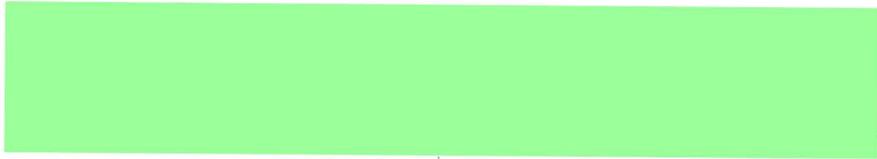




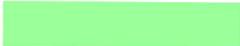
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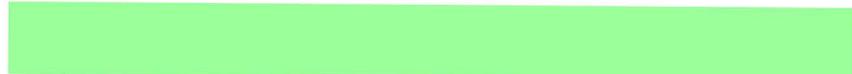


DATE: **MAR 19 2013**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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 nonimmigrant visa petition. The petitioner filed a motion to reopen and reconsider to the service center. The director granted the motion to reopen the petition and subsequently affirmed the denial of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, states that it operates a "custom software" business. The petitioner claims to be the parent company of [REDACTED] located in Ahmedabad, India. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a software engineer, for an initial period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or will be employed in a specialized knowledge capacity. The petitioner filed a motion to reopen and reconsider the denied petition. The director granted the motion to reopen and reconsider, but then affirmed his decision to deny the petition on the same grounds.

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 "petitioner has demonstrated that it developed proprietary products and applications that only a few employees have been trained to work with," and the beneficiary is one of those specially trained individuals.

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(I)(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 (I)(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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and will be employed in a specialized knowledge capacity.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it operates a "custom software" business with 23 current employees and a gross annual income of \$6,000,000. The Form I-129 indicates that petitioner would employ the beneficiary as a software engineer, a position he has held with the petitioner's foreign subsidiary for approximately two and a half years.

The petitioner submitted a letter in support of the petition in which it explained that the petitioner provides "computer related software and hardware to companies looking to improve operating efficiency." The petitioner indicated that it specializes in custom software development, system integration, intranet, Internet and client/server systems." In addition, the petitioner emphasized that it develops "'final customized software packages' integrating its own hardware and software resources at its own technical office," and is not in the business of leasing employees. The petitioner further specified that it specializes in healthcare and "has pioneered developmental computerization for the home healthcare industry."

The petitioner stated that the beneficiary's role for its Indian subsidiary has included the "duties of a software engineer in addition to the following specialized knowledge activities":

1. Accountable for understanding of overall project, including quality and coordination of project;
2. Responsible for creating Low Level Design documents with coding and changing as necessary using [REDACTED] to adhere to this process;
3. Responsible for the architecture and technology of the project;
4. Responsible to code any module/aspect of the projects;
5. Responsible to code Front-end, Middle tier and Database;
6. Responsible for fixing all technology and functionality issues for the assigned modules & screens in the project;
7. Responsible for doing good-quality unit testing of all coded screens/modules before declaring them as "Complete";
8. Should be aware of all the project specific standards, should adhere 100% to the standards;
9. Responsible for completing the work (e.g. coding) by estimated Date/Time.

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

If this petition is approved, [the beneficiary] will continue to fill the position of Software Engineer. He will be responsible for most of the same functions. Specifically, he will continue to:

1. Tasks & Time management with [REDACTED] - As [the beneficiary] has formal training and specialized knowledge with [REDACTED] application; he will be responsible to identify the milestones and components of the project(s) to incorporate in [REDACTED] tool.
2. Managing Quality using Itrack - With the training and practical experience with Itrack application, he will be responsible for reviewing the recorded incidents, preparing history notes for incidents, and synchronizing incidents with [REDACTED]
3. Coding for Logistics & Warehousing System - As [the beneficiary] had specific in-house training program on "Logistics & Warehousing System", he understands the business domain of the project. He will be responsible for implementation methodology of user interface development, functional and technical design and application development of the project. He will be responsible for creating multiple order transactions such as order entry, vendor purchase order, customer order entry and invoice entry using Logistics & Warehousing System. He will be responsible for managing the pricing management, warehouse management and customs and release managements using the warehousing system. He will also be responsible for analyzing the cost and benefits for operating cost, maintenance cost, ongoing costs and benefits of the project.

