

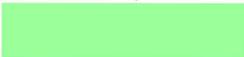


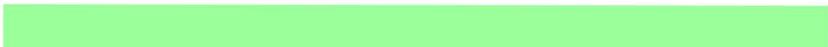
U.S. Citizenship  
and Immigration  
Services

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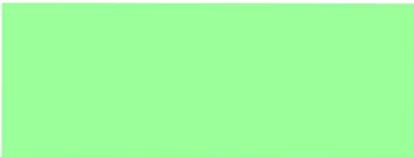
**MAR 18 2013**

DATE: OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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:



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 Delaware corporation, is a developer of capital market software systems. The petitioner claims to be a wholly owned subsidiary of [REDACTED] located in Sri Lanka. The petitioner seeks to employ the beneficiary as a lead system support engineer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the following: (1) that the beneficiary possesses specialized knowledge; (2) that the beneficiary has been employed in a specialized knowledge capacity for one continuous year prior to the filing of the petition; and (3) that the beneficiary will be employed in a specialized knowledge capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends that the evidence in the record was sufficient to establish that the beneficiary possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity.

#### I. The Law

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

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

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

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

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

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

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

## II. Facts and Procedural History

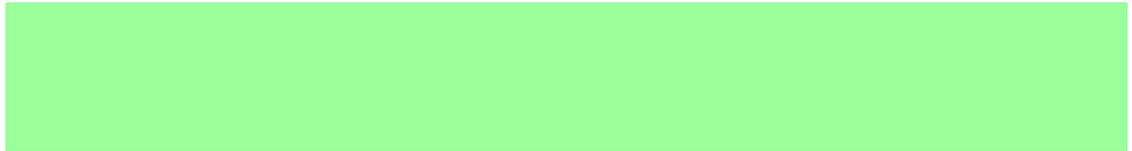
The petitioner is a developer of capital market software systems. The petitioner employs approximately 20 persons in the United States, and has a gross annual income of \$16.2 million.

The petitioner stated the beneficiary will be employed as a lead system support engineer from the petitioner's Jersey City, New Jersey office. The petitioner described how the beneficiary will be responsible for implementing and supporting products at client sites throughout the United States. Specifically, the petitioner described how it is currently implementing a Fixed Income Debt Trading System for its client, [REDACTED] and asserted that the beneficiary is needed to work on this particular project. The petitioner also described the beneficiary's work experience and background with the company since 2006. The petitioner asserted that through the beneficiary's work experience with the company, the beneficiary "has developed an in-depth understanding of software development needs in the securities industry and has gained a thorough understanding of how [the company's] proprietary software can suite the needs of our clients."

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide the following: (1) a detailed description of the actions and duties the beneficiary will perform on a daily basis; (2) a list of proposed duties that require specialized knowledge; (3) an explanation of why each duty requires a worker with specialized knowledge; (4) an explanation of which processes, procedures, tools, and/or methods

the beneficiary will use for each duty and from which company each comes from; (5) an explanation of how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized, specifying how many workers possess this knowledge and are similarly employed by the organization; (6) an explanation of how exactly the beneficiary's training differs from the core training period provided to the company's other employees; and (7) a record from the company's human resources department detailing the manner in which the beneficiary gained his specialized knowledge, including the pertinent training courses the beneficiary received.

In response to the RFE, the petitioner asserted that the beneficiary has specialized knowledge of the petitioner's methodology. The petitioner asserted that the beneficiary's knowledge is "uncommon, noteworthy and distinguished and not generally known by practitioners in the field." The petitioner asserted that the beneficiary "is an expert, thereby possessing specialized knowledge" of the following systems and proprietary software:



The petitioner provided the following description of the beneficiary's work and training history with the company:

When [the beneficiary] joined [the company] in 2006, he possessed the minimum generic requirements for a System Support Engineer including a bachelor's degree in IT/IS/Computer Science or Engineering and knowledge of Unix, Unix Scripting, Perl Scripting, PL/SQL, SQL Plus, Oracle DBA, Oracle Cluster, Dataguard and RMAN, Unix Hardware Platforms, C++, networking, and Oracle Application Server. However, it was critical for him to gain specialized knowledge of our proprietary software and systems. Therefore, [the beneficiary] joined the company as an Intern where he underwent a training and assessment period of over one year. [The beneficiary's] training involved both internal and external training as well as on-the-job training and mentorship.

