



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 11 2013** OFFICE: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation, provides installation and customization of telecommunication systems using Cisco products. The petitioner claims to be a joint venture of [REDACTED] of Costa Rica. The petitioner seeks to employ the beneficiary as its Senior Systems Network Engineer to open a new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has specialized knowledge and will be employed in a position requiring specialized knowledge, and that it has secured sufficient physical premises for the new office.

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, the petitioner submits a brief and additional evidence. Counsel for the petitioner contends that the petitioner has in fact established the beneficiary has specialized knowledge and will be employed in a specialized knowledge capacity, as well as obtained the requisite physical premises.

I. The Law

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

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

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special

knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

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

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

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

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(vi) states that if the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

II. The Issues on Appeal

The director denied the instant petition, finding that the petitioner failed to establish: 1) that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity, and 2) that it has acquired sufficient physical premises.

The petitioner is a joint venture between [REDACTED] a Costa Rican corporation, and Information Technology Consulting Company ("ITC2"), a U.S. corporation. The beneficiary has worked as the president of [REDACTED] since October 2008. The petitioner seeks to bring the beneficiary to the United States as a Senior Systems Network Engineer to open a new office. The petitioner currently has one employee and capital of \$50,000. The beneficiary will receive a salary of \$3,000 per month.

The petitioner stated that the beneficiary will, as a Senior Systems Network Engineer, "[m]anage [the] complete lifecycle of telecommunications services." The petitioner stated that the beneficiary will be responsible for providing a high level of expertise for Cisco products. According to the petitioner, Cisco is the world-wide leader in networking. In its business plan, the petitioner indicates that it intends to become a go-to provider for solutions for Cisco Systems. It seeks to provide Cisco customers with end-to-end services for large voice deployments. The petitioner stated that Cisco works through Value Added Resellers (VARs) and a few select Professional Services Subcontractors (PSS) for installation and deployment projects.

In its letter accompanying the I-129 Petition for a Nonimmigrant Worker, the petitioner states that the beneficiary is currently a Design Engineer with over 4 years of experience with Cisco AVVID (Architecture for Voice Video and Integrated Data) equipment. A letter written by [REDACTED], the petitioner's Chief Operating Officer/Secretary, claims that the beneficiary has CCIE (Cisco Certified Internetwork Expert) and Cisco IP Telephony Design Specialist certifications.

The petitioner states that the beneficiary is one of the principal designers of the foreign parent's corporate strategy. It states that this strategy is to provide cost-effective resources with an expert skill set, and to become the premier solutions and resource provider for Cisco Systems.

In a letter accompanying the I-129, the petitioner states:

Through the successful execution of key large, complex deployments for [REDACTED] in Mexico and El Salvador, [the beneficiary] has gained unique expertise with the Cisco systems limitations and an ability to spot design flaws. For example, [the beneficiary] was a key part of the [REDACTED] team that

successfully executed the migration and upgrade of 7,000 phones in one building in a project in Mexico. [The beneficiary] applied [REDACTED]'s uniquely high standards of quality to the projects, which positioned him to write the operations procedures and maintenance Windows manual for the customer.

The petitioner provided a brochure entitled, "The Power of a Cisco Partnership" which details a program devised by Cisco to certify independent companies to service its systems:

Cisco Certified Partners offer validated skills in one or more technology specialties—ranging from core routing and switching infrastructure and unified communications, to wireless LAN deployments and multi-level security. You can select a Cisco Certified Partner that will assist you with any or all phases of building and operating your network—starting with planning, preparing, and designing your network, and proceeding through implementation, operations support, and optimization.

The brochure explains Cisco's career certifications and specializations:

Cisco specializations include four distinct levels that directly reflect the partner's depth of sales, technical, and services expertise in a particular technology.

Entry: The SMB Specialization recognizes partners that have completed technical training in switching, routing, security, and wireless solutions for small and medium-sized businesses with fewer than 250 employees.

Express: Two Express Specializations are available. The Cisco Express Foundation Specialization recognizes partners that have completed integrated training in routing and switching, wireless LAN, and security technologies. The Cisco Express Unified Communications Specialization recognizes partners for their knowledge and expertise in selling, designing, installing, and supporting converged data, voice, and video networking for small and medium-sized businesses.