4. Follow-up with process and procedures using [REDACTED] – Having undergone the training program for [REDACTED] for managing projects with defined process and procedures, [the beneficiary] will be utilizing this process-oriented exposure to gather the requirements thoroughly. As part of the process, he will be responsible for creating and following Low Level Design (LLD) document, code review checklist, test plan and test case standards.
5. Manage and Review Projects for Clients and Technology – For implementation phase of the project, he will be coordinating between the team of Software Developers at India, Project and Product Manager at USA and the client at USA.
6. Make presentations to clients and management – [The beneficiary], backed by his solid technical experience, will be a proven technical help for the project managers, product manager and marketing team to present the technical architecture to the client, including technical discussions, if any.
7. Interview candidates for the company – For the few open positions for Software Developers at USA office, [the beneficiary] will help the USA office to manage their technical tests and practical exams.

The petitioner also submitted a document titled "Job Description for Software Engineer" listing the same seven duties as above and adding percentages to each as follows:

1. Task & Time management with [REDACTED] (15%) . . .
2. Managing Quality using Itrack (10%) . . .
3. Coding for Logistics & Warehousing System (30%) . . .
4. Follow-up with process and procedures using [REDACTED] (15%) . . .
5. Manage and Review Projects for Clients and Technology (15%) . . .
6. Make presentations to clients and management (10%) . . .
7. Interview candidates for the company (05%) . . .

The petitioner provided a similar position description for the beneficiary's foreign position indicating that he allocates his time among the following "job areas":

1. [REDACTED] (15%)
2. [REDACTED]
3. Logistics & Warehouse System Functionality (30%)
4. Technology Coding (20%)
5. Project Quality and Productivity (15%)

The foreign entity's Director – Projects provided a letter confirming that the foreign entity hired the beneficiary as a software developer in August 2007 and currently employs him as a software engineer. The foreign entity stated that "he has been involved in various software development projects (with [REDACTED] technologies)."

The petitioner submitted the beneficiary's training certificates indicating that he completed the following "internal training courses" and passed the associated written examinations:

- Logistics & Warehousing System January 7-21, 2008 (10 working days)
- [REDACTED] May 5-20, 2008 (12 working days)
- [REDACTED] September 3-27, 2007 (16 working days)

The petitioner's initial evidence also included a copy of the beneficiary's resume. The beneficiary indicates that since September 2007, he has been assigned to work as a software engineer for various client projects including: (1) [REDACTED] (since September 2007); [REDACTED] (since November 2009); [REDACTED] (August to October 2009); [REDACTED] (December 2008 to April 2009). The beneficiary states that he is experienced in software and application design using [REDACTED]. [REDACTED] has strong database knowledge in [REDACTED] and [REDACTED], is able to develop [REDACTED] services using [REDACTED] and can develop and configure reports using [REDACTED]. The beneficiary does not mention any company-specific systems or methodologies (such as [REDACTED]) in describing his skill set or his prior experience with the foreign entity.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary has specialized knowledge and evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner further explained the beneficiary's specialized knowledge and proposed position as follows:

Having received the training on proprietary solution Logistics & Warehousing system, our trademarked and patented process [REDACTED] and proprietary tools [REDACTED] the beneficiary will be able to perform the actions and duties on a daily basis.

* * *

The below list illustrates that the beneficiary requires specialized knowledge to perform in his proposed duties.

List of proposed Job Areas requiring specialized knowledge		
#	Job Area	(%) of total Job Area
1	Follow-up with process and procedures using [REDACTED]	15%
2	Task, Time and Project Management with [REDACTED]	10%
3	Managing Quality using [REDACTED]	15%
4	Coding for Logistics & Warehousing System	35%

* * *

For Job Area # 1 . . . the beneficiary needs to perform the below-listed duties:

- Functionalizing the SDLC process
- Standardizing the testing procedure, creating testing plan and test cases.
- Working on configuration management procedures like version identification, change control, and customer problem resolutions.
- Working extensively on project management procedures like estimation, scheduling, meeting the schedules and dealing with evaluation procedures.

To perform these duties, [the petitioner] has proprietary and registered process called [redacted] methodology is the next level of [redacted] a registered and proprietary methodology, is based on the [redacted] and the software [redacted]

* * *

Such specialized knowledge of proprietary and patented process helps the employee to make the repetitive tasks of rapid application development faster & better. So, without working exposure to this specialized knowledge, the worker/employee cannot perform required job duties.

For Job Area # 2 . . . the beneficiary is required to carry out the below mentioned duties:

- Identifying the milestones and components of the project(s)
- Recording team's work progress, Management requirements and communication notes
- Preparing user / project / client reports on timesheets
- Sending invoices and bill for different modules in the projects.

To be able to perform these duties, [the petitioner] has defined procedure of doing it with [redacted] ([the petitioner's] Proprietary tool for task, time and project management).

