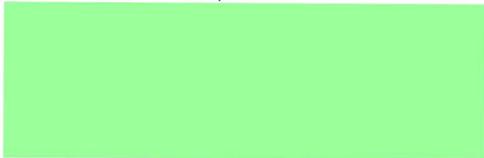


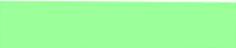


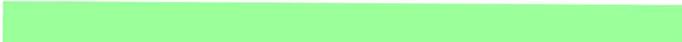
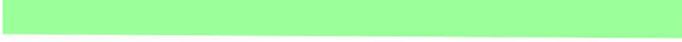
U.S. Citizenship
and Immigration
Services

(b)(6)



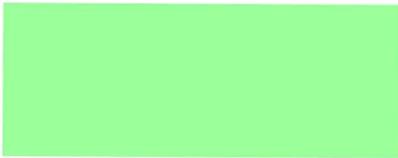
DATE: **MAR 25 2013**

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 Pennsylvania corporation, is a software development and consulting company with a branch office located in Chennai, India. The petitioner seeks to employ the beneficiary as its senior software engineer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he has been or will be employed in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal the petitioner contends that the beneficiary has been and will be employed in a specialized knowledge capacity based on his role in developing the petitioner's specialized software. The petitioner asserts that the director erred in finding that the beneficiary would mainly be providing consultant services to clients using computer software that is not specific to the petitioner.

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.

I. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and that he has been and 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).

The petitioner is a software company that provides solutions to the health and human services industries, and specifically to behavioral health facilities. Specifically, the petitioner indicates that its software securely automates the collection, distribution, processing, reporting and analysis of administrative, financial and clinical client data. The petitioner claims to have 18 employees and a gross annual income of \$1.5 million in the year preceding the filing of the petition.

The petitioner stated the beneficiary will be working as a senior software engineer. The petitioner stated the beneficiary will have the following responsibilities:

- Lead a team of developers involved in designing and programming [the petitioner's] software.
- Write technical specifications based on business requirements.
- Work with counterparts in [the petitioner's] Wayne office in understanding business requirements.

- Interview and hire programmers for his team.
- Assist in programming tasks which are of a complex nature.
- Write, oversee, and direct the client deliveries, development of business requirements, development of functional and program specifications relational database design, programming, testing, implementation, and documentation for applications.
- Schedule and assign resources to ensure that applications satisfy users' needs and are completed within agreed upon time parameters.
- Write a detail description of user needs, program functions, and steps required to develop and modify computer programs.
- Prepare workflow charts and diagrams to specify in detail, the operations to be performed by personnel.
- Provide technical support.

In a letter supporting the petition, the petitioner states that the beneficiary has specialized knowledge of the company's product lines, services, internal procedures, and technical support methods, and, based on his education and experience, is the only qualified candidate for the proposed position.

The petitioner submitted the beneficiary's Degree of Bachelor of Technology in Information Technology from [REDACTED] and provided an appointment letter and pay slips for the beneficiary indicating he began his employment with the petitioner's branch office in India as a software engineer on June 2, 2008. An appraisal letter indicates the beneficiary was promoted to senior software engineer on February 2, 2010. The petitioner did not provide a position description for the beneficiary's current or previous positions with the foreign entity.

The petitioner provided an organizational chart for the foreign branch office. The beneficiary is identified as a senior software engineer in the product development team led by a "Sr. Project Manager – [REDACTED]". This team includes a team leader, five senior software engineers and four software engineers. The petitioner also has a [REDACTED] product development team with a project manager, team leader, two senior software engineers and two software engineers. The foreign entity employs approximately 15 additional software engineers and team leaders assigned to the [REDACTED] Implementation & Support Team.

The petitioner provided product information for [REDACTED] which is described as "a comprehensive suite of enterprise software products designed for behavioral health and human service industry" consisting of the following products: [REDACTED]. The product information provides technical details about the product stating that the software is a web-based architecture using self-hosting and ASP(SaaS) environments. The information states that using [REDACTED] "[s]ystem administrators can design and publish new forms to the library through the built in forms designer or develop sophisticated solutions using Crystal Reports or Microsoft FrontPage, ASP, .NET, or other programming tools and integrate them back into [REDACTED]. The description of [REDACTED] states that it allows integration of content and developed solutions based on Microsoft .NET, JAVA, or other web technologies.

