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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 18 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the 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, California Service Center, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 was incorporated under the laws of the State of New Jersey. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicates it was established in 1993, employs over 500 personnel, and had earned a gross annual income of $112 million when the petition was filed. The petitioner states that it is engaged in software development and is a wholly owned subsidiary of (formerly known as , which is headquartered in India. The petitioner seeks to continue the employment of the beneficiary in the United States in a specialized knowledge capacity, as a project lead/technical architect, for an additional 18-month period. The petitioner indicates that the beneficiary will work primarily offsite in Chicago, Illinois at the worksite of its client, The or "the unaffiliated employer").

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a capacity that requires specialized knowledge. The director further determined that the beneficiary would be placed at the worksite of the unaffiliated employer as labor for hire, contrary to the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary will be employed in the United States in a specialized knowledge capacity and not as labor for hire.

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 parent, subsidiary, or affiliate of the foreign employer.

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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

> An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

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

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

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

II. The Issues on Appeal

A. Specialized Knowledge

The first issue to be addressed is whether the petitioner will employ the beneficiary in a specialized knowledge capacity.

Facts and Procedural History

On the Form I-129 the petitioner indicated it is engaged in software development. In the petitioner's letter appended to the petition, the petitioner stated that its parent company is a global provider of information technology services and process outsourcing and "offers mission-critical, state-of-the-art information technology ("IT") solutions to business problems in a variety of platforms and technologies, with a focus on maximizing client returns though [*sic*] outsourcing and off-shoring." The petitioner noted its parent company's focus is on key technology areas and provides ERP Solutions, Application Management Services, Application Development, Application Integration, Application Testing and Architectural Consulting. The petitioner stated that it offers a suite of business and software solutions and that its employees "analyze our clients' IT requirements and computer hardware, and custom design a system which will best process the client's data" and that its "employees implement the design by customization of the software to the client's unique specifications and system capabilities."

The petitioner referenced its contract with [redacted] to work on the [redacted] Adequacy Assessment Process [redacted] – Basel II project. The petitioner explained that the "objective of the project is to provide a controlled, automated, centralized IT architecture database where Basel II Credit Risk regulatory capital is derived from data source system extracts, which feed to a calculation (and reporting) engine" which then creates regulatory reports. The petitioner stated the "Technical Architect must have domain knowledge about Risk Management, data warehousing and Business Intelligence, as well as experience in use of [the petitioner's] proprietary tool [redacted])." The petitioner also highlighted the need for confidentiality regarding [redacted] data and the need to not disrupt [redacted] day-to-day operations.

The petitioner noted that the beneficiary would continue to hold the position of Project Lead/Technical Architect and would utilize his knowledge and expertise of the [redacted] tool to find and analyze redundancies and storage maintenance issues relating to the [redacted] data

systems. The petitioner indicated that the beneficiary would use the "specialized knowledge gained at [the parent company] to continue to coordinate his team in the execution of the tests and provide ongoing technical guidance and maintenance support onsite." The petitioner listed the beneficiary's more specific duties as:

- Analyze existing data warehouse system and determine how best to apply the functionality in the environment;
- Use to understand the operations of the existing nFORM system and determine how to reconfigure it so it can be reused in ;
- Organize and chair formal design review meetings and status meetings;
- Ensure the Extraction/Transformation/Loading ("ETL") mappings templates are done in accordance with [the petitioner's] quality standards;
- Assign daily tasks and responsibilities to the team members;
- Provide technical guidance during the development and testing processes;
- Review test scripts for unit, validation, regression and migration testing and analyze results with team members; and
- Update customers as to status.