Advanced: Partners can achieve Advanced Specialization in unified communications, security, wireless LAN, routing and switching, and datacenter technologies. Cisco Advanced Specializations recognize partners for their knowledge and expertise in selling, designing, installing, and supporting solutions for a wide range of customer needs—from small to medium-sized businesses all the way up to larger enterprise organizations.

Master: The Master Specialization recognizes partners with a highly qualified practice in a specific technology. Master Specialization builds on the advanced specializations and recognizes an elite group of partners that have the most in-depth technology skills and demonstrated customer success in selling, deploying, and providing services for more sophisticated Cisco solutions. Cisco currently offers Master Specializations in security and unified communications.

While specializations measure the depth of knowledge in a particular area, Cisco also has certifications that measure the breadth of knowledge:

Select Certified Partners have achieved the Cisco SMB Specialization, which focuses on small and medium-sized business customers with fewer than 250 employees. Select Certification reflects a partner's technology and business expertise specific to the SMB market.

Premier Certified Partners have achieved the Cisco Express Foundation Specialization. Premier Certified Partners have demonstrated competency in the integration of basic routing and switching, wireless LAN, and security technologies.

Silver Certified Partners have achieved two of the following Advanced Specializations: Unified Communications, Routing and Switching, Security, and Wireless LAN; or have achieved the Express Unified Communications Specialization and one of the following advanced specializations: Routing and Switching, Security, or Wireless LAN.

Gold Certified Partners have the broadest range of expertise by achieving all of the following four Advanced Specializations: Unified Communications, Routing & Switching, Security, and Wireless LAN.

According to the petitioner, the foreign parent is a Premier Certified Partner. The petitioner's letter accompanying the I-129 also indicates that the foreign entity has "red badge" status with Cisco, and that the majority of its staff holds the "red badge" designation. According to the petitioner, this means its employees go through the same hiring process as internal Cisco employees.

The petitioner also submitted a letter from Cisco thanking the petitioner's two parent companies for helping its Cisco's Unified Communications division. The letter states that the petitioner is now in a position for additional subcontracting engagements.

The petitioner submitted an organizational chart for the foreign affiliate that shows 15 employees. General management consists of a president, a North American manager, and a Latin American

manager. Under general management, the chart shows three branches headed by an operations manager, a business development manager, and a technology manager. Reporting to the operations manager are an office manager, an administrative assistant, and an accountant. Reporting to the business development manager are two "KA" managers. Reporting to the technology manager are an architecture coordinator with two subordinate engineers, as well as an implementation coordinator, who also has two subordinates.

The petitioner provided a Statement of Work ("SOW") agreement between the petitioner and [REDACTED] signed by both parties on November 13, 2009. The agreement states that the petitioner will supply an estimated 33.3 hours of senior level networking and engineering support to [REDACTED]'s voice and local communications systems. This would normally be billed at \$150 an hour, however, in lieu of the base fee, [REDACTED] will provide an office suite, office furniture, electricity, phone services and limited internet access to the petitioner. The petitioner also submitted a picture of a sign on a wall that states:

Fusionet Corporation
Suite 103

The SOW further states that the agreement includes Cisco PBX maintenance and support for [REDACTED] within reason, and that additional onsite services will be billed at \$100 per hour. The term of the agreement is two years.

The director issued a lengthy request for evidence ("RFE") instructing the petitioner to provide additional evidence including, *inter alia*: evidence that sufficient physical premises to house the new office have been secured, including an original lease agreement, a statement from the lessor identifying the square footage, the floor plan, the lessor's phone number, and photographs of the interior and exterior of the premises; and evidence that the beneficiary will be employed in a specialized knowledge capacity, including a description of the actions and duties the beneficiary will perform on a daily basis, a list of the proposed duties requiring specialized knowledge, an explanation as to why each of the identified duties requires specialized knowledge, the processes or methods used for each duty, and how long it would take to train an employee to use the process or methods identified.

In response to the RFE, the petitioner submitted a cover letter and additional evidence. A letter dated December 30, 2009 from [REDACTED], Chief Operating Officer/Secretary of the petitioner, states the following regarding the beneficiary's expertise:

Specifically, [the beneficiary] will use his technical expertise with Cisco router and switch configuration, Cisco CallManager configuration, Cisco Unity Connection configuration, Cisco Unified Contact Center Express configuration, Cisco Unified Presence configuration, Cisco Unified MeetingPlace Express configuration, XML

applications, and computer telephony integration to provide project deployment and delivery to meet the customers' needs.

