



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 01 2014** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“director”), denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129) 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 Colorado corporation, is in the telecommunications industry. The petitioner states that it is an affiliate of [REDACTED]

[REDACTED] The petitioner seeks to engage the beneficiary as an information technology project coordinator for a period of three years.

The director denied the petition, concluding that the petitioner had failed to demonstrate that the beneficiary possesses specialized knowledge or that he would be employed in a capacity requiring specialized knowledge.

On appeal, counsel contends that the proprietary nature of the knowledge held by the beneficiary establishes it as specialized. Counsel asserts that the beneficiary’s knowledge is not held by other companies in the industry or commonly held within the company.

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, Petition for a Nonimmigrant Worker, 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. THE ISSUE ON APPEAL

The sole issue addressed by the director was whether the petitioner established that the beneficiary possesses specialized knowledge and whether he was employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

A. Facts

The petitioner filed the Form I-129 on July 5, 2013. The petitioner stated that [REDACTED] merged in 2011 "creating the nation's third largest telecommunications company in the United States." The petitioner indicated that "the company provides broadband, voice, wireless and managed services to consumers and businesses across the country," including "cloud infrastructure and hosted IT solutions for enterprises." The petitioner stated that it is a Fortune 500 company which generated \$15.35 billion in revenue in 2011 and that it employs approximately 45,000 people in the United States.

The petitioner indicated that the beneficiary began working for the foreign entity in December 2009 as a software engineer assigned to the infrastructure application and middleware support team (IAMS) "responsible for the management of applications residing in the [REDACTED] environment." The petitioner

stated that the beneficiary handled alarms, resolved outages (or SWATS) and implemented code releases. The petitioner explained that the beneficiary was promoted to a senior software engineer on the IAMS team in April 2012, and in this capacity, “he had the responsibility of managing the applications and ensured that all of his applications were meeting the SLA (Service Level Agreements) for availability.”

The petitioner described the beneficiary’s duties and knowledge in the position of senior software engineer as follows:

[The beneficiary] is responsible for managing a group of 24 web applications in Consumer Markets, Enterprise Ordering, Network Services and e-Commerce business units. He has several years of extensive knowledge of [redacted] network and web application in our internal [redacted] platform including: [redacted] as well as their upstream and downstream interfaces. [The beneficiary] has a clear understanding of all phases of the application life cycles and has demonstrated capabilities in the domain, functional and technical knowledge of the internally developed and proprietary Consumer Markets, Enterprise Ordering, Network Services and e-Commerce business applications hosted on the [redacted] platform. The [redacted] platform refers to the technology environment which hosts the applications for client use. These applications are complex and have a variety of interfaces with other applications.

The petitioner set forth the beneficiary’s duties abroad indicating that he spent 40% of his time acting “as a Disaster Recovery Coordinator,” reviewing and updating disaster recovery plans and actively participating in improving quality control; 20% of his time on coordinating “a group of off-shore team members, guiding and mentoring them in troubleshooting, and application management;” 20% of his time working “with the project team on hardware upgrades from initiation through the implementation process;” and 20% of his time performing application troubleshooting.

In addition, the petitioner explained the beneficiary’s knowledge as follows:

[The beneficiary] is considered the Subject Matter Expert for the Call Handling suite of applications including [redacted] web applications...Due to the complexity of these applications, it takes a year or more of internal training to gain sufficient understanding on how these systems work end-to-end. Having an employee like [the beneficiary] with this knowledge is uncommon and makes him a crucial asset to the team. Many of the current [redacted] Application Operations team members are new and are less knowledgeable, and do not possess the End-to-End view of our internal Network Service systems, order flows, and troubleshooting skills compared to [the beneficiary]. Indeed, at this time, [the beneficiary] is the only team member who is able to effectively provide End-to-End knowledgeable service for all client order issues. The current project requires extensive knowledge on processes to co-

ordinate and handle all cycles of application development and maintenance and [the beneficiary] is the only member in the team who is ITIL (Information Technology Infrastructure Library) Foundation certified and is well trained in process areas.