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. Specifically, the director requested: (1) a detailed description of the actions and duties the beneficiary will perform on a daily basis; (2) a list of proposed duties which require specialized knowledge; (3) an explanation of why each duty requires specialized knowledge; (4) identification of the processes, procedures, tools, and/or methods the beneficiary will use for each duty and from which company each process, procedure, tool, and/or method originated; (5) identification of the time it takes to train an employee to use the specific tools, procedures, and/or methods utilized and the number of workers possessing the knowledge and similarly employed by the organization; (6) an explanation of how the beneficiary's training differs from the core training provided other employees; and (7) a record from human resources detailing the manner in which the beneficiary gained his specialized knowledge including documentation of training courses, the duration of the courses, the number of hours, the completion dates, and certificates of completion for the courses.

In response to the RFE, counsel explained that the petitioner's [redacted] product line has been rebranded as [redacted] and that the beneficiary was a key architect/developer of several clinical modules that are critical to [redacted]. Counsel further stated:

While these modules are developed using Microsoft .NET technologies, they require a very strong understanding of their [redacted] product architecture and the proprietary clinical tools that have been developed by [the petitioner] over the past several years. Further [the beneficiary] has gained unique skills in using various third party tools that are an integral part of their product. These are unique skills the petitioner has been unable to find in job candidates they interviewed. It is also noteworthy that [the beneficiary's] work has been accepted and used by several of their customers.

Counsel's letter included the following table of the beneficiary's job responsibilities and required specialized knowledge as follows:

Lead a team of developers involved in designing and programming [the petitioner's] software	[The petitioner's] [redacted] product is designed specifically for the behavioral healthcare industry. We have over 40 customers currently using the product. With each new customer, we require customizations and development of new clinical interfaces. These changes required a strong understanding of the [redacted] product architecture, knowledge about the behavioral health care industry, experience in building such interfaces and an overall product direction knowledge gained through experience. A strong understanding of the architecture and product history also helps in work allocation, estimation, and ongoing management of deliverables from other team members. [The beneficiary] possesses all the above skills.
Work with counterparts in [the petitioner's] Wayne office in understanding business requirements.	[The beneficiary] will be interacting with other team members to understand business requirements and

	translate them into product specific requirements documents. Having [the beneficiary] on-site will expedite this process and enable us to meet our commitments to the customer.
Interview and hire programmers for his team.	[The petitioner] is looking to expand its technical team in the United States. As part of this process, we have hired and [sic] Director of Software Development and looking to add additional programming staff. Due to [the beneficiary]'s knowledge of the products, [he] will assist in the interview process for identifying and selecting new employees. . . .
Write technical specification	Since all the business requirements are based on our [redacted] product and require integration back with [redacted] knowledge and experience specifically with [redacted] is required to develop technical requirements.
Assist in programming tasks which are of a complex nature	[The petitioner]'s products have been developed over the past several years. Understanding of the product architecture (which covers several hundred domain objects) allows experienced users to more efficiently solve programming tasks of complex nature or assist other programmers doing the same.
Write, oversee, and direct the client deliveries, development of business requirements, development of functional and program specifications, relational database design, programming, testing, implementation and documentation for applications	[The petitioner]'s database architecture contains over 500 data tables and thousands of stored procedures to process clinical data. A strong understanding of the underlying data architecture will help in writing, overseeing, and directing client deliverables, development of requirements, and related technical activities.
Write detail description of user needs, program functions, and steps required to develop and modify computer programs	As product based company, our goal is to make sure that changes made for one customer do not impact others and contribute to the overall product enhancement. [The beneficiary]'s experience with the product allows him to perform these tasks very well.
Prepare workflow charts and diagrams to specify in detail the operations to be performed by personnel	[The beneficiary]'s experience with the [redacted] product and industry experience allows him to more efficiently develop technical work flow charts and diagrams. [The beneficiary] will be coordinating with other members of our implementation team with business process experience in integrating business and technical requirements.
Provide technical support	Our customers reply [sic] upon our [redacted] product to

