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

[redacted]

DATE: JUN 2 9 2013 Office: VERMONT SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner filed the nonimmigrant petition to classify the beneficiary as an L-1B intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a computer software development and consultancy company with an affiliate, . It seeks to extend the employment of the beneficiary in the specialized knowledge position of "systems analyst" at the offsite work location of its client,

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

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge; and (2) the conditions of the beneficiary's proposed L-1B employment at the worksite of the unaffiliated employer, Hartford, are in compliance with the terms of the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the record contains ample evidence establishing that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity, as well as evidence that the beneficiary's offsite employment was not "labor for hire." Counsel submits a brief and additional evidence 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.[1] 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.

[1] 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.

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.

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

A. Employment in a Specialized Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has more than 55,000 employees worldwide. In a letter of support appended to the petition, the petitioner averred that it is a "leading e-business and applications outsourcer, providing software development and application management services to Fortune 1,000 companies." Regarding its business model, the petitioner stated as follows:

> [The petitioner] designs, engineers, and implements business solutions on a project basis for companies that are not in the IT sector. All of our employees work directly for [the petitioner] on projects designed and built by our company, and under the supervision of one or more of [the petitioner's] project managers. [The petitioner] at all times retains "Ultimate Authority" over all employees located at client sites. The projects are completely managed by [the petitioner]. The projects are designed and directed by [the petitioner], using the company's proprietary project management tools and methodologies.

(Emphasis in original).

The petitioner also described the on-site/offshore model it uses to provide clients with IT solutions and services, noting that the company "typically assigns client site project leaders who have an advanced level of knowledge of [the petitioner's] proprietary tools and systems, as well as experience in key roles on other projects in which [the petitioner's] Onsite/Offshore methodology was implemented."

Regarding the beneficiary, the petitioner claimed that he has been employed by the petitioner for approximately four years and ten months and has worked on various projects in its insurance domain during the course of his employment. His resume further demonstrates that during this time, he worked on multiple projects for as well as for the petitioner's client

With regard to the beneficiary's proffered position, the petitioner claimed that he would continue to be employed as a systems analyst for its ongoing project for its client, The petitioner noted that the is the same project to which the beneficiary is currently assigned in the U.S. at the client's worksite located in , and it further indicated that the beneficiary has been working on this specific project in the U.S. for approximately two months. The beneficiary's resume further indicates that immediately prior to his assignment on the project in the U.S., the beneficiary worked abroad in India on this project for approximately four months.

Regarding the project, the petitioner stated that it was providing an onsite team to work on the Application project, and claimed that is the core application used to support individual annuity products with an approximate active contract base of over 1.5 million contracts." The petitioner also provided the following explanation regarding the beneficiary's role in the project:

> As Systems Analyst on this project in the U.S., [the beneficiary] is responsible for analyzing and supporting the He works on multiple enhancements to the

application being the point of contact between the clients and offshore. He provides real time batch supports during the night which are critical for financial operations of the organization.

[The beneficiary] is involved with supporting the application and in the enhancements toward the application. He understands the application and has a thorough knowledge of the business. He is onsite coordinator for the application, and he is the key liaison between the client and the offshore team for imparting of the application knowledge, and also his technical support in this area. [The beneficiary] is responsible for communicating with the business in supporting the application, and schedules the deliverables along with the offshore team. He reviews the deliverables made by the offshore team and releases them to the client after any corrections that are necessary. [The beneficiary] is also responsible for resolving the issues raised by the business which requires thorough technical and business knowledge of the application. He supports the application by querying the database using SQL Plus and researches through the code using Oracle Forms and SQL Navigator. [The beneficiary] is involved with identifying and correcting the issues through data updates or correcting the code requires expertise in Oracle.

