to specific projects," while "the role and responsibility of the individual on a project team determines the extent to which he gets experience in using the internal tools and implementing the procedures for the project."

The petitioner also submitted a letter from the foreign entity's Projects Manager, [REDACTED] who provides additional information regarding the [REDACTED] project. He states that the project "is responsible for maintenance operations for the legacy systems' application [REDACTED] and has a "complex database structure involving IMS DB and DB2."

The director issued a request for additional evidence (RFE). The director instructed the petitioner to submit additional evidence that clearly shows that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. The director requested that the petitioner describe a typical work week, highlighting specific duties that require an individual with specialized knowledge. The director also requested, *inter alia*, further documentation with respect to the 450 hours of training provided to the beneficiary, information regarding the amount of time required to train an employee to fill the proffered position, and the number of similarly trained workers within the organization. The director requested an organizational chart for the [REDACTED] and instructed the petitioner to identify the roles and duties of the project members.

In response to the RFE, counsel for the petitioner submitted a detailed letter dated January 30, 2009. Counsel emphasized that the beneficiary "possesses special knowledge and advanced understanding or proprietary [company] tools and their unique implementation to the [REDACTED] Counsel stated that the beneficiary's proposed duties and the specialized knowledge required for each duty would include the following:

- 25% of weekly duties – Analyze the internal systems currently used at Uniprise, such as Renewals, rating, SGUB and [REDACTED] downstream feeds for new enhancements, using [REDACTED] system knowledge, Health insurance business knowledge and sound knowledge in SCM tools like ADR, PCR, etc.

- 20% of weekly duties – Interact with end users to gather requirements for upcoming maintenance and enhancement activity in these systems; discuss and understand the new business requirements with business people, using [REDACTED] health insurance business knowledge, and client interfacing skills gained through previous [REDACTED].
- 15% of weekly duties – Coordinate development activity for the project with the offshore team in India, including conducting deep dive sessions on project requirements; schedule walk-through for offshore team members; explain business requirements for upcoming projects with offshore team members, answer their questions and ensure their compliance with business requirements, using [REDACTED] system knowledge, Health insurance business knowledge, project coordination capability, and leadership ability.
- 20% of weekly duties – Prepare and review system specification document; create system specification document from business requirements; review system specification prepared by offshore team members, using excellent system knowledge and project documentation skill; sound knowledge in SCM activities and quality process.
- 10% of weekly duties – Review technical specification, code and unit test log prepared by offshore team; verify the technical specification for implementing business requirements, using sound technical knowledge, troubleshooting capability, excellent knowledge of COBOL, DB2 and mainframe application.
- 5% of weekly duties – Support UAT and system testing by executing test batch, trace defect logged by testing team, code movement to production once the testing is over, using renewal batch processing knowledge, [REDACTED] tools like Deskpro, Testdirector and Mainframe tools such as ENDEVOR. The limited access to such tools are restricted by [REDACTED] to only the key members of the project.
- 5% of weekly duties – Collect, consolidate and analyze project metrics, and assist in the efficient calculation of quantifiable project specifications, using Q-view for quality assurance, Q-Smart to automate quality assurance through powerful built-in workflow mechanisms, RAMS for resource allocation and management, using experience in E-tracker and [REDACTED] for Application Value Management, Q-view, Q-smart, RAMS, TRS, etc.

Counsel further emphasized that the beneficiary possesses the required knowledge as a result of his 42 months of experience working on the [REDACTED] where he was responsible for "systems analysis and development (including design, coding, testing) for more than 18 sub-projects." Counsel further stated:

[The beneficiary] has obtained internal certification in the domain area related to Healthcare management. He also works on the Internal Quality Audit team for the [REDACTED] project.