(b)(6)

	ensure smooth cash flow within their organizations. Any disruption has a serious negative impact on our customer's business.
--	--

Counsel stated that the beneficiary uses [redacted] his knowledge of third-party software, and his experience in the behavioral healthcare industry to perform his responsibilities. The petitioner stated that the beneficiary's knowledge is a result of his hands-on work with the products and customer deliverables, periodic business meetings, research and development, and other on-going activities; therefore, no formal documentation of the beneficiary's training is available. The petitioner included activity logs for the prior year to show that over 70% of the beneficiary's time was spent "in clinical documentation interfaces for the petitioner's [redacted] product." The petitioner also provided a copy of a functional flow document and business requirement document created by the beneficiary and a log showing the beneficiary's employment activities for the previous year as evidence of his experience and knowledge.

Counsel stated that the cost and time it would take to hire and train another candidate would make it "virtually impossible" for the petitioner to fulfill its commitments on several large projects. Specifically, the petitioner estimates a new employee would require 8-10 months of experience with the products to perform the tasks required for the new projects. Counsel explained that there are five members of the beneficiary's team who similarly specialize in clinical documentation, but noted that the beneficiary's "unique skills and seniority in this area" allow him to handle more complex requirements, and that he provides guidance and support for the team members completing similar tasks of lesser complexity.

The petitioner also provided marketing materials for the company's products. The materials describe the company's [redacted] product as "a web-based software solution that helps organizations securely automate and manage the collection, distribution, processing, reporting, and analysis of administrative, financial, and clinical data." The marketing materials state that the software can be customized to meet the needs of the client. The materials explain that the program uses standard Microsoft SQL database technology and other Microsoft standard system software and operates in a 128 bit encrypted environment.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position. In denying the petition, the director found that the beneficiary's use of proprietary tools is incidental to the duties of the United States position as the beneficiary's assigned project is to develop and maintain the client's system. The director noted that the beneficiary would be working with Microsoft .Net, NSolutions Limited's wireless CRM software, Webcare 3.0, Visual Basic, Iron Speed designer, Cisco IOS software WC4, WebTree, Infragistics User Interface (UI) software, Web Connect 4.0, Java, J2EE, Mantis, CSI TestBed, Orion Application Server, and SQL, applications not specific to the petitioner, and that the record did not indicate the amount of time that the beneficiary would be spend performing the duties that require processes specific to the petitioner

On appeal, the petitioner asserts that the beneficiary will be employed in a specialized knowledge capacity working with processes specific to the petitioner. The petitioner states that the beneficiary is part of the company's product research and development group and does not provide consulting services to the petitioner's clients. Specifically, the petitioner explains that the beneficiary's development work results in

additional functionality to the petitioner's product rather than developing standalone solutions for the clients and that the beneficiary's work hours are not billable to any specific client.

The petitioner claims that a newly hired employee with comparable technical skills to the beneficiary would require six to eight months of hands-on work with the [REDACTED] product before being able to perform a similar function to the beneficiary. The petitioner continues that not all employees working abroad are considered to have specialized knowledge on account of their work with the petitioner's specialized product, but that due to the beneficiary's decision making and reasoning skills, he received opportunities to work on various parts of the [REDACTED] platform developing unique skills above those of most team members abroad.

In support of the appeal, the petitioner submits its Profit and Loss statements for 2010 and evidence of the company's membership in the Software and Technology Vendor's Association.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Beyond the decision of the director, the record is also not persuasive in establishing that the beneficiary was employed abroad in a capacity involving specialized knowledge for the requisite one-year period.

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. 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.