After the one year probationary internship concludes, [the company] evaluates the engineer for his/her potential. If a staff member performs above average levels in a particular role, management "ear marks" the person and allocates work suitable for the next level within the structure. All of our professionals who complete the internship tend to specialize in specific technical skills and excel at certain client projects with particular [company] products. Once these skills are highlighted and acknowledged by management, our professional staff can obtain the competencies required for the senior level while management further evaluates their performance.

Initially, [the beneficiary's] on-the-job training included shadowing a Team Lead in order to be oriented to senior level activities. After this training, [the beneficiary] was able to

implement tasks independently with minimum supervision. After almost four years of specialized knowledge at [the company], [the beneficiary] now conducts these training cycles for junior [company] professional staff.

... Initially [the beneficiary's] training focused on technical skills including Solaris 10 and a variety of Oracle products. However, as [the beneficiary's] on-the-job training honed his skills on client sites, it was important for [the beneficiary] to develop his customer-facing business skills such as communication, negotiation and customer service excellence.

The petitioner further described how the beneficiary is needed to work on its [redacted] project. The petitioner stated:

Critically, [the beneficiary] has the ideal skill set for the [redacted] project and is the only Senior Software Engineer on the project with experience on the [redacted] Project [redacted] and with our Street Access and Smart Order Routing products. This product suite is the basis of the [redacted] project and there are no other resources on this project or at the client site who could deliver the same work as did [the beneficiary] on our products at the [redacted] project.

In response to the question of how the beneficiary's skills exceed the knowledge and abilities compared to similar positions in the industry and within the petitioning company, the petitioner reiterated that the beneficiary "is the only [company] employee with experience on the [redacted] Project and with extensive experience with the Street Access and Smart Order Routing product suite as applied to the [redacted] project."

In response to the question of how the beneficiary's duties in the United States will require specialized knowledge, the petitioner stated: "We are currently implementing a Fixed Income Debt Trading System for the client, [redacted] and [the beneficiary's] specialized knowledge of our proprietary products is required to ensure that the client's system software is optimized for performance." The petitioner described how the beneficiary will be responsible for: the identification, investigation, and resolution of front-end and back-end problems, development environment related problems, and client pre-production test issues; assisting the client's quality management group to run initial smoke tests; carrying out the implementation of releases at the client site; and executing retrieval and analysis of logs for problem investigations, and supporting the client in implementation and use of its test tools. The petitioner provided a list of daily job duties for the beneficiary in the United States, including the following: application process startup, check and monitor connectivity to external markets, system health checks, attending client/trader queries, initiate and monitor end of day process, verify end of day successfully completed, application process shutdown, backup database dumps, backup logs and other related files, installation of new releases, and cleanup of the system. The petitioner concluded:

All of [the beneficiary's] job duties as set forth above will require specialized knowledge of [the company's] products. Since we created the complex and proprietary suite of capital market software products that are being implemented at [redacted] each task will involve [the

beneficiary's] specialized knowledge. An engineer without our extensive on-the-job training could not step into this lead role.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, and that the beneficiary has been and will be employed in a specialized knowledge position. In denying the petition, the director found that the beneficiary's training in many third party processes, products, tools, and methods, did not constitute specialized knowledge. The director found that the petitioner failed to distinguish the beneficiary's on-the-job training from the training received by the company's other employees, although this information was specifically requested in the RFE. The director found that the beneficiary did not have the requisite one-year of continuous employment in a specialized knowledge capacity, as the beneficiary has only been a Lead System Support Engineer since April 2010.

On appeal, counsel disputes the director's finding that the beneficiary's on-the-job training is not more specialized than other support engineers at the petitioning company. Counsel describes how the beneficiary received specialized training, different from the core training provided to other employees, on the company's Street Access and Smart Order Routing products. Counsel states that "there are no other resources on [redacted] project or at the client site who could deliver the same work as did [the beneficiary]" because the beneficiary is "the only employee with experience with the Street Access and Smart Order Routing product suite" applied to the [redacted] project. Counsel also asserts the beneficiary "possesses knowledge that is more specialized than any other support engineer at [the petitioner] with respect to [the company's] proprietary Fixed Income Debt Trading System."

