

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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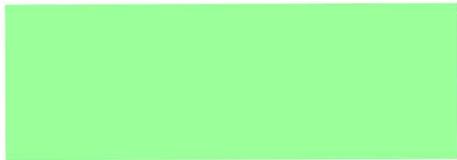


DATE: **MAY 20 2013** OFFICE: VERMONT SERVICE CENTER FILE:

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 Texas partnership, is a jewelry designer and producer. The petitioner claims to be an affiliate of [REDACTED] located in Thailand. The petitioner seeks to employ the beneficiary as a business operations specialist for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the United States and foreign entities have a qualifying relationship. The director also found that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she 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 director erred in finding the position did not require specialized knowledge. The petitioner further contends that the beneficiary has the specialized knowledge required for the position based on her training in gemology and her cultural background. With respect to the qualifying relationship, the petitioner states that it has entered into an agreement with the foreign entity to invest in a new factory located in Thailand, and concedes that it failed to fully explain the agreement in response to the director's request for evidence.

I. Law

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

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

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

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

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

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

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

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

II. Qualifying Relationship

The first issue addressed by the director is whether the petitioner established that the United States and foreign entities are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner, a Texas partnership, is engaged in the design and production of jewelry. The petitioner claims on the Form I-129 to have five employees in the United States and a gross annual income of \$4,606,076.52. The petitioner also indicates that it is an affiliate of [REDACTED] the beneficiary's employer in Thailand. In its letter in support of the petition, the petitioner stated that it and the foreign entity "have a long standing business relationship as affiliates."

As evidence of the qualifying relationship the petitioner initially provided the following: its 2007 IRS Form 1120, U.S. Corporation Income Tax Return; its by-laws; IRS Form 1120, Schedule O, Consent Plan and Apportionment Schedule for a Controlled Group, for [REDACTED] IRS Form 851, Affiliations Schedule, for [REDACTED] a 2007 IRS Form 4562, Tax and Other Apportionment Schedules, for [REDACTED] the foreign entity's certificate from the Ministry of Commerce's Department of Business Development; tax returns for the foreign entity; and a 2008 document from the foreign entity entitled "Copy of Shareholders' Names."

The submitted tax documentation indicates that the petitioner is a subsidiary of [REDACTED] which is in a combined group with American International Purchasing. The documents further indicate

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Arunee Hale and Gregory W. Hale officers for [REDACTED] and that they each have a 50% ownership interest in the company's stock.

Tax documents for the foreign entity show outstanding stock valued at 3,000,000 baht. A document from the Thai Department of Business Development shows the foreign entity issued 30,000 shares of stock with a share value of 100 baht to nine individuals. The individuals are named as follows: [REDACTED]

The director subsequently issued a Request for Evidence ("RFE") requesting that the petitioner submit additional evidence to establish that the U.S. and foreign entities have a qualifying relationship. The director specifically requested additional evidence to show the common ownership and control of the petitioner and the foreign entity.

In response to the RFE the petitioner submitted its Certificate of Limited Partnership, indicating that [REDACTED] is the sole partner of the company; Articles of Organization for [REDACTED] indicating that its members are [REDACTED] Articles of Incorporation and by-laws for American International Purchasing Supply; and two receipts in the name of [REDACTED] Co., Ltd. The petitioner also resubmitted the shareholder listing for the foreign entity dated July 2008.

The director denied the petition, concluding that the petitioner failed to establish a qualifying relationship between the petitioner and the foreign entity. The director specifically noted that the evidence indicated the petitioner is a partnership owned by [REDACTED] while the foreign entity is held by nine shareholders. The director further noted that although the record indicates the beneficiary is a shareholder of the foreign entity, there is no evidence on the record that the two owners of the petitioner own shares of the foreign entity and no evidence that any of the foreign entity's nine shareholders have an ownership interest in the petitioner's partnership.