* * *

Specifically, [the beneficiary] displayed his advanced expertise through his focus on the following project:

project October 2008 – Present

While currently working on this project in the U.S., [the beneficiary] is responsible for the production support on a daily basis. He handles and resolves application processing issues for the business customers. [The beneficiary] is involved with financial reporting and trade file corrections. He handles Out of Balance which involves the balancing of the day-to-day money on this application. [The beneficiary] provides enhancement and analysis and testing to the enhancement trackers. He coordinates with the [petitioner] offshore team in India to ensure the client specifications are met. He reviews all work done by the offshore team and if any issues arise, he resolves them prior to delivery to the client.

The petitioner provided the following description of the specialized knowledge required by the beneficiary's position in the United States:

[The beneficiary] has worked on the project and has been instrumental in the development of and in the implementation of several development, maintenance and testing applications. [The beneficiary] has acquired business product and technical process knowledge that can be only attained through developing company's information technology and it is neither common nor basic knowledge. [The beneficiary] has specialized in the Insurance domain on various [petitioner] projects since February 2004 and

has been instrumental in the design, development and testing of all cases during this vital [petitioner] project with in the U.S.

In addition, [the beneficiary] has been involved in the entire life cycle of the initial phases of the Application project while located onsite in the U.S. He worked on Test design, Test plan preparation, and test execution during the Application project and hence has acquired the business knowledge of the project for the future leveraging during the upcoming implementation. His concentrated focus on the development and implementation of this client's technology cannot be passed onto another candidate due to the intense and lengthy time period required for acquaintance with [business processes and related technology. [The beneficiary] is very familiar with the project and his technical expertise therefore is an asset to both and [the petitioner][.]

The petitioner went on to describe the beneficiary's unique technical knowledge applicable to the project in the United States as follows:

[The beneficiary] has acquired specialized knowledge of the technologies requires for the creation, modification and validation of customized application systems using internal and external technologies. He has developed experience in application and module design, testing and implementation and has also gathered a unique knowledge of technological requirements and implementations. [The beneficiary's] thorough knowledge of [the petitioner's] processes for the project has rendered him an expert in the application maintenance and development and has highlighted his specialized knowledge.

The petitioner briefly described the beneficiary's education and training as follows:

[The beneficiary] earned a Bachelor of Technology in Engineering from the University of He has utilized a host of internal tools for the Application project and has received internal training in the usage of these tools. Therefore, his unique combination of professional experience with [and his practical educational expertise cannot be transferred or taught to other candidates.

The petitioner's supporting evidence included the beneficiary's detailed resume and evidence that the beneficiary completed a Bachelor of Technology in Engineering. On his resume, the beneficiary lists his technical skills as: UNIX, Windows 2000/XP/NT, DOS, PL/SQL, SQL, Oracle Forms, JAVA, C, C++, Oracle, Sybase, SQL Server, SQL Plus, SQL Loader, Forms 9i, SQL Navigator, TOAD, Test Director, Microsoft Visio, Microsoft Project Planning, Quality Center, Serena Version Manager, PVCS Tracker, Sybase Replication, Prolite, eTracker, Icare, Action Request Remedy Tool, and Cognizant 2.0 project planner. He states that he has four years and 9 months of experience in the industry in "diversified areas of Software Development such as Design, Development, Testing, Data modeling, [and] Implementation[,]" and the resume includes a description of each project to which the beneficiary has been assigned since the start of his career.

The director found the initial evidence insufficient to establish eligibility, and consequently issued a request for additional evidence (RFE). The director instructed the petitioner to submit additional evidence to show that the beneficiary's knowledge is not commonly held by practitioners in the field. The director requested that the petitioner submit evidence relating to the unique methodologies, tools, programs, and/or applications used by the company and a detailed description as to how these are different from those used by other companies. The director also requested, *inter alia*, a more detailed description of the proprietary nature of the procedures used by the beneficiary, further documentation with respect to the training provided to the beneficiary, information regarding the amount of time required to train an employee to fill the proffered position, and the number of similarly trained workers within the organization.