The petitioner stated that the beneficiary "has acquired critical information necessary for the proper function of the existing system and has gained knowledge of the newly created modules and data migration processes." The petitioner claimed that the beneficiary is one of the petitioner's "few employees to have such access, and thus, has more knowledge about the system and implementation of the applications than other [of the parent company's] employees." The petitioner noted that the beneficiary is one of eleven people assigned exclusively to this project and that as the project lead would oversee and coordinate the work of ten professionals. The petitioner indicated that the beneficiary would be based primarily in Chicago, Illinois and would report to the petitioner's project manager,

The petitioner indicated that the beneficiary has a bachelor's of science/computer science degree obtained in 1998 and a master of computer applications degree obtained in 2001. The petitioner noted that the beneficiary began employment with the parent company on September 27, 2004 as a software engineer and was assigned to projects relating to HCM, Finance, CRM, Supply Chain data warehousing issues, and development of ETL jobs. The petitioner noted further that during this time the beneficiary gained experience in the use of and data warehousing systems. The petitioner indicated that prior to the beneficiary's transfer to the United States in April 2006, he worked on a project for in India relating to Vendor Management Workforce Administration (HRMS) as a business analyst and was responsible for analysis and remedies for HRMS environments per the customer's standards and agreements and maintained and administered the Business Object Servers which included using knowledge of . The petitioner stated that since coming to the United States, the beneficiary worked exclusively on various projects for requiring the use of . The beneficiary's resume indicated that he had eight years of IT experience, mainly in data modeling, data warehousing and BI (Business Intelligence) technology and knowledge of Oracle, SQL server, DB2, Access databases, Erwin and PL SQL and various business objects products and ETL tools.

The petitioner also provided an overview of its [redacted] noting that this is a framework for the analysis of metadata in a business intelligence environment. The petitioner's [redacted] framework consists of two layers, a component specific to a business intelligence tool for metadata extraction and components that enable analysis of the collected metadata. The petitioner explained that the collection and analysis of metadata addressed redundancies in elements loaded through the ETL process, addressed report reusability, addressed development standardization, and generated impact analysis reports.

The initial record also included a statement of work ("SOW") between the petitioner and the unaffiliated employer effective September 22, 2008. The SOW indicated that the unaffiliated employer is a mandatory Basel II institution and Basel II regulations required that it create a stronger risk measurement, management, and reporting system. In that regard, the unaffiliated employer was setting up an nCAAP Data Warehouse to support its compliance with the regulatory norms listed under the Basel II Accord. In addition to providing the scope of work, the SOW specifically excluded hardware and software procurement and installation of operating systems and other third party products, system and network administration, interfacing with other systems other than the data sources mentioned in the scope, changes to source systems, and data quality improvements. The SOW, at section 3.3, listed positions for 17 of the petitioner's onsite personnel including: one technical business/data analyst; two ETL (Datastage) technical leads; three ETL (Datastage) developers (onsite); five PeopleSoft/Oracle DBA; and six Basel II Subject Matter Experts. The SOW also noted that the unaffiliated employer's [redacted] Project Manager would provide daily management and deliverable direction for the petitioner's resources. In an attachment to a July 8, 2009 change request, a list of changes to the existing "contractors" was noted. The amended list of contractors identified the beneficiary as the ETL Lead. The change request was initiated by the beneficiary and it was reviewed by [redacted] on behalf of the petitioner and was approved by two of the unaffiliated employer's managers.

The director issued a request for further evidence (RFE), requesting, *inter alia* evidence of the specialized knowledge position in the United States and evidence of compliance with the L-1 Visa Reform Act of 2004. Among other items, the director specifically requested more detailed information regarding the beneficiary's duties in the United States, including the beneficiary's knowledge of the petitioner's product or service, special or advanced duties, and the training, if any, the beneficiary would provide. In response, the petitioner, through counsel, asserted that the information contained in the initial record should have been more than sufficient to establish eligibility but nonetheless complied generally with the director's RFE.