On appeal, the petitioner claims that it has a qualifying relationship with the foreign entity because the two entities have entered an agreement to invest in a new factory. The petitioner explains that the two receipts submitted in response to the RFE are evidence of a joint investment creating a qualifying relationship with the foreign entity. For the first time on appeal the petitioner submits a contract for the sale of property at [REDACTED] (hereinafter, "[REDACTED] represented by [REDACTED]. The petitioner also submits a brochure describing the [REDACTED] investment property and resubmits receipts for the payments made to the developer by [REDACTED]

Upon review the petitioner has not established that the U.S. and foreign entities have a qualifying relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289

(Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The Form I-129 and accompanying letter indicate that the petitioner and foreign entity have a qualifying relationship as affiliates. The term "affiliate" is defined in the regulations as one of two subsidiaries which are owned and controlled by the same parent or individual, or as one of two legal entities owned and controlled by the same group of individuals, with each individual owning and controlling approximately the same share or proportion of each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). The documents on record do not establish an affiliate relationship between the petitioner and the beneficiary's employer abroad. Tax documents and articles of organization for the petitioner indicate that it is a subsidiary of [REDACTED] each own a fifty percent interest in the petitioner's parent company and are the sole managing members. The Copy of Shareholder Names indicates the foreign entity is owned by nine shareholders. As the director noted, the record does not indicate that the petitioner, the petitioner's parent company, or either of its managing partners own shares in the foreign entity or that any of the foreign entity's nine shareholders possess an ownership interest in the petitioner. As there is no common ownership or control over the petitioner and foreign entity, the evidence of record fails to establish an affiliate relationship.

The record also does not support the petitioner's assertion on appeal that a qualifying relationship exists because of an agreement to make a joint investment.

For the first time on appeal, the petitioner attempts to submit the contract for the property purchase as evidence of a qualifying relationship based on the joint investment. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In the RFE, the director notified the petitioner of the deficiency in the evidence establishing a qualifying relationship and requested additional evidence. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* The petitioner provided no explanation as to why the contract was unavailable at the time of filing the instant petition or in response to the RFE notifying the petitioner that the evidence was insufficient to establish a qualifying relationship and requesting additional evidence to establish a qualifying relationship. Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Even if the contract were considered, it does not establish the existence of a qualifying relationship between the petitioner and foreign entity.

The petitioner appears to claim that the joint investment creates a qualifying relationship as a joint-venture between the petitioner and the foreign entity. USCIS accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Neither the Act nor the regulations provides a definition of the term "joint venture." However, the AAO has applied a broad definition of joint venture in prior decisions. *Matter of Hughes* states

that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from Endle J. Kolde, *International Business Enterprise* (Prentice Hall, 1973)). *Matter of Siemens Medical Systems, Inc.* states: "Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint venture), the joint venture is a subsidiary of each of the parents." 19 I&N Dec. 362, 364 (BIA 1986). In order to meet the definition of "qualifying organization," a joint venture must be formed as a corporation or other legal entity. 8 C.F.R. § 214.2(l)(1)(ii)(G). A business created by a contract as opposed to one created under corporation law is not be deemed a "legal entity" as used in section 101(a)(15)(L) of the Immigration and Nationality Act. *Matter of Hughes*, 18 I&N Dec. 289, 294 (Comm. 1982); see also *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

The only evidence of the investment is a contract for the sale of property and two receipts for payments in the name of [REDACTED]. Although the petitioner claims that the property is a joint investment between itself and the foreign entity, the record is devoid of evidence regarding the formation, ownership, or control as necessary to establish that the investment meets the definition of a joint venture under the applicable regulation and case law. The petitioner has not submitted a joint venture agreement, articles of formation, tax returns, meeting minutes, financial documents, or other evidence to demonstrate that Universal and Nini is wholly owned and controlled by the petitioner and foreign entity as a 50-50 joint venture. Further, due to the lack of documentation regarding the formation of [REDACTED] it is also unclear whether the investment was formed as a legal entity with the requisite amount of permanency rather than a contractual agreement limited to a single, specific venture. 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)).

Further, it is noted that, even if the petitioner and the foreign entity had formed a qualifying 50-50 joint venture prior to the date of filing the petition, the petitioner in this case is not the joint venture itself, but rather one of the partners or shareholders in the claimed joint venture. The partners or shareholders of a 50-50 joint venture do not acquire a qualifying corporate relationship by virtue of forming a joint venture; the qualifying relationship formed exists only between each individual parent and the joint venture entity. The limited evidence in the record indicates that the beneficiary, while employed abroad, was employed by the foreign entity claimed to have an ownership interest in the joint investment and not by the joint investment itself. Therefore, the petitioner has failed to establish a qualifying relationship with the beneficiary's employer abroad based on the joint investment.