In response, the petitioner explained that the beneficiary "gained his intimate knowledge of the designed solutions for client's systems by working with since February 2004 . . . [and] since February 2006 working with the project at [the petitioner's] client." The petitioner noted that the technical and highly detailed nature of the beneficiary's knowledge and his years of hands-on experience make it difficult to impart the same specialized knowledge to another employee without significant economic inconvenience to the petitioner or its client. The petitioner also stated that "the combination of [the beneficiary's] extensive knowledge of the project, his advanced expertise of [the petitioner's] systems and processes, his experience of working onsite with this client, and being on the project from the start is extremely difficult to replicate."

The petitioner went on to further describe the beneficiary's duties and attached percentages indicating the amount of time the beneficiary dedicates to each task. The petitioner also described the beneficiary's training, while noting that classroom training "is not the most important qualification needed to determine who is most qualified to perform the duties required for certain positions." The petitioner stated that most of the beneficiary's knowledge has come from his experience working on past company projects since 2004. Nevertheless, the petitioner provided a new list of 19 "formal training sessions" completed by the beneficiary, for a total of 396 hours of training from February 11, 2004 to July 17, 2008.

The petitioner concluded its final description of the beneficiary's specialized knowledge and duties as follows:

> [The beneficiary] is in a unique position to be the only employee onsite having the knowledge of the complete upstream and downstream process of the application and his knowledge and experience working at the clients site in combination with his knowledge of the tools and processes used are extremely critical for this project [*sic*].
>
> [The beneficiary] has expert knowledge and training of general trends in the Insurance domain throughout the industry.
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> [The beneficiary] uses his expert knowledge of the many tools used and his experience while working in the U.S. to coordinate with the offshore team members on this project. He answers any questions team members may have and manages the work they complete, which makes him vital to remain an onsite resource.

The director denied the petition, concluding, in part, that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director noted that the beneficiary's training has been in a broad range of systems and tools and not in one specialized area. The director found that the record does not establish that the beneficiary has training or experience above and beyond that of those similarly employed in the field of software engineering. The director further found that the beneficiary's duties and skills as a systems analyst demonstrate knowledge which is common among systems analysts employed by the foreign entity, the workforce at the unaffiliated employer's work location, and others in the field of information technology.

On appeal, counsel for the petitioner asserts that the director's decision was erroneous, contending that the petitioner has submitted sufficient and detailed evidence of the beneficiary's specialized knowledge and the specialized knowledge capacity of the proposed position. Counsel states that is a highly sophisticated software system custom-developed by the petitioner for its client, and is therefore a product of the petitioner. Counsel further states that the beneficiary has first-hand knowledge of this unique, internally developed product, as well as the petitioner's unique tools and methods that were used to develop it.

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

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

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate

question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

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

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

In the present matter, although the petitioner submitted lengthy position descriptions for the proffered position in the United States, it has not described any duties that would require the beneficiary to possess knowledge not possessed by other similarly experienced systems analysts working on the same project. The petitioner repeatedly explains that the project was internally developed by the petitioner for its client and that the beneficiary has an in-depth understanding of as he has been involved in its software design and development activities for three years. The petitioner states that the beneficiary has been involved in the entire life cycle of the initial phases of the application project while at the foreign entity and in the U.S., including work on test design, test plan preparation, and test execution, and has acquired the business knowledge of the project. The petitioner further indicates that this knowledge cannot easily be passed onto another employee due to the intense and lengthy time period required for acquaintance with business processes and related technology. However, by itself, experience with a project does not automatically constitute a level of knowledge that can be deemed specialized or advanced. The petitioner has not demonstrated that the beneficiary possesses specialized or advanced knowledge beyond any other systems analyst working on the project.