While on the [REDACTED] [the beneficiary] has worked as Metrics coordinator and gained knowledge on CMMi Level 5 processes. He has also gained knowledge on tools

used by [REDACTED] client like Deskpro, Test Director and other configuration management tools like ADR, and Projects tools like PROMPT and PCR. Such knowledge, restricted by [REDACTED] to only a select group of key project members, will make [the beneficiary] a key employee when [the petitioner] executes the project for [REDACTED]

Counsel stated that the beneficiary has completed a total of 472 hours of formal training with the petitioner's group, plus 112 hours of "project-specific" training. The petitioner submitted a certificate indicating that the beneficiary earned [REDACTED] Certified Professional certificates in COBOL and "Introduction to Managed Healthcare." The petitioner also submitted a "training certificate" indicating that the beneficiary has completed courses in the following areas: Mainframe Entry Level Training – COBOL, DB2, CICS, JCL, VSAM (360 hours); Level 0 Health Care Foundation Course (4 hours); Introduction to Managed Healthcare (16 hours) Written Communication Skill (16 hours); Business Etiquette (8 hours); COBOL certification program (24 hours); Code of Business Ethics (one day); Overview of [REDACTED] (one day); English Language Gym (one day); Use Case Estimation (one day); and My Value, My Presence (one day). The petitioner further provided a chart outlining the training the beneficiary received that is specific to [REDACTED] and the [REDACTED] project, including a [REDACTED] Knowledge sharing session (40 hours); Endeavor (16 hours); COBOL/DB2/IMS (16 hours); File Aid (8 hours); Abend-Aid (8 hours); REXX (16 hours); and Overview of SCM Tools (8 hours).

Counsel noted that the petitioner has an offshore team with more than 65 members working on the [REDACTED], and that the beneficiary was chosen for the U.S. assignment because he is a key member of the team with the most extensive project experience. Counsel further stated that the petitioner has only one L-1B employee working on the project in the United States, whose area of specialty is web development applications and therefore in a different role than a systems analyst. The petitioner submitted an organizational chart for the project which depicts the beneficiary as one of nine members on the [REDACTED] team. Counsel concluded by stating that the petitioner could not fill the beneficiary's proposed U.S. position with any other company employees, much less a new hire.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge. The director determined that the petitioner failed to establish how the beneficiary's knowledge of the company's internal tools and processes is advanced compared to other similarly trained workers, and emphasized that most of the beneficiary's training courses were completed in a very short length of time and presumably available to other systems analysts. The director further found that the petitioner failed to document how the beneficiary's role and duties rise to the level of a key employee within the organization.

The director also denied the petition, in part because the petitioner failed to provide a copy of its contract with [REDACTED] which was requested in the RFE. The director acknowledged the petitioner's response that it could not provide the contract due to confidentiality agreements, but determined that "there is no independent corroborative documentation in the record to establish that the project, as described, exists or that the beneficiary will be assigned to it."

On appeal, counsel asserts that the director "completely disregarded, or minimized the importance of" significant facts included in the petitioner's letters and supporting documentation. Specifically, counsel asserts that the

director failed to address the petitioner's longstanding relationship with the client, the beneficiary's 42 months of experience with the [REDACTED] the beneficiary's knowledge of the [REDACTED] system and the petitioner's processes and solutions developed for the system, the beneficiary's responsibility for 18 sub-projects, the beneficiary's role as the project's e-Metrics coordinator and internal quality audit team member, and the petitioner's explanation that the company has only one other L-1B employee working on the project in the United States.

Counsel further asserts that the petitioner's contracts contain binding provisions regarding the confidentiality of client information, and thus may not be disclosed or shared with the general public. Counsel contends that the lack of access to the contract should not be a ground for denial of the petition.

In addition, counsel asserts that the director erred by requiring that the petitioner establish that the beneficiary is "one of a select few in [the petitioner's] organization who has proficiency in . . . specific tools and processes," noting that neither the law nor regulation supports this standard. Counsel further explains:

[The petitioner's] business model involves studying a client's systems in depth in order to design and implement major system improvements or an entirely new application. In this business model, a team of IT professionals working both in the U.S. and abroad use a combination of specialized knowledge of a client's systems and . . . proprietary tools to produce and implement a solution for the client. Those working with the same client for several years, such as the beneficiary in this petition (42 months abroad) certainly develop a very high level of unique knowledge of both client systems as well as the project design implemented by [the petitioner]. Such knowledge undeniably fits squarely within the legal and regulatory definition of specialized knowledge.