The letter further states that the beneficiary has Cisco Voice CCVP, CCDA, and CCNA certifications. The petitioner submitted the following chart showing the different voice certifications offered by Cisco:

Cisco Certification	Goal	Prerequisites	Recommended Training	Course Objectives	Exams
CCDA	Validates knowledge required to design a Cisco converged network			Cisco solutions in designing and implementing scalable internetworks	
CCNA Voice	Validates associate-level knowledge and skills required to administer a voice network	CCNA or CCIE	Implementing Cisco IOS Unified Communications or Cisco Voice Over IP	Unified communications concepts; component definition & high level designs	CCNA exam and IUC or VoIP
CCVP	Validates advanced knowledge and skills required to integrate into underlying network architectures.	CCNA Voice or CCIE	Cisco VoIP, Implementing Cisco Unified Communications Manager Parts 1 & 2, Quality of Service, Troubleshooting Cisco Unified Communications Systems	Understanding of converged voice and data networks and challenges faced by various network technologies	CVOICE 6.0
CCIE Voice	Validates the highest level of expertise in VoIP		CVOICE, Cisco IP Telephone Parts 1 & 2, QoS, Implementing Cisco Voice Gateways and Gatekeepers, IP Telephone Express, IP Telephony	Technologies and applications that comprise Cisco Enterprise VoIP solutions	Written Exam Lab Exam

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			Troubleshooting, Cisco IPCC Express & IP IVR Deployment		
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The petitioner stated that the beneficiary is a CCIE Voice candidate in that he has passed the written portion of the exam and is now eligible to sit for the lab portion. The petitioner submitted an "Examination Score Report" confirming that the beneficiary passed the written portion of the CCIE exam on October 30, 2007. As indicated in the chart, CCIE is the highest technical certification by Cisco. Below the chart, the petitioner states there are 20,800 CCIEs in the world, of which only 1101 are Voice CCIEs. In its initial letter the petitioner also claims: "Today, CCIE certification holders represent less than 3% of all certified Cisco professionals and less than 1% of the networking professionals worldwide."

The petitioner submitted numerous pages of print outs regarding courses offered by Cisco to assist in passing its certification tests. Cisco provides the following description of one such course:

The Cisco 360 Learning Program for CCIE Voice is the smart way to help ensure your IT staff is equipped with the latest skills and knowledge to support your sophisticated network. The program offers a comprehensive, blended-learning curriculum designed to accelerate competency and build the skills needed to achieve CCIE Voice certification.

In response to the RFE's request for a list of the beneficiary's proposed job duties and the specialized knowledge required for each duty, the petitioner produced the following chart:

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Job Duty	Specialized Knowledge required	Percent of time
Provide expert technical advice to customer by comparing the implementation project with Cisco best practices	Expertise with Cisco Solution Reference Network Design guides for CallManager, Qos, Routing, and Security.	5%
Perform analysis for areas for improvement	five years' experience working with small, medium and large-size networks, with different levels of complexity.	5%
Provide concept definition and design	Five years' experience with the use of Visio to create large scale network designs and good documentation skills	5%
Perform analysis and diagnosis of complex networking problems	CCIE Voice certification and at least three years' experience working at the Cisco Technical Assistance Center.	20%
Perform analysis of complex network designs	Architectural expertise and five years' experience performing network design work.	20%
Build simulated networks in test labs to resolve complex problems and compatibility issues	CCIE Voice certification required and five years' experience building networks from the bottom up.	5%
Perform script validation	three years' experience writing, and reviewing Cisco Unified Contact Center Express scripts for Call Center applications.	5%
Provide project deployment and delivery to meet the customer's needs	CCIE Voice certification required and technical expertise with Cisco router and switches configuration, CallManager configuration, Unity Connection configuration, Unified Contact Center Express configuration, Unified Presence configuration, Unified Meeting Place Express configuration, XML Applications, and CTI integration	20%
Address the needs of specific client issues within the limitations of Cisco products	Knowledge of all Cisco emerging technologies and remain current with all new technologies that are being deployed by Cisco.	5%
Liaise with clients to resolve any issues before, during, or after service engagements	Must maintain good interpersonal relationships with other colleagues and customers.	5%
Provide high-level crisis	Must have good stress management skills and	2.5%

management	be able to provide the customer with temporary solutions to relieve stress. CCIE Voice Certification required as proof of leadership and expert levels of technology.	
Provide training to junior system engineers	Must maintain good interpersonal relationships with colleagues and be able to mentor junior system engineers and help them grow professionally	2.5%