The AAO finds that, in the context of the record of proceeding as it existed at the time the RFE was issued, the request for additional evidence was appropriate, not only on the basis that the director was seeking required initial evidence, but also on the basis that the evidence requested was material in that it addressed the petitioner's failure to submit documentary evidence substantiating the petitioner's claim that it had specialized knowledge work for the beneficiary for the period of temporary employment requested in the petition and that it was in compliance with the L-1 Visa Reform Act of 2004. [1]

[1] The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8);

The petitioner in response, through counsel, noted that 62 of its employees worked at the unaffiliated employer's location in Chicago but only 11 of the employees are assigned to the same project as the beneficiary. The petitioner, through its vice-president, provided a revised version of the beneficiary's duties as follows:

- Understand the Basel II business requirements and identify the Architectural components for the Risk warehouse ( ). Use to understand the operations of the existing nForm system and determine how to reconfigure it so it can be reused in – 20 percent.
- Participate in **technical** and **functional** requirement walk through with Data Analysts to understand the requirements and suggest the best suitable approach for the unaffiliated employer – 15 percent.
- Prepare and publish the ETL (Extract, Load and Transform) Basel II standard design by analyzing the existing environments. (Using the analyzer) – 25 percent.
- Prepare and run through the ETL project plan – 5 percent.
- Assign daily tasks and responsibilities to the team members – 10 percent.
- Prepare and publish the integration testing design. Review test scripts for unit, validation, regression and migration testing – 10 percent.
- Prepare the batch process scheduling approach for the ETL stream – 5 percent.
- Participate in the Steering committee/SCRUM meetings to update the status that ETL team is responsible for – 10 percent.

The petitioner noted that the beneficiary has knowledge in Risk warehouse implementation, BI and ETL tools and knowledge in that allows fast, accurate analysis and gauging of the existing systems. The petitioner indicated that it is the combination of Risk Warehouse skills and the technical and functional information that differentiates the beneficiary from other employees at the petitioner. The petitioner also noted that the beneficiary's supervisor when the petition was filed, had returned to India and that the beneficiary currently reports to , engagement director, and , program manager, both of whom are stationed onsite at the unaffiliated employer's worksite. The petitioner provided an organizational chart showing that the beneficiary reported to who in turn reported to a sales director who reported to . The petitioner also included a list of 62 individuals stationed "onsite." The list did not include the names of .

Upon review of the evidence in the record, the director denied the petition. On appeal, counsel asserts that the director confused the petitioner's tool with project management methodologies used by competitors. Counsel avers that the petitioner's tool is used by engineers to analyze the client's business intelligence metadata and is not a project management tool. Counsel contends that the beneficiary "has achieved advanced knowledge about the complexity of the underlying algorithms for the use of , the capabilities of the generations of , and the interoperability

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214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). The 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).

with third party applications, as well as the architecture of and subsystems and functionality of the modules." Counsel claims that this knowledge is not held by others in the field of expertise or others employed by the petitioner in the field of computer applications/engineering. Counsel also attempts to distinguish the instant petition from other cases governing specialized knowledge. Counsel reiterates that the petitioner's employees, , employees previously identified as the beneficiary's supervisors, are at the same work location as the beneficiary. Counsel attaches photocopies of badges for the beneficiary, and these two individuals identifying them as contractors for the petitioner.

Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary 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.

United States Citizenship and Immigration Services (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). USCIS 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. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

Preliminarily, we observe that the record is devoid of evidence from the petitioner or the unaffiliated employer clarifying whether the petitioner's "Project Lead/Technical Architect" position is the same, a more senior-level position, or another position entirely – than the "ETL (Datastage) Technical Lead" position described in the SOW. The AAO is not in a position to determine whether the positions are the same. It is the petitioner's obligation to fully clarify such 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).

Moreover, the petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. Rather, the petitioner repeatedly references a particular software tool used by the petitioner's employees without articulating with specificity how this particular tool is different than similar tools used to extract metadata, analyze the collected data, and address redundancies in elements loaded through the ETL process, report reusability, development standardization, resulting in the creation of impact analysis reports. It is reasonable to believe that other successful information technology consulting companies specializing in business intelligence solutions have also encapsulated their abilities to extract metadata and analyze the collected data to address issues that appear when upgrading, revising, or replacing particular software. The petitioner in this matter has not provided sufficient information regarding the [redacted] process to establish that [redacted] does more than use the best practices and standards in the information technology consulting industry when extracting metadata and analyzing the metadata prior to transformation and reloading of the data. 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*, *supra*.