The petitioner explained that the beneficiary “received a Certificate of Achievement for outstanding contribution in National Workflow” in March 2011, and that he was one of only fifteen employees to receive this award out of 2,500 employees in both the United States and India. Further, the petitioner stated that the beneficiary received “the Outstanding Team Award for exceptional performance on the Infrastructure and Middleware Support Team” in November 2011, and that he was one of the top three submissions out of twenty five entries and this is among 1,500 employees. The petitioner indicated that the beneficiary is the most senior member of his team consisting of nine members.

The petitioner explained that the beneficiary would be assigned to the “[redacted] Application Production Operations Team” in the United States, and that he would be responsible for managing production applications to ensure that service level agreements are met. Similar to his capacity abroad, the petitioner noted that the beneficiary would work “on the Consumer Markets, Enterprise Ordering, Network Service and e-Commerce applications in the [redacted] environment.” The petitioner stated that the beneficiary’s knowledge “can only be obtained by hands on experience with the applications and all of the associated application interfaces.” The petitioner indicated that the beneficiary’s “contributions will lead to product design enhancements, and solution implementation.” Further, the petitioner stated that the petitioner lacks an employee in the United States who possesses the beneficiary’s “end knowledge and experience with Call Handling, Enterprise Ordering and e-Commerce applications to assist with design and enhancements and improvements.” The petitioner explained that it would take at least a year to train another employee to the level of the beneficiary, and that this would “negatively impact production timelines.” The petitioner submitted evidence demonstrating that the beneficiary has a Bachelor of Technology Degree in Electronics and Communication Engineering from the [redacted]

The petitioner also provided a support letter from [redacted] a Project Lead with the foreign entity and the beneficiary’s supervisor. Mr. [redacted] largely reiterated much of that previously stated about the beneficiary’s knowledge and qualifications. However, he further stated that the beneficiary “is in charge of other team members and also works as a configuration controller for SEP (Software Engineering Processes) that are internal to [the company].” He indicated that “[the beneficiary] has gained critical experience and knowledge in various tools and language, some of which are unique to our company, and some of which are common to the industry but tailored to meet our unique business needs.” In addition, he stated that the beneficiary is the most senior member of his team of nine other software engineers. A submitted foreign organizational chart of the beneficiary’s department reflected Mr. [redacted] project lead, overseeing [redacted] senior software engineer, [redacted] software engineers, [redacted] software engineer trainee, [redacted] module leads, and the beneficiary. The beneficiary was not shown as having any subordinates.

Furthermore, the petitioner submitted a resume for the beneficiary indicating that he was “currently working as a senior software engineer- application for [redacted] projects” and that he was “handling more than 400+

applications in [REDACTED] environment as [REDACTED] project.” The resume indicated that the beneficiary had been working on the [REDACTED] project since December 2009 on a team with sixteen members.

Lastly, the petitioner submitted various training certificates relevant to the beneficiary, including the following trainings completed on the referenced dates: (1) [REDACTED] with [REDACTED] June 2013; (2) [REDACTED] June 2013; (3) Managing [REDACTED] in [REDACTED]; (4) Foreign Corrupt Practices Act- June 2011; and (5) the completion of the ITIL Foundation Examination in January 2013. Further documentation also indicated that the beneficiary had received accommodation for his efforts from management on a few occasions, including for “making National Workflow a success” in March 2011.

Based on an initial review of the record, the director issued a request for evidence (RFE). In the RFE, the director stated that it was not apparent from the evidence submitted how the beneficiary’s duties differed from those in similar positions in the industry. As such, the director requested that the petitioner submit the following evidence relevant to the beneficiary’s asserted specialized knowledge capacity abroad: (1) a more detailed description of the beneficiary’s duties abroad, including the percentage of time required to perform the duties, (2) an explanation of why others have not acquired the beneficiary’s special or advanced level of knowledge and how the position is different from other software engineers employed by the foreign entity or others employed in similar positions in the industry, and (3) an organizational chart showing the beneficiary’s department including the names of the employees, their job titles, a summary of duties for each employee, and their education levels and salaries.