In response to the director's RFE request for evidence that it secured sufficient physical premises, the petitioner submitted a letter from the Secretary/Treasurer of [REDACTED] stating that the petitioner is currently leasing an office with the address of [REDACTED]. The letter further states that the leased space consists of one office that is 11'6" by 15'6" and that it has a shared reception area and restroom facilities. The petitioner also produced photographs of the outside of the [REDACTED] building, as well as a photograph of the inside of the leased office.

The director ultimately denied the petition, concluding that the petitioner failed to establish 1) that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity, and 2) that it has acquired sufficient physical premises. The director found the petitioner failed to establish specialized knowledge because the beneficiary's skills in Cisco tools, procedures, and methods are from a third party, not from the foreign entity. In addition, the director stated that the beneficiary did not submit any evidence to establish that he received training in the foreign entity's standards and deployment procedures, or that such standards and deployments procedures are specialized knowledge. The director stated that the petitioner failed to demonstrate sufficient physical premises because it did not provide a lease, floor plan, or provide any indication of the amount of rent being charged.

On appeal, counsel for the petitioner contests the director's findings. It submits a brief and a floor plan of the first floor of [REDACTED] located at [REDACTED]. The floor plan shows office #103 labeled as "Fusionet." The petitioner also submitted copies of the regulations at 8 C.F.R. § 214.2 that refer to the specialized knowledge definition, a memo from [REDACTED] former Acting Executive Associate Commissioner, dated March 9, 1994, and memos from [REDACTED], former Associate Commissioner and Director, dated December 20, 2002 and September 9, 2004.

Counsel for the petitioner disputes the finding that the beneficiary's skills in Cisco products do not constitute specialized knowledge. In the brief, counsel for the petitioner states:

As one of the two principal designers of [REDACTED]'s corporate strategy and co-founder of [REDACTED], [the beneficiary] has unparalleled specialized knowledge of the company's standards and deployment procedures. All of this specialized knowledge was developed during his employment with [REDACTED] since he was authoring these procedures during this employment. Thus, [the beneficiary] has profound knowledge of [REDACTED]'s processes and procedures.

He further states that specialized knowledge does not have to be proprietary, and that the beneficiary's level of knowledge distinguishes him. Counsel for the petitioner reiterates the claimed Cisco qualifications of the foreign entity and concludes by stating: "[The beneficiary] is one of the very few people worldwide that has this unique combination of specific Cisco training and Redefusionet expertise that we require to launch the U.S. operations."

Regarding physical premises, counsel for the petitioner notes that, in lieu of a lease, petitioner provided an SOW indicating that [REDACTED] would provide office space in exchange for computer services. Counsel also emphasizes the other evidence submitted, including the letter from [REDACTED] the photographs of the outside building and inside of the office, and the floor plan.

III. Analysis

A. Specialized knowledge

Upon review, the petitioner's assertions regarding specialized knowledge are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized

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

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

In the present case, the petitioner's claims are based on the second prong of the statutory definition in that it asserts the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner contends that the director erred because the definition of specialized knowledge does not require that the knowledge involved be proprietary. However, to qualify as a specialized knowledge, the knowledge must involve an advanced level of knowledge of the petitioner's processes and procedures.

In this case, the petitioner has failed to articulate its processes and procedures with any degree of specificity. The petitioner made repeated, vague claims regarding the petitioner's advanced knowledge of these procedures. An example is counsel for the petitioner's characterization of the beneficiary's specialized knowledge on appeal:

As one of the two principal designers of [redacted]'s corporate strategy and co-founder of [redacted], [the beneficiary] has unparalleled specialized knowledge of the company's standards and deployment procedures. All of this specialized knowledge was developed during his employment with [redacted] since he was authoring these procedures during this employment. Thus, [the beneficiary] has profound knowledge of [redacted]'s processes and procedures.