Counsel asserts that "the fact that [the beneficiary] has only held the Lead System Support Engineer position since April 2010 is wholly irrelevant." Counsel emphasizes that the beneficiary joined the company as an intern and received "extensive training before assuming all professional duties of a System Support Engineer." Counsel asserts that as a System Support Engineer, the beneficiary "continued to work under senior professionals . . . contributing extensively to their [redacted] Project and working to create the Street Access and Smart Order Routing product suite." Counsel then questions the relevance of the director's request for training records, stating that "it is difficult to imagine a scenario where anything other than bespoke on-the-job training would result in specialized knowledge."

### III. Analysis

#### a. Specialized Knowledge

The first issue to be addressed is whether the beneficiary possesses specialized knowledge. Upon review of the record, the petitioner has not established that the beneficiary possesses specialized knowledge.

In order to establish eligibility, the petitioner must show that the individual possesses specialized knowledge. The definition of specialized knowledge at 8 C.F.R. § 214.2(l)(1)(ii)(D) is comprised of two equal but distinct subparts or prongs. First, an individual is considered to have 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 have specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." 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 first prong of the statutory definition, asserting that the beneficiary has special level of knowledge of the company's products and their application to international markets. However, the petitioner has failed to clearly articulate the nature of the beneficiary's specialized knowledge.

The petitioner listed the products and processes that the beneficiary purportedly has specialized knowledge in as the following:

[REDACTED] the main order loop and application processors, external connectivity and APIs, and 3<sup>rd</sup> party systems that interact with [the company's] applications. However, other than listing the names of the above products and processes and asserting that the beneficiary has specialized knowledge in them, the petitioner provided no description of the nature and level of the beneficiary's actual knowledge in each particular product and process. Conclusory assertions that the beneficiary has specialized knowledge in these products and processes, without more, is insufficient to meet the burden of proof in these proceedings.

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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner repeatedly asserted that the beneficiary has "extensive experience" with the company's proprietary Street Access and Smart Order Routing products, which the petitioner claimed forms the basis of its current [REDACTED] project. The petitioner repeatedly asserted that the beneficiary's knowledge and experience with these products constitutes specialized knowledge, as there are no other employees working on the [REDACTED] project that has experience with these products.

However, the petitioner's claim that the beneficiary is the only one with experience with its Street Access and Smart Order Routing products is not credible. Specifically, the petitioner described how the beneficiary, as a System Support Engineer, worked "under senior professionals . . . contributing extensively to their [REDACTED] Project and working to create the Street Access and Smart Order Routing product suite." The petitioner's statement that the beneficiary worked under senior professionals to contribute to these particular products inherently contradicts its claim that the beneficiary is the only employee with experience with these products and this particular project. This contradiction is critical since the petitioner's claim that the beneficiary possesses more specialized training and knowledge than other support engineers rests upon the beneficiary's purported exclusive experience with the Street Access and Smart Order Routing products.

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). 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.*

Even assuming *arguendo* that the beneficiary is different from other support engineers in that he is the only employee with prior experience with the company's proprietary Street Access and Smart Order Routing products and the [REDACTED] Project, this alone does not establish that the beneficiary possesses specialized knowledge. Any experienced software engineer within the petitioning organization would reasonably be familiar with its some of its internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients and the client's products or systems. However, by itself, work experience and knowledge of a firm's technically complex products or particular projects will not rise to the level of "special knowledge." *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). By that logic, anyone employed at the petitioning organization with any work experience and knowledge of a firm's proprietary products or with any work experience on a particular project would be considered to have "special knowledge." Such an interpretation strips the statutory language of any efficacy. In other words, specialized knowledge requires more than experience and familiarity with the petitioner's products and projects; otherwise, special or advanced knowledge would include almost every employee in an organization. If everyone in an organization is specialized, then no one can be considered truly specialized.

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

specialize in specific technical skills and excel at certain client projects with particular [company] products.” The petitioner’s statement supports the conclusion that the beneficiary is no different from its other support engineers, in that all its support engineers tend to specialize in specific technical skills and excel at client projects. The fact that other engineers may not have the same experience with particular products and methodologies as applied to one component of a specific client project is not enough to establish the beneficiary possesses specialized knowledge.