The director also indicated that the evidence submitted did not sufficiently establish how the beneficiary’s knowledge was uncommon, noteworthy, distinguished by some unusual qualification, or not generally known by practitioners in the beneficiary’s industry. Therefore, the director asked that the petitioner submit: (1) a letter from the beneficiary’s supervisor describing his training or experience with the foreign entity, (2) a detailed description of the beneficiary’s specialized knowledge, including the time required to obtain the knowledge, an indication of whether the knowledge was held by others in the organization or the field, and/or an explanation of significant projects, (3) an indication of the total number of employees abroad and in the United States that had the same knowledge as the beneficiary, and (4) documentation of training completed by the beneficiary and how this training established his special or advanced level of knowledge. The director further stated that the petitioner had failed to demonstrate that the beneficiary’s duties in the United States were special or advanced, noting that it had failed to compare his duties against other employees engaged in similar work. Therefore, the director requested that the petitioner submit: (1) a more detailed description of the beneficiary’s duties, including an explanation of how his duties would be different from those of other workers employed by the company or other similar U.S. employers, (2) any training to be provided by the beneficiary in the United States, and (3) an organizational chart for the beneficiary’s proposed department in the petitioner’s organization, including the names of the employees, their job titles, a summary of duties for each employee, and their education levels and salaries.

In response, counsel emphasized the proprietary nature of the beneficiary's knowledge of the company's call handling web tools and applications, indicating that "not only is the Beneficiary's knowledge uncommon and advanced, but it involves and requires proprietary knowledge that is not found in other companies in the industry nor commonly held with the Petitioner's organization abroad or in the United States."

In support of the assertion, the petitioner submitted an opinion from [REDACTED], a professor in the Department of Computer Science at the [REDACTED]. Mr. [REDACTED] stated the following with respect to the beneficiary's knowledge:

While I cannot comment with respect to the named beneficiary's specific knowledge, I can state with a high-level of certainty that many of the specific web application tools and technologies listed above are unique to [the petitioner]. They are not common within the telecommunications industry. Indeed, the knowledge required to develop, operate, and maintain these technologies very likely is proprietary.

Further, the petitioner submitted another letter of support from the beneficiary's supervisor abroad Mr. [REDACTED] which largely reiterated previous statement made about the beneficiary's duties and knowledge. However, Mr. [REDACTED] further stated that "while other employees work on these applications no other employee within our organization has the same in-depth knowledge of these proprietary web tools and applications as [the beneficiary]," and he further noted that "no worker outside of our company would have proprietary knowledge of these tools." He also added that the company was an international leader in telecommunications, specifically in "cloud infrastructure and hosted IT solutions for enterprise customers," but noted that "competition amongst telecommunication companies is fierce." In addition, the petitioner provided an updated foreign organizational chart including short duty descriptions for each of the members of the beneficiary's department, except for his supervisor Mr. [REDACTED]. For instance, the chart noted that Mr. [REDACTED] software engineer "works as a production application support engineer" which involves "resolving the incidents as per Service level agreements," and that Ms. [REDACTED] software engineer works in the same capacity "configuring the monitoring tools for the applications in production environment." The chart also noted that Mr. [REDACTED] - senior software engineer had nine years of experience and that he acted as an application coordinator, "scheduling the releases to the applications" and acting "as a Lead on call."

The petitioner further provided a support letter from the beneficiary's proposed supervisor in the United States, [REDACTED] - Manager IT Operations. Mr. [REDACTED] mainly reiterated the same assertions submitted previously on the record regarding the beneficiary's knowledge and experience, but added that the beneficiary's "knowledge is not found outside of our company, nor are there many others within our 45,000 person organization with the level of knowledge possesses [sic] by [the beneficiary]." Mr. [REDACTED] stated that "only a few select number of employees work in this role given the mission critical nature." He further indicated that there was no one with the beneficiary's knowledge on "the U.S. team," and that the beneficiary will mentor and train his fellow team members on the company's consumer markets, enterprise ordering, network services and e-Commerce proprietary applications. An organizational structure relevant to the beneficiary's department in the United States showed that the beneficiary was one of six professionals reporting to [REDACTED] Sr. Lead IT Engineer. The other subordinates to Mr. [REDACTED]

Lead IT Engineer, [REDACTED] Sr. IT Engineer, [REDACTED] - Sr. IT Engineer, [REDACTED] - Sr. IT Engineer, and [REDACTED] IT Project Coordinator. Ms. [REDACTED] was listed as having expertise in “call handling,” similar to the beneficiary in his capacity as an “IT project coordinator.” The organizational chart also indicated that the beneficiary had expertise in “Win 2008 R2” and “migration.”