Despite the claim that the beneficiary has unparalleled specialized knowledge of the company's standards and deployment procedures, the petitioner provides no further information regarding these supposed standards and deployment procedures. Any further reference to the company's processes and procedures is similarly couched in vague and uninformative terms. The petitioner's brief on appeal states that: "Fusionet's corporate strategy and business model are to provide a cost-effective niche expert skill set to Cisco Systems." This statement provides no information about its business model or

strategy. Rather, it states the services the petitioner intends to provide. Likewise, the petitioner refers in its initial letter to the foreign parent's "uniquely high standards of quality." However, the petitioner provided no specific information to explain what makes the foreign parent's standards so unique. Specifics are clearly an important indication of whether a beneficiary has specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Without more information regarding the petitioner's processes and procedures, the AAO cannot adequately evaluate whether the beneficiary possesses an advanced knowledge of these processes and procedures.

The petitioner claims that its foreign parent and the beneficiary have received official recognition from Cisco for their advanced skill with Cisco products. The petitioner and its counsel assert that the foreign entity is a Cisco Premier Certified partner. However, the petitioner has provided no objective evidence that the foreign entity has the claimed Premier designation. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

The petitioner similarly claims that the beneficiary holds several Cisco voice certifications, including CCDA, CCNA Voice, and CCVP. However, other than the assertions made by the petitioner and its counsel, the record contains no evidence that the beneficiary holds these certifications. Again, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Id.*

The petitioner states that the beneficiary is currently a candidate for Cisco's CCIE Voice certification, Cisco's highest voice certification. The petitioner provided a certificate indicating that the beneficiary passed the written portion of the CCIE exam on October 30, 2007, and that he is now eligible to sit for the lab portion of the exam. The record contains no information suggesting that the beneficiary has subsequently passed the lab portion of the exam. This is telling in that Cisco's information sheet states: "Candidates must make an initial attempt of the CCIE lab exam within 18 months of passing the CCIE written exam. Valid passing scores on written exams expire after 18 months." The petitioner filed the instant petition on November 24, 2009, a date well over 18 months after the beneficiary's passing score on the written exam.

The petitioner repeatedly emphasizes the rarity of Cisco's CCIE Voice certification. Petitioner's counsel states on appeal, for example: "There is a 98% failure rate for the CCIE Voice on the first attempt, evidencing the expertise required to achieve this certification." The petitioner provides no objective evidence for this claim. However, even if objective evidence regarding CCIE certification were provided, the rarity of the CCIE certification is seemingly irrelevant, given that the beneficiary does not have this certification.

In addition, the characterization of the beneficiary as a CCIE candidate contradicts the letter from Mr. [REDACTED] submitted with the original petition, which claims the beneficiary already possesses the CCIE certification. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

To show specialized knowledge, the petitioner must also show that the beneficiary's knowledge of the company's processes and procedures is advanced. This means that it cannot be knowledge widely held in the marketplace or within the company. The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or widely held throughout a company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then mere possession of knowledge of the petitioner's processes and methodologies does not rise to the level of specialized knowledge. The L-1B visa category was not created in order to allow the transfer of all employees with any degree of knowledge of a company's processes. If all employees are deemed to possess "special" or "advanced" knowledge, then that knowledge would necessarily be ordinary and commonplace.

In this case, the petitioner did not adequately differentiate himself from other employees in the organization. The cover letter accompanying the petitioner's response to the RFE indicates that the foreign entity currently has five senior systems network engineers. The letter states that the foreign entity provided its engineers with CCSI training, IPCC Express study materials, and CCIE study materials. It further states that, out of the foreign entity's five engineers, four have the CCIE certificate, and one is a CCIE candidate. Thus, of the company's fifteen employees, at least four have skills superior to those of the beneficiary, and an additional employee has skills equal to those of the beneficiary. If the beneficiary is being transferred to the United States in order to make use of his expertise with Cisco products and systems, it is unclear why one of the four engineers with an actual CCIE certificate was not chosen for the transfer. Based on these considerations, the petitioner has failed to show that the beneficiary has an advanced level of knowledge compared to other employees of the foreign entity or petitioner.

In addition, the evidence in the record suggests that Cisco, as the worldwide leader in telecommunications, works with many other companies and individuals. The petitioner has failed to describe how the beneficiary's skills are rare among others in the industry. The petitioner claims the beneficiary has obtained three other certifications, but provides no corroborating evidence, nor statements regarding the prevalence of these certifications in the field. As noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, . . . it cannot be concluded that all employees with specialized knowledge or performing

highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm'r 1981).