* * *

For Job Area # 3 . . . the beneficiary is required to carry out below mentioned duties:

- Reviewing the recorded incidents; preparing history notes for incidents and synchronizing incidents with [redacted]
- Interacting with both development & testing team members to get the incidents resolved on timely basis.
- Preparing incidents statistics summary and status reports to the management team as well as the client.

To perform these duties in efficient way, [the petitioner] has proprietary tool called Itrack (for managing quality). Itrack is [the petitioner's] web application for Quality Assurance of development projects / products. . . .

For Job Area # 4 . . . the beneficiary is required to perform these duties:

- Utilizing the implementation methodology skills, to customize the proprietary solution to meet the needs of client projects
- Creating multiple order transactions such as order entry, vendor purchase order, customer order entry and invoice entry
- Managing the pricing management, warehouse management and customs & release managements
- Analysing [*sic*] the cost and benefits for operating cost, maintenance cost, and on-going costs.

Having worked extensively on Logistics & Warehousing projects over a long period of time, [the petitioner] has developed a customized proprietary solution "Logistics & Warehousing System". Specific training program and detailed exposure / specialized knowledge on it, helps the software development professionals to customize the solution for clients very efficiently.

Hence, it can be observed that the tools, proprietary solution, processes and procedures the beneficiary knows are far from being comparable to that of Information Technology industry worker. Without the knowledge of such comprehensive set of tools, product and processes, the beneficiary cannot carry his job duties that require the use of such specialized knowledge.

The petitioner went on to describe the required training for the position being offered to the beneficiary:

Only selected employees will be trained on these specialized skills.

For an employee to be eligible for this type of training he should meet our following criteria.

- Professional education degree in Computer Science, Information Technology or Software Engineering
- Individual's performance during the induction training
- Necessary experience with the employer
- Practical work exposure with the projects

For a person to work in the similar position we are seeking to fill, it requires about 10 months of [experience with the petitioner], almost 2 months of training and further 5 to 6 months to practice and implement the skills learned in training.

Listed below are the tools, processes and procedures along with training duration which a person has to be trained on, to work in the proposed position:

Tools / Processes	Minimum Experience with [the petitioner]	Training Duration
[REDACTED]	1 month	3 weeks
Logistics & Warehousing – Business Model	6 Months	2 weeks
[REDACTED]	10 months	2 weeks
Level I		
Total		7 weeks

* * *

Employed by [the petitioner], Beneficiary is the only employee in the company having such combination of specialized knowledge.

Specific training program and detailed exposure / specialized knowledge on customized proprietary solution "Logistics & Warehousing System", makes this beneficiary unique in the company when compared to other workers.

Hence, Beneficiary is only employee who possesses such set of knowledge and is similarly employed by our organization.

* * *

Count of employees who have gained specialized skills in the company is as low as 30 out of 160 employees.

Of these 30 employees, for this combination of tools, products, methodologies and customized business knowledge, only the beneficiary has gained such skills, experience and work exposure.

The petitioner submitted a document titled "Job Description for Software Engineer" listing the same seven duties as above and adding different percentages than previously provided to each as follows:

1. (10%) [The beneficiary] will utilize Tasks & Time management with [REDACTED]
2. (10%) [The beneficiary] will manage quality using Itrack . . .
3. (35%) [The beneficiary] had specific in house training on "Logistics & Warehousing System", he understands the business domain for the project. . .
4. (15%) [The beneficiary] will follow-up with process and procedures using [REDACTED]
5. (15%) [The beneficiary] will manage and review projects for clients and technology . . .
6. (10%) [The beneficiary] will make presentations to clients and management . . .
7. (5%) [The beneficiary] will interview candidates for the company . . .

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. In denying the petition, the director found that the

knowledge acquired by the beneficiary appeared to be general and not advanced as it appears that with seven weeks of training any other of the petitioner's employees would be able to perform the requested employment. The director further found that access to such knowledge appears not to be limited by company needs or policy, and not because the knowledge itself is specialized.

The petitioner filed a motion to reopen and reconsider the denied petition. The director granted the motion to reopen and reconsider and subsequently affirmed the denial of the petition making the same observations as in the initial denial.

On appeal, counsel for the petitioner asserts that the director erred in his decision because he did not "give enough credence to documentation supporting the specialized knowledge position submitted with the petition." Counsel states:

In the current matter, the Petitioner has several trademarked, proprietary processes which are not generally found in the industry and further are totally different and uncommon. Additionally, in order to possess the specialized knowledge, one has to work for the Petitioner and go through a series of training classes and certification. Thus, not every employee has specialized knowledge. Only a very select few can be said to have reach this pinnacle of proprietary knowledge. . . .