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. 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are the first prong of the statutory definition, as it primarily asserts that the beneficiary has a special knowledge of the company's [REDACTED] product and its application in international markets. The petitioner also claims that the beneficiary has unique skills that enable him to handle more complex tasks than other members of his team.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by other software professionals in the petitioning organization or the industry as a whole. The petitioner notes that it has 45 employees in its foreign branch office and explains, "We do not consider every one of these employees to have specialized knowledge on account of them working on a specialized product for a niche industry." Therefore, it appears that the petitioner does not claim all software engineers who work with the [REDACTED] product have specialized knowledge.

The record indicates that the tools used in developing and implementing the petitioner's [REDACTED] software are third-party applications including Microsoft SQL, FrontPage, ASP, and .NET. These applications are commonly used throughout the industry, and the petitioner has not provided evidence that developing, testing, maintaining or updating this product requires technical skills that cannot be gained outside the petitioner's organization. The petitioner's statement on appeal supports this conclusion. Specifically, the petitioner states that it regularly searches for "resumes of individuals with skills in Microsoft .NET and behavior healthcare" due to its growing need for additional personnel "with specialized skills similar to the beneficiary." Even if knowledge of the petitioner's specific [REDACTED] product is necessary to perform the job duties, the petitioner has not provided evidence to show that the requisite knowledge is at a level of complexity that it could not be imparted upon a similarly experienced software engineer in a reasonable amount of time.

While the petitioner states that the beneficiary possesses unique skills and special knowledge of the [REDACTED] product compared to the other members of his team, there is no evidence on the record to support those assertions. The petitioner provided an appointment letter showing the beneficiary began working for the foreign entity on June 2, 2008. At the time of filing the petition the beneficiary had worked for the foreign entity for just over two years. The petitioner has not provided documentary evidence to show the length of time the other members of the beneficiary's team have been employed with the company or provided any documentary evidence to show that the beneficiary's two years of experience provided him with a special or advanced level of knowledge relative to employees working for the petitioner. 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)).

The petitioner claims that the company does not provide formal training in its proprietary software, and therefore, has not provided documentation that the beneficiary completed company training that resulted in an advanced knowledge of the company's products. Consequently, the petitioner has not provided documentary evidence that the beneficiary's training through experience is more specialized or advanced than other employees within the company. The AAO acknowledges that the specialized knowledge need not be narrowly held within the organization in order to be considered "advanced." However, it is equally true that

knowledge will not be considered "special" or "advanced" if it is universally or widely held throughout the company. If all similarly employed workers within the petitioner's organization receive essentially the same training, then the mere possession of knowledge of the petitioner's products does not rise to the level of specialized knowledge. Further as noted above, the petitioner acknowledges that it does not consider all engineers working with its software products to have specialized knowledge, but has not provided evidence to distinguish the beneficiary's work with the product from that of software engineers not considered to possess specialized knowledge.

The log recording the beneficiary's employment activity with the foreign entity indicates that he was working with the [REDACTED] product [REDACTED] within two weeks of joining the company and does not demonstrate how the beneficiary's analysis and design work has progressed to the level of specialized knowledge. This is particularly important considering the petitioner's claim that the beneficiary gained his specialized knowledge through his "on-the-job" experience rather than formally documented training in the company's products. Without evidence to illustrate how or when the beneficiary progressively acquired the claimed specialized knowledge, the petitioner's claims are unsupported. The petitioner submitted the log in lieu of detailed descriptions of the beneficiary's duties abroad and the log is insufficient to establish how he gained the claimed special knowledge with the petitioner [REDACTED] product through on-the-job training. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO does not dispute that the beneficiary is a skilled employee who has been, and would be, a valuable asset to the petitioner. As explained above, however, the record does not distinguish the beneficiary's knowledge as special or advanced when compared to the knowledge possessed by other people employed by the petitioning organization or by workers who are similarly employed elsewhere. The evidence on record of the beneficiary's duties and technical skill demonstrate that he possesses knowledge that is common among consultants specializing in computer software and related technologies. It is not clear that the performance of the beneficiary's duties requires more than basic proficiency with the company's internal process and methodologies. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner for planning, monitoring, and implementing project tasks are substantially different from those used by other technology consulting companies.

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

For the reasons discussed above, the evidence submitted fails to establish 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)(6)

IV. 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.