Although specifically requested in the RFE, the petitioner failed to indicate any training the foreign entity provided the beneficiary. The petitioner provides information on numerous training courses Cisco offers to help with preparation for its certification exams. However, the petitioner does not allege that the beneficiary completed any of these courses. A Cisco print-out indicates that there is no formal training requirement for the CCIE certification, and that the provided training courses are intended only to enhance personal knowledge related to the topics covered by the exams. The petitioner similarly failed to allege that the petitioner received any relevant education or training prior to working for the foreign entity, with the exception of two years of work experience at the Cisco Service Center in [REDACTED]. The petitioner did not provide corroborating evidence regarding the alleged position in [REDACTED].

The petitioner stated that the foreign parent company has achieved "red badge" status with Cisco, and that the majority of the foreign entity's staff holds the "red badge" designation. The petitioner claims that this designation gives the company access to sensitive areas such as technical assistance center systems as well and direct access to Cisco's development staff. The petitioner offers no further explanation regarding the "red badge" status, such as how one acquires the status or how it differs from the other certifications and statuses issued by Cisco. There is no information on "red badge" status in the print-outs from Cisco and the petitioner provides no corroboration for the claim. Without more information and evidence and supporting evidence, the AAO cannot consider this statement probative evidence of a special status held by the employees of the foreign entity.

In response to the RFE, the petitioner produced a chart of the beneficiary's proposed job duties, the specialized knowledge required for each, and the percentage of time the beneficiary would spend on each. Based on the chart, it appears the beneficiary lacks the requirements for most of his proposed duties. The petitioner states that a CCIE Voice certification is needed to "perform analysis and diagnosis of complex networking problems," a task that will take 20% of the beneficiary's time, to "build simulated networks in test labs to resolve complex problems and compatibility issues," a task that will take 5% of the beneficiary's time, to "provide project deployment and delivery to meet the customer's needs," a task that will take 20% of the beneficiary's time, and to "provide high-level crisis management," a task that will take 2.5% of the beneficiary's time. As discussed above, the beneficiary does not have a CCIE Voice certification. The chart also indicates that five years' experience working with small, medium and large-size networks is necessary to "perform analysis for areas for improvement," a task that will take 5% of the beneficiary's time. The petitioner does not allege that the beneficiary has five years' experience, but instead refers to his four years of relevant work experience. The petitioner similarly states that five years' experience performing network design work is necessary to "perform analysis of complex network designs," a task that will take 20% of the beneficiary's time. Again, the petitioner fails to allege that the beneficiary meets this requirement. The petitioner states that three years' experience writing and reviewing Cisco Unified Contact Center

Express scripts for Call Center applications is necessary to “perform script validation,” a task that will take 5% of the beneficiary’s time. The petitioner stated that the beneficiary worked at a Cisco Customer Service Center for two years, which falls short of this supposed three year requirement. Lastly the petitioner states that five years’ experience with the use of Visio to “create large scale network designs and good documentation skills,” a task that will take 5% of the beneficiary’s time. Again, the petitioner fails to allege that the beneficiary has five years of relevant experience.

Based on the evidence in the record, it appears that the beneficiary is not qualified to perform the tasks that will require 82.5% of his time. This creates an inherent contradiction in the petitioner’s claims and raises questions as to the validity of the evidence provided and the claims made. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho, supra* at 591-92. 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. *Id.* at 591.

Lastly, the petitioner states in its business plan: “In the past month [the petitioner] has quoted 12 jobs totaling \$3.2 million in resource hours. Because of our relationship with Cisco and the growing dependency on our niche [*sic*] skillsets, [the petitioner] has scooped every job that passes through the Unified Communications teams of Cisco Systems.” The petitioner provided no support for this claim. Without supporting evidence, the claim on its face is inherently implausible. The petitioner currently has one employee and has not yet been in business for one year. Given that the petitioner states Cisco is the world leader in communications, it is unclear how a new business with one employee could “scoop up every job that passes through the Unified Communications teams of Cisco Systems.” In addition, the petitioner provided no objective evidence to support its claimed dominance of the Unified Communications team jobs. A letter from Cisco to [redacted] thanks him and states that the petitioner’s two parents are in a position for additional engagements with Cisco. The letter does not indicate Cisco’s reliance on the petitioner as suggested in the petitioner’s business plan. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra* at 165. Again, 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, supra* at 591.