### III. Analysis

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

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized

knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

#### A. Description of Job Duties

While the petitioner has provided a detailed description of the beneficiary's duties, the petitioner has not established that such duties are atypical of a systems analyst working with mainframe-based database technologies. Instead, the description reveals that he is required to use knowledge and technical skills which are widely available in the information technology industry, such as Cobol, JCL and CICS programming languages, IMS and DB2 database management systems, and mainframe system tools. Although counsel indicated that "experience with legacy systems in IBM mainframe is increasingly rare," there is no evidence in the record to support this claim, or to support a finding that knowledge of such technologies could be considered specialized knowledge specific to the petitioning organization.

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

The petitioner fails to adequately articulate or document the manner in which the beneficiary has been and will be employed in a specialized knowledge capacity. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

#### B. Proprietary Tools and Methodologies

Counsel and the petitioner further assert that aspects of the position require project-specific knowledge that the beneficiary gained in India, as well as experience with the petitioner's internal processes and procedures, and therefore could not be performed by the typical skilled systems analyst specializing in mainframe applications.

Therefore, one question before the AAO is whether the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies, by itself, constitutes specialized knowledge. The AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(I)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and systems development projects. These tools and methodologies are said to include E-Tracker for Application Value Management; E-Metrics to collect and analyze project metrics; iCare user support system; Q-View for quality assurance; Q-Smart to automate quality assurance; RAMS for resource allocation and management; and Timesheet for tracking the number of hours worked in each module. The petitioner emphasizes that the beneficiary possesses special knowledge and advanced understanding of these tools and their "unique implementation" in the [REDACTED]

However, the petitioner's description of the beneficiary's duties in response to the RFE does not support a conclusion that knowledge of the proprietary systems and products is necessary for the performance of the duties. The petitioner described those duties as follows:

5% of weekly duties – Collect, consolidate and analyze project metrics, and assist in the efficient calculation of quantifiable project specifications, using Q-view for quality assurance, Q-Smart to automate quality assurance through powerful built-in workflow mechanisms, RAMS for resource allocation and management, using experience in E-tracker and [REDACTED] 2.0 for Application Value Management, Q-view, Q-smart, RAMS, TRS, etc.

Contrary to the claim that experience with the petitioner's internal processes and procedures is essential, the beneficiary will only be required to spend 5% of his time utilizing these tools. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

### C. Training

Furthermore, the minimal evidence submitted suggests that the petitioner's employees are not required to undergo any extensive training in the company's tools, processes and methodologies.

The record reflects that the beneficiary completed a one-day [REDACTED] but the remainder of his courses were general technology-based training, i.e. 360 hours of mainframe entry level training in Cobol and DB2; project-specific courses in the client's technologies; domain knowledge courses such as the health care foundation course. The beneficiary also spent significant time in general courses such as written communications, English language and business ethics and etiquette. Although the beneficiary completed a total of 584 hours of training during his 42-month tenure with the foreign entity, the majority of the training does not appear to be associated with the petitioner's claimed proprietary tools and processes. Specifically, the petitioner states in the letter submitted in support of the initial petition that the beneficiary will need to have knowledge of internally developed tools as follows: Qview Intranet, eCockpit, eMetrics, iCare, eTracker, and Qsmart. Of these tools, the petitioner only states that the beneficiary will be required to use Q-view and Q-Smart in the proposed duties listed in response to the RFE. The petitioner also provided a list of trainings and certifications offered by [REDACTED]. This list does not include training in any of the internally developed tools. The beneficiary received significantly more training in [REDACTED] internal tools and systems.

Additionally, there is no evidence to suggest that the beneficiary has not been fully performing the duties of the systems analyst position since the date he was hired by the foreign entity and assigned to the [REDACTED]. The petitioner does not articulate or document how specialized knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge.