In denying the petition, the director stated that the beneficiary’s duty descriptions were similar and typical of a software developer as specified in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. As such, the director concluded that the evidence submitted failed to establish that the beneficiary’s knowledge or experience was significantly different from that possessed by other similarly employed workers in the same industry.

On appeal, counsel references memos from INS director [REDACTED] in March 1994 and [REDACTED] in December 2002 to stand for the premise that the beneficiary’s knowledge of the company’s proprietary tools is sufficient to establish it as special or advanced. See Memorandum from [REDACTED] Assoc. Comm., INS, “Interpretation of Specialized Knowledge,” March 4, 1994 ([REDACTED] Memorandum) and Memorandum from [REDACTED] Assoc. Comm., INS, “Interpretation of Specialized Knowledge,” December 20, 2002. Counsel reiterates that knowledge of the company’s proprietary tools is not commonly held in the petitioner’s organization or in the industry. Counsel emphasizes that training another employee to the beneficiary’s level would take a year and notes that the petitioner’s team in the United States has no one with the same knowledge as the beneficiary.

B. Analysis

Following a review of the totality of the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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.

In order to establish eligibility, the petitioner must show that the individual’s prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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 matter, the petitioner has provided contradictory explanations and evidence related to the beneficiary's claimed specialized knowledge. For instance, the petitioner states that the beneficiary is the most senior member of a team of nine working for the foreign entity. However, the organizational chart reflects that there is a senior software engineer on the beneficiary's team abroad with nine years' experience, or approximately five more than the beneficiary. The foreign organizational chart also indicates that the team is overseen by Mr. [REDACTED] the beneficiary's supervisor, who is listed as the "project lead." As such, the submitted organizational chart does not suggest that the beneficiary is the senior member of his team abroad. Moreover, the petitioner provided a resume for the beneficiary stating that he has worked on a team abroad with sixteen members, whereas the record elsewhere indicates that the beneficiary worked on a team with nine employees. The resume also states that the beneficiary worked on [REDACTED] technologies or concepts that are not mentioned in the explanations of the beneficiary's specialized knowledge. The petitioner further states that the beneficiary will provide training to the members of his proposed U.S. team in the company's proprietary applications, but the submitted organizational charts indicate that the beneficiary will be working with similarly qualified colleagues in equivalent capacities, thereby raising questions as to this assertion. Further, the U.S. organizational chart indicates that the beneficiary has expertise in "Win 2008 R2" and "migration," technological concepts not clearly articulated in the descriptions of his specialized knowledge or elsewhere described on the record. 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). Again, 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.

Furthermore, the petitioner has not provided evidence that compares the beneficiary's knowledge with similarly employed workers within or outside the company as is necessary to demonstrate that his knowledge

is special or advanced. The beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other software engineers in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Therefore, as detailed above, the director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced. However, the petitioner's response to the RFE included minimal evidence relevant to comparing the beneficiary against similarly employed workers, and therefore failed to establish his knowledge as special or advanced. Failure to submit 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). Merely stating that the beneficiary is the most knowledgeable is not sufficient. 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)).