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. Sufficient physical premises

Upon review, the petitioner's assertions regarding sufficient physical premises are persuasive. On this issue alone, the decision of the director is withdrawn.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business.

The petitioner alleges that it has acquired office space at [REDACTED] Florida [REDACTED]. It did not submit a conventional lease agreement regarding this property. Rather, it submitted a Statement of Work which indicates that the lessor will provide the petitioner with an office lease in exchange for the petitioner's services. In addition, the petitioner provided a letter from the lessor confirming the lease, pictures of the outside of the building and the inside of the office, and a floor plan of the floor on which the petitioner's office is located.

Although the petitioner did not provide a conventional lease, the SOW serves as the functional equivalent of a lease agreement in that it indicates the lessor will exchange office space for the petitioner's services. In this case, the totality of the circumstances requires that the director's finding on this issue be withdrawn. The petitioner has satisfied its burden of showing that it has acquired sufficient physical premises.

The withdrawal of the director's finding on this one issue does not disturb the other findings made in this decision.

IV. Beyond the decision of the director

Beyond the decision of the director, the instant petition must be denied due to its failure to comply with the L-1 Visa Reform Act of 2004.

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

As amended by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F), provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 1101(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 1101(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 specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act was created by the L-1 Visa Reform Act of 2004 and is applicable to all L-1B petitions filed after June 6, 2005, including extensions and amendments involving individuals currently in L-1 status. *See* Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004).

In evaluating a petition subject to the terms of the L-1 Visa Reform Act, the AAO must emphasize that the petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1). 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 alien 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 or the employer will suffice to establish eligibility. *Matter of Soffici*, *supra* at 165; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

In this case, the petitioner indicated on its Form I-129 that the beneficiary will work at a location other than that of the petitioner. Page 3 of the Form I-129 states that the beneficiary will work at [REDACTED] while the petitioner is located at [REDACTED]. The petitioner provided a Statement of Work and other evidence regarding the petitioner's office location in [REDACTED] Florida. However, the record contains no explanation or further evidence regarding the beneficiary's offsite work location in [REDACTED] North Carolina.

In its letter accompanying the Form I-129, the petitioner states:

[The petitioner]'s Systems Engineers are required to be located at client sites to install the Cisco phone systems and implement next generation network configuration. These implementations can only be accomplished at the client sites. However, [the petitioner's] engineers will be supervised and managed by the Chief Operating Officer (COO) of [the petitioner]. [The petitioner] has specified deliverables for each project along with specified obligations, timelines, and budgets. The COO will be in frequent contact with the engineers and make monthly site-visits to ensure the engineers are meeting the project milestones. At no time will the client have authority over [the petitioner's] engineers, but must work through the COO for any personnel actions.

Because the beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the petitioner must show (1) that the alien 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. The petitioner has provided no evidence regarding a specific work agreement for the beneficiary.

Other than the petitioner's statement quoted above, the petitioner provided no evidence in support of the assertion that it will maintain control of its engineers stationed offsite. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici, supra* at 165. As such, the petitioner fails to meet its burden of proof in showing that the beneficiary will be controlled and supervised principally by the petitioner.

In addition, the petitioner has failed to show that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. First, the petitioner provided no specific information about the proposed placement. All references to the beneficiary's future duties are generic and do not refer to the specific job the beneficiary will perform. Second, as discussed in the preceding sections, the petitioner has generally failed to show that the beneficiary possesses specialized knowledge specific to the petitioner. The petitioner has repeatedly emphasized the beneficiary's skills with Cisco systems. However, the beneficiary's skills are related to the product of a third-party company: Cisco. For the reasons discussed in the previous section, the petitioner has not shown that the beneficiary possesses specialized knowledge or will be employed in a position requiring specialized knowledge. As a result, the petitioner therefore also fails to meet the requirement that the beneficiary's placement be related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

(b)(6)

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The petitioner has failed to satisfy the requirements of the L-1 Visa Reform Act. For this additional reason, the appeal is dismissed.

IV. 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 the petitioner has not met that burden.

ORDER: The appeal is dismissed.