The record contains no evidence that would indicate an existing qualifying relationship between the petitioning entity and the foreign entity. For this reason the petition must be denied and the appeal will be dismissed.

III. Specialized Knowledge

The next issue is whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity.

The petitioner stated the beneficiary will be working in the United States as a business operations specialist. The petitioner provided a description of the beneficiary's duties with the foreign entity, noting that she was responsible for coordinating communication between the U.S. and Thai companies, overseeing production planning and new product design, maintaining quality control at the Thai company, researching new market trends, maintaining the proper inventory of raw materials, and creating production reports.

The petitioner further described the proposed U.S. duties as follows:

Communicate in Thai to the factory

- Translate documents for [the petitioner] for transmission to factory
- Communicate with the factory regarding order, QC issues and new designs for fabrication
- Translate the purchase orders for the factory
- Communicate between [the petitioner] and Thai factory, [REDACTED]

Perform translations between both companies

- Translate and transfer data for each company
- Function a[s] coordinator among two companies
- Coordinate standardization work task between the two companies

Coordinate between Universal Collection in Thailand and [the petitioner] in USA

- Act as catalyst for production plan and new product design
- Analyze and coordinate product design in each season
- Function as knowledgeable Coordinator in all sections of the two companies
- Present and update status of products development to both companies

Quality control, problem solving

- Collaborate with goldsmiths and stone setters to verify the setting coincide[s] with the designer's drawings
- Verify the quality of diamonds and stone
- Solving any issue of each piece to make customer friendly
- Examine quality of each merchandise upon receipt
- Verify [the petitioner's] logo stamp on every piece upon receipt

Research marketing of new fashion and new trend

- Attend meetings with designers and retailers to collect all information about new fashion and new trend in volatile season to present to [the petitioner] in US
- Gather data and analyze our products in compliance with present trends
- To acquire the appropriate products in each trend for the US market

Oversea[sic] design with US market

- Participate with Nini to design the new collection each season
- Research and survey jewelry trend for American market by visiting with [the petitioner] and our retail client stores.

Daily manufacturing productivity report and Weekly manufacturing recaps

- Communicate and update the status of the product manufacturing . . .
- Inform [the petitioner] the issues about timing , shipping, and QC
- Discussion and problem solving based on situation, piece by piece
- Gathering and summarizing weekly working report to [the petitioner]

Raw material inventory control

- Maintain accurate up to date inventory sheets in [E]xcel format with the following procedures
 - All raw material bring in to the factory should be brought down to the factory section of the spreadsheet
 - Any new pieces should be recorded and properly color coded in red-the color for all NRM [new raw material] items
 - Inform [the petitioner] once a month about status of raw material inventory

The director issued an RFE requesting additional evidence that the Business Operations Specialist position required specialized knowledge beyond the role of a generalist and additional evidence that the beneficiary possessed specialized knowledge. Specifically, the director requested, *inter alia*, the following: (1) a detailed description of the actions and duties the beneficiary will perform on a daily basis; (2) a list of proposed duties which require specialized knowledge; (3) an explanation of why each duty requires a worker with specialized knowledge; (4) identification of which processes, procedures, tools, and/or methods the beneficiary will use for each duty; (5) identification of how long it takes to train an employee to use the specific tools, procedures or methods utilized and how many workers possess this knowledge and are similarly employed by the organization; (6) a record from the human resources department detailing the manner in which the beneficiary gained her specialized knowledge; and (7) documentation of pertinent training courses to include the number of hours spent taking the course each day, the duration of the course, and certificates of completion.

The petitioner responded to the RFE, and provided the following percentages for each duty: communicate in Thai with the factory (5%); perform translation between both companies (5%); coordinate between [redacted] and [the petitioner] (25%); quality control and problem solving (5%); research and marketing of new fashion and new trends (25%); oversee design in U.S. market (20%); report daily and weekly manufacturing (5%); and control raw material inventory (5%).