Based on the petitioner's representations, its proprietary processes and tools, while highly effective and valuable to the petitioner, are simply 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 mainframe 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. [REDACTED]

The petitioner asserts that an additional, and most important, component of the beneficiary's purported specialized knowledge is his existing knowledge of the client's [REDACTED]. Specifically, the petitioner indicates that the beneficiary's involvement in this project for over three years is indicative of his knowledge of the petitioner's products, services and techniques and their application in international markets. By itself, the fact that the beneficiary possesses very specific experience with a particular international client project does not establish that the beneficiary's knowledge is indeed special or advanced. In response to the RFE, the petitioner states that 60% of the beneficiary's duties rely on his application of [REDACTED] knowledge. The petitioner's list of the beneficiary's training, however, reveals that the "overview and detailed study" of [REDACTED] sharing session only required 40 hours, or one week of training. This short duration of training does not support a finding that the beneficiary's knowledge is "special" or "advanced" compared to those in the petitioner's organization or in the industry.

Even if the AAO assumes *arguendo* that the beneficiary's familiarity with the client's systems could be considered "specialized knowledge," the petitioner claims that it has a long-term relationship with the client and has many ongoing onshore and offshore projects with the client. The beneficiary is one of nine systems analysts assigned to the [REDACTED] and appears to be a regular team member, notwithstanding his long tenure on this particular project. Absent some description of how his role differs from that of other team members working on enhancing and maintaining the same client systems, the AAO cannot conclude that his knowledge is advanced based on length of experience alone. The petitioner stated that he was responsible for 18 sub-projects, but did not describe these projects or the beneficiary's role within these projects with any specificity. 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.

#### E. Preponderance Analysis

Again, USCIS must review the quality of the submitted evidence to determine whether the petitioner has established that the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

On appeal, counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. Counsel states that the seminal agency guidance 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 systems 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.

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).

The petitioner has not successfully demonstrated that the beneficiary's knowledge of the petitioner's processes and procedures gained during his employment with the foreign entity is advanced compared to other similarly employed workers within the organization. As noted above, the petitioner's attempts to distinguish the beneficiary's knowledge as advanced relative to a specific client project are unpersuasive. All of the foreign entity's technical employees would reasonably have project-specific knowledge in addition to knowledge of the company's proprietary tools and processes for implementing projects. By this logic, any of them would qualify for L-1B classification if offered a position working on the same project in the United States.

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.

#### F. Contracts

The director also denied the petition, in part, based on the petitioner's failure to provide a copy of its contract with [REDACTED] which was requested in the RFE.

In response to the RFE, counsel asserted that the petitioner's contracts contain binding provisions regarding the confidentiality of client information, and thus may not be disclosed or shared with the general public. Instead, the petitioner proffered a statement from [REDACTED] and Senior Vice President, which confirms that it may not provide contracts or Master Service Agreements because of broad confidentiality provisions. The director acknowledged the petitioner's response that it could not provide the contract due to the confidentiality agreements but denied the petition for the failure to provide the documents.

The AAO agrees with the director's assessment. The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). 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).

In the present case, the requested evidence was material to the beneficiary's assignment on the client project, the nature of the beneficiary's duties, and the petitioner's supervision of the beneficiary. The petitioner must also 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 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. In response to the questions posed by the Form I-129, the petitioner stated that the beneficiary would be supervised by [REDACTED] project managers and that "[o]nly [the petitioner] may discharge the beneficiary, assign additional projects, or set work hours or schedules."

The petitioner's reliance on [REDACTED] summary, rather than the original documents themselves, creates some doubt as to the actual content of the agreements that would describe the petitioner's rights and ability to discharge the beneficiary, assign additional projects, or set work hours or schedules.<sup>2</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).

The petitioner failed to submit material evidence in response to the director's 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). For this additional reason, the appeal must be dismissed.

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<sup>2</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.

#### 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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.