Additionally, as observed by the director, the petitioner has not adequately identified the systems, processes, methodologies, or procedures of which the beneficiary is claimed to have specialized and advanced knowledge. Here, the petitioner continually asserts that the proffered position requires project-specific knowledge that the beneficiary gained in the previous three years working on this project and "in-depth experience" with the petitioner's "internally developed technologies and procedures." The petitioner concludes that the duties of the proffered position could not be performed by the typical skilled software development specialists who are not familiar with the petitioner's complex software systems which have been custom developed for its clients. However, the petitioner has not provided any further explanation or documentation with respect to these systems, technologies, methodologies, processes, or procedures, and thus provided no basis on which USCIS could conclude that they are in fact "unique," complex, or "difficult to grasp." The petitioner cannot simply make a broad assertion that the beneficiary possesses advanced knowledge of processes due to his hands-on experience on a project without defining those processes and procedures. Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner explains that in order to perform the beneficiary's duties, an employee must have worked for the petitioner or one of its affiliates for one year and must have 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. The petitioner further explains that extensive formal training is required through the petitioner's training academy, covering the petitioner's underlying internally-developed technology and the methods in which that technology is used within the petitioner's organization in order to effectively and efficiently complete technology development projects for clients.

In response to the RFE, the petitioner provided a list of 19 training sessions completed by the beneficiary. Other than the number of hours to complete the training, the petitioner did not provide any detail about any of the training sessions, nor did it explain how any particular training raises the beneficiary to a level of knowledge that is specialized or advanced. Further, the petitioner indicates that the beneficiary's training combined with his hands-on experience utilizing its internally-developed technologies, systems, processes, methodologies, and procedures raises him to a level of specialized or advanced knowledge, such that he is the best qualified employee for the proffered position. However, the petitioner did not establish that the training sessions listed for the beneficiary are atypical of IT professionals or set him apart from other systems analysts within the petitioner's company or the industry. Therefore, the AAO cannot determine that the beneficiary possesses a level of knowledge that is special or advanced within the company or the industry.

Based on the petitioner's representations, it appears that 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 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.

Furthermore, the petitioner does not provide any information relating to the beneficiary's position abroad. According to the beneficiary's resume, he performed the same or similar duties abroad as those of the proffered position. As such, the petitioner has not established that the beneficiary's position abroad involved specialized knowledge.

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 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.

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.

B. L-1 Visa Reform Act

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

The Form I-129, Petition for a Nonimmigrant Worker, solicits information specifically related to the proscriptions created by the L-1 Visa Reform Act. On the Form I-129 Supplement L, at Section 1 Question 13, the form asks if the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer. If the petitioner answers this question in the affirmative, the form then solicits information regarding: 1) how and by whom the beneficiary will be controlled and supervised; and 2) the reasons why placement at another worksite is necessary, including a description of how the beneficiary's duties relate to the need for his or her specialized knowledge.

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

In its support letter, the petitioner claimed that the beneficiary would continue to serve in the role of systems analyst on a project for Regarding the nature of its relationship with , the petitioner stated:

> [The petitioner's] relationship with [its] clients, including is that of independent contractor, and **no** other relationship exists, including employment, joint venture, or agency. [The petitioner] at all times retains **"Ultimate Authority"** over and is fully responsible for the actions and omission of all its employees, whether or not such employees are working on site at a client facility.

(Emphasis in original).

The petitioner specifically indicated that it cannot produce a copy of its Master Service Agreement with pursuant to the terms of the confidentiality provisions. The petitioner also provided an overview of the beneficiary's duties on the project. Specifically, the petitioner stated that he is "involved in supporting the application and in the enhancements towards the application."

The petitioner proffered an affirmation or statement from General Counsel and Senior Vice President, which attempts to summarize the language of the master service agreements and the manner in which it supervises off-site employees.

The director issued an RFE, advising the petitioner that it provided insufficient evidence concerning the location where the beneficiary will work, the product or service to which the beneficiary will be providing specialized knowledge, and the conditions of employment. The director requested that the petitioner provide, *inter alia,* evidence to establish: (1) who retains the authority to hire and fire the beneficiary; (2) who is responsible for administering the alien's time and pay; (3) to what degree the beneficiary will be controlled and supervised by the offsite employer; (4) how many of the company's employees are located at the unaffiliated work-site; and (5) the name of the individual who will supervise the beneficiary along with evidence of his or her assignment to the project. The director stated that the evidence could include: (1) a more detailed explanation of the contracted for services to be provided to the unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; and (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer.

In response, the petitioner provided: (1) a letter addressing the director's queries; (2) the same affidavit of as submitted with the initial petition; and (3) training certificates demonstrating the training history of the beneficiary.