The petitioner also submitted a more detailed description of the beneficiary's duties in her position with the foreign entity:

Open and close the office (5%)

- Set alarm to off every morning
- Set alarm to away every time leaving the office
- Open and close safe monitor material usage

New Raw material inventory (10%)

- Take picture of new Raw material, download into computer

- Name new piece (cannot duplicate number)
- Enter new pieces in inventory and inventory photos

Receiving and sending raw material to the factory (10%)

- Give the drawing design to the factory for molds
- Consult and solve any manufacturing issues at the factory
- Coordinate between factory and the head office to report daily progress to [the petitioner]
- Monitor production to assure on completion time-frame

Involvement with Designers (40%)

- Attend meeting with Thai designer during creative design meetings
- Research and gather data of new trend and acquire the appropriate raw materials for the US market
- Coordinator between Thai designer and American Customers

Purchase office supplies (5%)

- Purchase the necessary office supplies not more than 2 times a month; always keep an ongoing list of needed items

Order shipping supplies (5%)

- Order boxes, padded pack, and int'l AWB for international shipments

Repairs (25%)

- Keep accurate record of inventory, repair, special order and melt down
- Keep record of the pieces that [the petitioner] send back to repair
- Have repair facility sign documents for input into the repair Log
- Keep record of the pieces that we send for melt down or redesign

A letter from the managing partner states that the beneficiary's specialized knowledge is a result of her involvement with the foreign entity's factory, as the niece of the owner, since she was in her mid-teens and through her experience cataloguing molds and working in the casting, polishing, and the stone setting departments for the foreign entity since her graduation from university. The partner states that the beneficiary graduated from [REDACTED] with a major in international business and a minor in business English, and her specialized knowledge is a result of her university degree as well as her completion of a jewelry design course and graduation from a gem identification and semi-precious stone appraisal and valuation program offered at the Bangkok branch of the [REDACTED]

As evidence of the beneficiary's education and training, the petitioner submits the beneficiary's bachelor degree in business English from [REDACTED] and a transcript from the [REDACTED] for a two month course in Jewelry Design.

The director denied the petition concluding the petitioner failed to establish that the proposed duties require specialized knowledge or that the beneficiary possesses specialized knowledge. The director noted that,

though specifically requested, the petitioner did not submit an explanation as to why each duty requires a worker with specialized knowledge. Further, the director stated that the record did not establish that the beneficiary possesses knowledge beyond that normally acquired by employees working in any jewelry manufacturing business.

On appeal, the petitioner asserts that the position requires a business specialist with a specialized knowledge of the gem business, and that gemology is a specialized field because it is a form of mineral science. The petitioner asserts that gemologists are rare in the United States and that the beneficiary possesses specialized knowledge in gemology because she has knowledge regarding the use of "a variety of specialized handtools [sic] and equipment to design and manufacture pieces of jewelry."

Finally, the petitioner claims the beneficiary possesses specialized knowledge because of her familiarity with the Thai language and culture. The petitioner states that the beneficiary's cultural knowledge can only be acquired when a person is "born and raised with that set of values."

In support of the appeal, the petitioner submits documents printed from various internet sources describing the jewelry and gemology industries and the field of international business; information on courses from the Asian Institute of Gemological Sciences on gem identification, gem grading and pricing, and gemologist accreditation; a website showing the results of an internet search for gemologists in the petitioner's locality; and U.S. Census Bureau statistics on the number of U.S. households that speak English and Thai.

Upon review, the petitioner has not established that the beneficiary's current position or proffered position in the United States requires an employee with specialized knowledge or that the beneficiary possesses specialized knowledge 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. 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 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 based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of international business, Thai culture, and the jewelry and gemstone industries.

Preliminarily, the regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. While the petitioner responded to the RFE, it failed to provide evidence clearly and specifically requested by the director. As noted by the director, the petitioner failed to submit an explanation of why of the beneficiary's proposed duties requires a worker with specialized knowledge. Beyond that, the petitioner did not provide the requested documentary evidence of "pertinent training courses in which the beneficiary has been enrolled while working for [the] company, as well as the duration of the courses, the number of hours spent taking the courses each day, and certificates of completion of the courses"; the number of individuals similarly trained or employed by the company; an explanation of how the beneficiary's knowledge differs from the knowledge or training of her colleagues; the amount of time it would take for other employees to acquire beneficiary's claimed specialized knowledge; and/or evidence that the beneficiary was provided training by the company beyond what is generally provided in the field. The petitioner's failure to submit the requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

The petitioner asserts on appeal that the position of gemologist requires specialized knowledge and submits documents describing the position of gemologist, however, the Form I-129 and accompanying letter state that the beneficiary will be employed as a business operations support specialist, not as a gemologist. Furthermore, the majority of the beneficiary's duties appear to be related to the company's business operations. For example, the petitioner states that the beneficiary's duties include: acting as a liaison to communicate and coordinate between the petitioner and foreign entity, performing translations, researching marketing, overseeing design by researching and surveying jewelry trends, creating daily and weekly manufacturing reports, and controlling the raw material inventory using spreadsheets. As mentioned above, the petitioner failed to explain why each duty requires specialized knowledge and has not provided a description of the duties or additional evidence to demonstrate that the duties require knowledge beyond a typical business operations position.