In the present matter, the petitioner does not clearly state whether its claim is based on either the first or second prong of the statutory definition of specialized knowledge. The petitioner claims generally that the beneficiary "has a special knowledge of the company product and its application in international markets" and that the beneficiary has an advanced level of knowledge of this particular company tool. The petitioner indicated that the beneficiary, since his employment with the foreign entity in September 2004 has been assigned to projects relating to HCM, Finance, CRM, Supply Chain data warehousing issues, and development of ETL jobs and that during this time the beneficiary gained experience in the use of [redacted] and data warehousing systems. The beneficiary, on his resume, notes that his technical skills are mainly in data modeling, data warehousing and BI (Business Intelligence) technology and knowledge of Oracle, SQL server, DB2, Access databases, Erwin and PL SQL and various business objects products and ETL tools, technologies not designed or developed by the petitioner. The petitioner does not identify what aspect of the beneficiary's training and specific work experience would support a finding that this individual beneficiary's knowledge is specialized with the industry. Rather the record demonstrates at best that the beneficiary has general knowledge and technical skills related to data warehousing and the ETL processes, knowledge that is generally held by similarly experienced and qualified computer analysts.

The crux of the petitioner's claim is that its [redacted] tool is proprietary and the beneficiary's experience in utilizing this technology has resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner does not establish what specific knowledge of the [redacted] technology could

not be conveyed to similarly experienced software analyst professionals. Neither does the petitioner identify any particular training necessary to prepare the beneficiary to use the technology. Rather the petitioner emphasizes it is the beneficiary's familiarity with the technology gained over time and for different unaffiliated clients that creates the beneficiary's specialized and advanced knowledge. The petitioner has not demonstrated that its "proprietary" tool, while effective and valuable to the petitioner, is more than a customized version of best practices standards used in the industry for business intelligence analysis.

The petitioner has also failed to demonstrate that the beneficiary's knowledge is advanced within the petitioner's organization. The petitioner not provided detailed and credible evidence to demonstrate that the beneficiary possesses advanced knowledge of the technology, or that such knowledge is required for the project to which he is assigned. The petitioner has not made any attempt to distinguish between an "advanced" user and a regular user or explained why the beneficiary's project assignment would require advanced knowledge of the technology. 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)). Moreover, if the petitioner and its foreign affiliate rely on this technology when providing IT consultants to analyze existing software systems and the migration of new modules to the system, it is reasonable to believe that all the petitioner's software engineers, systems analysts and other software specialists would be routinely trained on the technology upon entry into employment with the petitioner or its foreign affiliate and prior to being assigned to client projects.

The petitioner also notes that the beneficiary is one of the few employees to have access to the unaffiliated employer's system and thus has more knowledge about this system and implementation of the applications than its other employees. However, the fact that the beneficiary possesses very specific experience with a particular client's project does not establish that the beneficiary's knowledge is indeed special or advanced. The petitioner has not identified with any specificity the aspects of the Basel II project that distinguish it from other data warehousing projects carried out by the petitioner's consulting group or other software companies offering services in this sector. Any experienced ETL analyst within the petitioning organization, as observed above, would reasonably be familiar with the petitioner's internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more clients and the client's products or systems. We note that the beneficiary's duties for the unrelated integration project do not appear to be demonstrably different than those performed for his current project assignment with the unaffiliated employer. USCIS cannot find that an employee's knowledge of a client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any information technology consultant in possession of project experience.

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

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

B. L-1A Visa Reform Act

The remaining issue addressed by the director is whether the petitioner's placement of the beneficiary at the unaffiliated employer's worksite complies with the requirements of the L-1 Visa Reform Act.

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, *S11686, 2003 WL 22143105 (September 17, 2003). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. at 534.

In this matter, the beneficiary will be stationed primarily at the worksite of the unaffiliated employer in Chicago, Illinois. The petitioner, in response to Question 13 on the Form I-129 Supplement L, answered "Yes" when asked: "Will the beneficiary be stationed primarily offsite (at the worksite of an employer other than the petitioner or its affiliate, subsidiary, or parent)?" Accordingly, the petitioner acknowledges the beneficiary will be stationed primarily at the offices of an unaffiliated entity.