Critically, the petitioner failed to distinguish how the beneficiary’s level of knowledge is more advanced than others within the company or general industry. The petitioner repeatedly asserted that the beneficiary’s knowledge is “uncommon, noteworthy and distinguished and not generally known by practitioners in the field,” and that his knowledge of the company’s processes and procedures is “apart from the elementary or basic knowledge possessed by others,” but the petitioner has neither adequately articulated nor documented any basis to support its claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As discussed above, the terms "special" and "advanced" are relative, and 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 director correctly noted that the beneficiary’s particular training and employment history does not appear to be any more specialized than that of any support engineer within the company. The petitioner’s training history listed courses in mainly third party products and processes, with only a few training courses specific to the petitioner’s proprietary products. The director also noted how the beneficiary followed the normal progression of the petitioner’s support engineers, as he was first hired as an intern, progressed to a system support engineer, and then promoted to a lead system support engineer. Although requested in the RFE, the petitioner failed to submit information regarding how many other employees were similarly trained as the beneficiary or how the beneficiary’s training was different from that provided to other employees. Although counsel disputes the relevance of written training records, the AAO emphasizes that the burden of proof in these proceedings rests solely upon the petitioner. The petitioner’s bare assertion that it provided extensive “bespoke on-the-job training” to the beneficiary, without any documentary evidence to support this assertion, is insufficient to meet the petitioner’s burden of proof. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

For the reasons stated above, the petitioner failed to establish that the beneficiary possesses specialized knowledge. Accordingly, the appeal will be dismissed.

*b. Employment abroad in a specialized knowledge capacity for one year prior to filing*

The second issue to be addressed is whether the beneficiary was employed abroad in a specialized knowledge capacity for one continuous year prior to the filing of the petition.

As the director noted, the beneficiary has only held the lead system support engineer position since April 2010, less than two months at the time the petition was filed. On appeal, the petitioner asserts that this fact is “wholly irrelevant” because the beneficiary “underwent extensive on-the-job training . . . before he was permitted to engage in support and maintenance activities.” The petitioner goes on to state that as an intern, the beneficiary “received extensive training before assuming all professional duties of a System Support Engineer” and that generally, intern engineers are not permitted to engage in support and maintenance activities.

The petitioner’s implication that the on-the-job training the beneficiary received as an intern constitutes employment in a specialized knowledge capacity is not persuasive. The petitioner has not explained how the beneficiary’s training received as an intern – during which time he was supervised by senior staff and could not yet assume all professional duties of a System Support Engineer” – could plausibly be considered employment in a specialized knowledge capacity. Notably, the petitioner described how intern engineers are not permitted to engage in support and maintenance activities. Furthermore, the petitioner described how when the beneficiary was first hired as an intern in August 2006, he “possessed the minimum generic requirements for a System Support Engineer” and his training was focused on third-party technical skills such as Solaris 10 and Oracle products, and generic skills such as “communication, negotiation and customer service excellence.” The petitioner’s description of the beneficiary’s limited responsibilities, minimum qualifications, and generalized training received as an intern does not establish that his employment during this time was in a specialized knowledge capacity.

The petitioner confuses the record by failing to specifically identify at what point during the beneficiary’s employment he became employed in a specialized knowledge capacity.<sup>1</sup> On one hand, as discussed above, the petitioner indicated that the beneficiary received specialized training during his internship. On the other hand, the petitioner asserted that the beneficiary “held the specialized knowledge position of system support engineer for several years prior to his promotion.” Assuming *arguendo* that the petitioner is claiming the beneficiary was employed in a specialized capacity when he became a system support engineer, the petitioner failed to describe any of the specific duties the beneficiary performed as a system support engineer, and failed to establish how those duties required specialized knowledge. Additionally, the petitioner stated that as a system support engineer, the beneficiary “continued to work under senior professionals” and contributed to their projects. Nothing in the petitioner’s brief description of the beneficiary’s job duties as a system support engineer supports the conclusion that this employment was in a specialized knowledge capacity.