The petitioner also failed to provide evidence that the beneficiary possesses specialized knowledge. Although the director requested certificates of completion and documentary evidence of the duration and hours of the all of the beneficiary's pertinent education and training, the petitioner failed to provide documents to support the petitioner's claims. The record contains no evidence that the beneficiary holds a bachelor's degree in international business. The only degree submitted as evidence of the beneficiary's education is a bachelor's degree in business English. There are no additional degrees, transcripts, or other evidence that the beneficiary has a degree in international business. Likewise, there is no evidence supporting the managing partner's claims that the beneficiary graduated from a program offered by the [redacted] with a primary study of gem identification and valuation. The only evidence of training beyond the beneficiary's

bachelor's degree in business English is the transcript for a two month jewelry design course. On appeal, the petitioner submits course information for an A.G. diploma offered by the [REDACTED] however, there is no evidence in the record to show that the beneficiary enrolled in or completed the described courses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Without documentary evidence to support the petitioner's claims, it has not been established that the beneficiary has specialized knowledge in international business or gemology based on her education or training.

The petitioner further claims the beneficiary's experience with Thai culture and her ability to speak the Thai language are additional bases of specialized knowledge. While the beneficiary's cultural experiences and linguistic abilities are undoubtedly helpful in the petitioner's business dealings with the foreign factory, for the purposes of the establishing eligibility for the requested visa classification the AAO cannot find that a beneficiary's life experience and innate abilities constitute specialized knowledge. To be employed in a specialized knowledge capacity, the regulations require the beneficiary has a special or advanced knowledge of a product, process, or procedure of the company. *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The beneficiary's ability to speak Thai and her cultural background are not specific to the petitioning organization or claimed foreign affiliate. The plain meaning of the term "specialized knowledge" is knowledge of or expertise in a company's product or processes and procedures, rather than a skill generally held outside the organization.

Although, the beneficiary's language skills may be relatively scarce in the U.S., the AAO cannot find that the beneficiary's familiarity with her native language and the culture of the country which she was raised constitute specialized knowledge specific to the organization. The petitioner may find the beneficiary to be a perfect fit for the organization based on her language skills and knowledge, and may even deem these qualities exceptionally difficult to find in the U.S. workforce, however, knowledge of the Thai language and culture is clearly not specialized knowledge as defined in the act or regulations.

Whereas, the AAO acknowledges that the specialized knowledge need not be narrowly held within the organization to be considered "advanced;" it is equally true, however, to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout the company. If all similarly employed workers within the organization receive essentially the same training, the petitioner has not established that the beneficiary's knowledge is advanced. As mentioned above the petitioner has not provided sufficient documentary evidence of the beneficiary's education or training and has not provided any evidence of the training, education or experience of other employees. Without the evidence to compare the the beneficiary's education, training, or experience with other employees it is not possible to determine that the beneficiary's knowledge is advanced or specialized beyond what is commonly found within the organization or within the industry. Additionally, the petitioner has not provided evidence to show that the experience or training the beneficiary acquired while working with the foreign company is so substantially different from the knowledge common in the field, such that the knowledge acquired is special.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed by the foreign entity in a specialized knowledge capacity for one continuous year out of the three years immediately preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). The evidence on record states that the beneficiary's duties in her position with the foreign entity include: opening and closing the office, receiving

and sending raw materials to the factory, involvement with designers, purchasing office supplies, ordering shipping supplies, and keeping records of repairs. The petitioner has not provided sufficient detail or evidence to establish that the beneficiary required specialized knowledge to perform these duties.

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. Here, for the reasons discussed, the petitioner did not submit relevant or probative evidence in support of its claims that the beneficiary is qualified for the requested classification.

For the reasons discussed above, the evidence submitted fails to establish that the beneficiary possesses specialized knowledge and has been or will be employed in a specialized knowledge capacity. *See* Section 214(c)(2)(B) of the Act.

III. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.