Under section 214(c)(2)(F)(i) of the Act, the petitioner must establish that the beneficiary will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. The petitioner submitted copies of pay statements that it issued to the beneficiary while he was in L-1B status. The AAO acknowledges that the method of payment can be a pertinent factor when determining the petitioner's relationship with the beneficiary. However, while items such as wages, social security contributions, worker's compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are relevant factors in determining who will control an alien beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the beneficiary, who will provide the instrumentalities and tools, where the work will be located, and who has the right or ability to affect the projects to which the alien beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will principally control and supervise the beneficiary's work at the unaffiliated employer's worksite. The L Classification Supplement to Form I-129 specifically requires that the petitioner describe "how and by whom the beneficiary's work will be controlled."

In this matter, section 3.3.2 of the SOW between the petitioner and the unaffiliated employer states that the unaffiliated employer's Project Manager will: "[p]rovide daily management and deliverable direction for [the petitioner] resources." The SOW also indicates that the unaffiliated employer is responsible for approving such items as change orders, time sheets, vacation requests, et cetera for "[the petitioner] consultants." This is also evidenced by the "Change Request" documents for the beneficiary, which was approved by , a Engagement Manager.

Although the petitioner initially indicated that the beneficiary would be supervised by , in response to the director's RFE, the petitioner noted that the beneficiary would now report to the petitioner's engagement director and the petitioner's program manager. The director specifically requested evidence that the two claimed supervising employees would be at the unaffiliated employer's worksite. As noted above, the list of the petitioner's 62 employees stationed onsite at the unaffiliated employer did not include either or Although counsel on appeal attaches photocopies of badges for these two individuals that are similar to the beneficiary's badge, the badges do not identify the worksite or the unaffiliated employer nor are they evidence that the holders of the badges are regularly onsite. These generic badges are not probative evidence that the beneficiary is supervised by employees of the petitioner onsite. Similarly, a change order that is initiated by the beneficiary which also contains the name of as a reviewer does not establish that the beneficiary is directly supervised by one or more of the petitioner's employees. Accordingly, the record lacks probative consistent evidence establishing that the petitioner principally supervises and controls the beneficiary's employment.

Additionally, the director determined that the petitioner failed to establish 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. Section 214(c)(2)(F)(ii) of the Act.

The petitioner's arguments with reference to the beneficiary's specialized knowledge have been discussed above and will not be repeated here. Again, although the petitioner claims that the beneficiary is one of the petitioner's few employees to have access to the unaffiliated employer's – BASEL II project, and thus, has more knowledge about the system and implementation of the applications than other of the parent company's employees, such access does not demonstrate that the beneficiary will be providing a product or service specific to the petitioner. Similarly, a review of the SOW also fails to identify the tool as a required component of the education or training of the individuals provided to the unaffiliated employer to perform work. The record is insufficient to establish that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which requires specialized knowledge that is *specific to the petitioning employer*. Section 214(c)(2)(F)(ii) of the Act.

The petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. For this additional reason, the petition cannot be approved.

The AAO acknowledges that the beneficiary was previously approved for an L-1B visa. However, the prior approval does not preclude USCIS from denying an extension of the original visa based on

reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that a visa petition was approved on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference. Moreover, each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish that the beneficiary would be employed in a position requiring specialized knowledge and that the petitioner failed to satisfy the requirements of the L-1 Visa Reform Act of 2004. If the previous petition was approved based on the same or similar evidence as contained in the current record, the approval would constitute gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Further, the AAO notes that the beneficiary was previously assigned to a project for a client at the time the previous L-1B petition was approved. As the beneficiary's current assignment is governed by a different SOW, the current petition involves a change in circumstances that impact the beneficiary's eligibility. Accordingly, the AAO finds that the director was justified in departing from the prior approval and denying the instant request for an extension of the beneficiary's status.

III. Conclusion

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

ORDER: The appeal is dismissed.