While it is possible that the beneficiary’s employment as a Lead System Support Engineer qualified as employment in a specialized knowledge capacity, the record clearly indicates that the beneficiary had been employed in this capacity for less than two months at the time of filing. Thus, the petitioner failed to establish that the beneficiary had at least one continuous year of full-time employment abroad within the three years

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<sup>1</sup> In the section of counsel’s appellate brief specifically addressing whether the beneficiary has held a specialized knowledge position for over one continuous year prior to the filing of the petition, counsel summarizes the beneficiary’s progression from an intern, to a system support engineer, and then to a lead system support engineer. Counsel did not specifically state when the beneficiary became employed in a specialized knowledge capacity.

preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(iii). Accordingly, the appeal will be dismissed for this reason.

*c. Employment in a specialized knowledge capacity in the United States*

The third issue to be addressed is whether the beneficiary will be employed in specialized knowledge capacity in the United States.

The petitioner stated that the beneficiary is needed in the United States to work on the petitioner's 9Alpha project, specifically the implementation of the Fixed Income Debt Trading System for [REDACTED]. The petitioner asserted that the beneficiary will "utilize his knowledge of [the company's] proprietary software," in particular, the company's Street Access and Smart Order Routing products. The petitioner asserted that the beneficiary "has been involved in Sri Lanka on the [REDACTED] project in the design, development, and testing phases and we need him here to lead aspects of the implementation at the client's worksite."

The petitioner's claim that the beneficiary's duties will require specialized knowledge relies upon the beneficiary's use of the petitioner's proprietary software. The petitioner stated: "Since we created the complex and proprietary suite of capital market software products that are being implemented at [REDACTED] each task will involve [the beneficiary's] specialized knowledge. However, as previously discussed, the fact that the beneficiary has knowledge of and experience with the petitioner's proprietary software does not establish that all the job duties the beneficiary will be performing require specialized knowledge.

From the petitioner's description of the beneficiary's job duties in the United States, the record does not establish that the beneficiary will be performing job duties requiring specialized knowledge. The beneficiary's duties include routine system administration duties such as: application process startup, check and monitor connectivity to external markets, system health checks, attending client/trader queries, initiate and monitor end of day process, verify end of day successfully completed, application process shutdown, backup database dumps, backup logs and other related files, installation of new releases, and cleanup of the system. The petitioner failed to establish why these routine duties require specialized knowledge, particularly considering that the Fixed Income Debt Trading System has already been designed, developed, and tested.

Finally, despite the petitioner's repeated reliance on the beneficiary's exclusive knowledge of the its Street Access and Smart Order Routing products, the project task list identifying the required proprietary software tool utilized for each task does not indicate that the beneficiary will be utilizing the Street Access and Smart Order Routing products at all. Rather, the task lists indicates that the beneficiary will only be utilizing the company's [REDACTED] software tools.<sup>2</sup> In fact, the task list does not list Street Access and Smart Order Routing as required proprietary software tools to be used by any member of the team. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any

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<sup>2</sup> While the petitioner made a fleeting reference to the beneficiary's specialized knowledge of [REDACTED], the petitioner failed to articulate the nature of the beneficiary's knowledge of this particular product. Furthermore, the petitioner did not specifically claim that the beneficiary possesses specialized knowledge of [REDACTED]

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. 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.*

For the reasons discussed above, the petitioner failed to establish that the beneficiary will be employed in a specialized knowledge capacity. For this additional reason, the appeal will be dismissed.

*d. Qualifying relationship*

Beyond the decision of the director, the record does not establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner claims to be a wholly owned subsidiary of [REDACTED] of Sri Lanka. In support of this claim, the petitioner a copy of its stock certificate number 1 issued to [REDACTED] for one hundred shares. However, this stock certificate appears facially invalid, as it is neither signed nor dated. In addition, the petitioner submitted a copy of another stock certificate number 1 issued to [REDACTED] for one hundred shares. Again, this stock certificate appears facially invalid, as it is neither signed nor dated. The petitioner also failed to explain why it issued two stock certificates, both numbered "1."

Assuming *arguendo* that the above stock certificates are valid, the stock certificates would indicate that the purported parent company, [REDACTED] is the 50% owner of the petitioner, not the 100% owner as claimed. The petitioner failed to establish the identity and relationship of the other 50% owner, [REDACTED]. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* 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.*

**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.