The director ultimately denied the petition finding that the petitioner failed to establish that beneficiary's placement at the unaffiliated employer's worksite is in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, as required by section 214(a)(F)(ii) of the L-1 Visa Reform Act. The director noted that the knowledge and expertise the petitioner claims the beneficiary holds, is pertinent to the client, and not the petitioner. The director found that the petitioner is providing labor for hire rather than placement in connection with the provision of a product or service. The director observed that the petitioner is providing programmers for hire to maintain the client's already existing system or software rather than developing its own software.

On appeal, counsel for the petitioner contends that the director's decision was based on a misapplication of law and that the director did not consider all the facts in evidence. Specifically, counsel contends that the director's conclusion regarding the legal terms "work for hire" and "labor for hire" was erroneous.

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

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

The L-1 Visa Reform Act amendment was intended to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fef82ef&wit_id=4f1e0899533f7680e78d03281fef82ef-0-3 (accessed on May 21, 2013).

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility.

Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

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

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

1. Supervision and Control

The director did not dispute the claim that the petitioner will supervise and control the beneficiary's work. In response to the RFE, the petitioner provided summarized information contained in its master service agreement with and indicated that the beneficiary will be supervised by the assistant manager. As the director conceded the issue in the denial, the AAO will not assess whether the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of section 214(c)(2)(F)(i) of the Act.

2. Specialized Knowledge Specific to the Petitioning Employer

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

The petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is specific to the petitioning employer. Section 214(c)(2)(F)(ii) of the Act. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act. *Id.*

The director noted that the beneficiary will be working on a software application that belongs to the unaffiliated client providing support and maintenance for that software and his knowledge of the petitioner's tools, procedures, and methodologies may only be tangentially related to the performance of the proposed offsite activity. The director concluded that, based on this finding, the beneficiary's placement at the site was essentially labor for hire. On appeal, the petitioner contends that the software application the beneficiary works on for the client was a custom-developed software system by the petitioner for the client.

For the reasons set forth below, the petitioner has failed to establish that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge

that is specific to the petitioning employer. The petitioner is required to provide sufficient evidence to corroborate its claims that this beneficiary's assignment at the unaffiliated employer's worksite requires the application of his claimed specialized knowledge. Here, the petitioner has not met that burden.

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

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

Second, the petitioner claims that it developed this software application specifically and solely for However, the petitioner failed to provide any evidence or documentation to establish that this software application, which is the beneficiary's sole project with the unaffiliated employer, was custom developed for the client. Furthermore, the petitioner failed to provide any evidence such as a statement of work, engagement agreement, work order, letter from the unaffiliated employer, or press release discussing the product or service to be provided to substantiate the claim that the beneficiary will be required to use the petitioner's proprietary technologies and methodologies in the performance of the contracted services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Third, the petitioner failed to provide the requested evidence in response to the director's RFE. As stated above, the director specifically asked for evidence to establish that the beneficiary "will enter the United States to render services in a capacity that involves specialized knowledge" at the unaffiliated employers worksite. The RFE provided an opportunity to submit this essential evidence, explaining that the petitioner's evidence could include: (1) a more detailed explanation of the contracted services to be provided to the

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

unaffiliated employer; (2) proof that the unaffiliated employer received the products or services; (3) updated contracts, statements of work, work orders, or service agreements between the petitioner and the unaffiliated employer; and (4) copies of press releases that discuss the product or service to be provided to the unaffiliated employer by the petitioner. In response, the petitioner submitted a copy of the previously submitted statement from , along with evidence of the beneficiary's training history. The petitioner failed to submit any additional evidence as requested in response to the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In conclusion, there is no evidence that the petitioner is providing the beneficiary's services in connection with the sale of any of its technology products or that the beneficiary's offsite employment requires any specialized knowledge specific to the petitioner's operations. Instead, the limited evidence in the record related to the nature of the contract indicates that the petitioner is providing general IT services to the unaffiliated employer.

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

III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.