For instance, submitted organizational charts relevant to the foreign entity and petitioner both include employees with similar titles and duties as the beneficiary. Indeed, the beneficiary's team includes another senior software engineer, Mr. [REDACTED] with more experience than the beneficiary and the same level of education. Further, this organization chart also includes two software engineers, Mr. [REDACTED] and Ms. [REDACTED] who both perform duties similar to those specified as being performed by the beneficiary, such as "resolving incidents per service level agreements" and "configuring applications in a production environment." Likewise, the U.S. organizational chart includes three senior IT engineers, a lead IT engineer, and another employee acting in the same capacity as the beneficiary. Further, another of the beneficiary's proposed colleagues in the United States, Ms. [REDACTED] is stated to have expertise in "call handling," a described specialty of the beneficiary. In addition, the beneficiary also has a supervisor with the foreign entity, and a proposed supervisor with the U.S. entity, who presumably have some level of advanced knowledge of the company's proprietary tools. Although the petitioner states that "many of the current [REDACTED] Application Operations team members are new and are less knowledgeable and do not possess the End-to End view of our internal Network Service systems, order flows, and troubleshooting skills compared to [the beneficiary]," the petitioner fails to substantiate this assertion through relevant comparisons of the beneficiary against his colleagues. Therefore, the petitioner has not provided sufficient explanation or evidence to demonstrate that the beneficiary's knowledge surpasses that of his colleagues as necessary to demonstrate that it is noteworthy or uncommon. In fact, the evidence submitted suggests that the beneficiary's colleagues abroad, and in the United States, hold similar knowledge of the company's proprietary applications.

The petitioner merely states that the beneficiary holds the most knowledge of company's proprietary tools within his foreign and U.S. teams. However, the petitioner does not specify how many teams work on customer projects or assignments. Given the evidence submitted, it can be reasonably presumed that the company has many teams working on various different projects, particularly considering that it is stated to employ over 45,000 employees. The petitioner states that "there are not many others" with the same advanced knowledge as the beneficiary, but fails to explain how many others in the organization have this knowledge. Further, the petitioner provides various certificates demonstrating the beneficiary's completion of trainings during his tenure with the company, but fails to explain why these trainings set the beneficiary apart or establish his knowledge as specialized. For instance, the petitioner states that the beneficiary "is the only

member in the team who is ITIL (Information Technology Infrastructure Library) Foundation certified,” but fails to explain the significance of this certification or articulate how many others within the company have received this designation. In sum, the petitioner has not sufficiently compared the beneficiary against his colleagues as is necessary to demonstrate that his knowledge is specialized, beyond simply stating that he is the most knowledgeable. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

Again, 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. As noted above, the petitioner has not provided any detailed comparisons of the beneficiary against his colleagues. In addition, the petitioner has failed to compare the beneficiary against other similarly placed employees in the field. The petitioner states that although it is a leader in the field, it faces “fierce” competition from other similarly placed competitors. Based on this statement, and without supporting evidence to the contrary, it is reasonable to conclude that other telecommunications companies have software engineers utilizing proprietary applications similar to those understood by the beneficiary. As asserted by counsel, it is not alone sufficient to demonstrate that a beneficiary’s knowledge is proprietary. Indeed, the Puleo memo referenced by counsel states the following with respect to a petitioner’s burden of proof:

From a practical point of view, the mere fact that a petitioner alleges that an alien’s knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien’s knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien’s field of endeavor. Likewise, a petitioner’s assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

The petitioner’s claims are based on the fact that the beneficiary holds proprietary knowledge of the petitioner’s products. The statutory and regulatory definitions of “specialized knowledge” do not include a requirement that the beneficiary’s knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary’s purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either “special” or “advanced.” Consistent with the guidance provided by the Puleo memorandum cited by counsel, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

Lastly, the petitioner relies heavily on an expert opinion provided from [REDACTED] a professor in the Department of Computer Science at the [REDACTED]. The petitioner asserts that Mr. [REDACTED]’s statements demonstrate that the beneficiary’s knowledge is proprietary, and therefore, specialized. First, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter*

of *Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795.

Here, the expert opinion of Mr. [REDACTED] is not probative in establishing the beneficiary's knowledge as specialized. Indeed, Mr. [REDACTED] states that he "cannot comment with respect to the named beneficiary's specific knowledge," suggesting that he holds little direct knowledge of the beneficiary's qualifications, actual knowledge, or the industry within which the beneficiary operates. Mr. [REDACTED] only tepidly endorses the beneficiary's knowledge as including applications that are unique to the petitioner. However, as stated, it is not alone sufficient to demonstrate that knowledge is proprietary to establish it as special or advanced. As such, the expert opinion of Mr. [REDACTED] is not persuasive in establishing the beneficiary's eligibility.

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 or that he 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

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.