. . . . The petitioner has shown, through extensive documentation, that they have several proprietary products which are unique to the market place. Out of their 163 employees worldwide, only 30 employees have been trained in any of these products and processes. The beneficiary in this matter is the only employee who has received this specialized training on a specific product.

On appeal, counsel submits evidence previously presented with the initial petition and in response to the RFE.

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

In the present case, the petitioner's claims are based on the first prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets. The petitioner claims that the beneficiary "possesses specialized knowledge of [its] internal operations that can only be had by employment with [the] firm in India, including training in [its] trademarked products." The petitioner submits evidence of the beneficiary's training at the foreign entity to establish his specialized knowledge in the company's proprietary systems. The petitioner submitted a list of the 30 employees, out of 160, it claims have some training in the petitioner's proprietary products. All of the 30 employees have completed the [REDACTED] and the [REDACTED] courses. The beneficiary is the only listed employee to have completed the "Logistics & Warehousing Management System" training course.

The beneficiary's training consists of one three-week course in [REDACTED] which the petitioner indicates requires a minimum of one month experience with the company; a two-week course in "Logistics & Warehousing – Business Model," which the petitioner indicates requires a minimum of six months experience with the company; and a two-week course in [REDACTED] which the petitioner indicates requires a minimum of 10 months experience with the company. The petitioner also requires that the individual apply the training acquired for five to six months in order to practice and implement the skills learned in training. However, these claims are contradicted by other evidence in the record.

At the time of filing, the petitioner submitted charts for each of the three training courses the beneficiary completed, which provide a list of the topics covered during the course and the number of hours spent on each topic. These documents also provide information regarding which types of employees each course is "applicable to." According to this evidence, training on both "Logistics & Warehouse System" and [REDACTED] are applicable to "New Recruit (any level)" while the [REDACTED] training is applicable to software engineers. The petitioner actually submitted different versions of these same course descriptions in response to the RFE which indicated that the "Logistics & Warehouse System" is only available to software engineers, while the training in [REDACTED] is applicable to "selected few new employees (any level)." The petitioner submitted no explanation for these changes.

Further, the petitioner submitted a letter indicating that the beneficiary began his employment at the foreign entity on August 27, 2007. The beneficiary attended the [REDACTED] training course September

3-21, 2007, only one week after commencing his employment; he then attended the "Logistics & Warehousing System" training course January 7-21, 2008, only 19 weeks after commencing his employment; and he finally attended the [REDACTED] training course May 5-20, 2008, well before he had been with the company for 10 months.

In this matter, the petitioner has not provided a consistent and credible explanation of the time necessary for an employee to reach the caliber of specialized knowledge required for this classification. Here, the petitioner states that it requires an employee to work at the company for a minimum amount of time prior to receiving specialized training in its proprietary systems. However, the evidence presented shows that the beneficiary completed such training courses long before those minimum time requirements were reached, while the petitioner's own internal documents further undermine its claims. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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).

Further, the petitioner has neither documented nor described the type or amount of on-the-job experience required to achieve proficiency in its proprietary technologies and methodologies. While the petitioner appears to claim that the beneficiary is the only software engineer trained in the Logistics and Warehousing system domain, the record shows that he has been assigned to only one client project in that domain, and that he was assigned to the project in September 2007, one month after joining the company and several months prior to completing his Logistics and Warehousing training. The beneficiary's resume makes no reference to the petitioner's various proprietary methodologies or systems. Rather, he indicates that he was responsible for developing and enhancing GUIs for different modules of the client's logistics system using [REDACTED]

Further, the petitioner's claim that the beneficiary's combination of training is unusual or even unique within the company is also not adequately supported by the record. The petitioner describes [REDACTED] in the record as its standard implementation approach for delivering customized systems to its client. The claim that only a small portion of the company's software engineers would have access to training in the company's application development process has not been adequately explained. The foreign entity's organizational chart includes approximately 75 software engineers and senior software engineers, and 20 or more project engineers and project managers. The petitioner has not identified any clear hierarchy or divisions among these employees to explain why only 30 of these employees, who presumably are also charged with developing client software solutions, are not provided with training in the company's standard software development and client project tracking systems and tools.

Further, the petitioner indicates that the [REDACTED] is based on [REDACTED]; and the [REDACTED] "proven methodologies" to form its "best practice tool." Thus, while [REDACTED] may be considered proprietary, the petitioner did not establish how it is different compared to best practices used by other software development companies, such that the knowledge is truly special, and not easily transferable to a similarly educated and experienced software engineer through completion of a short training course.

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.

III. CONCLUSION

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.