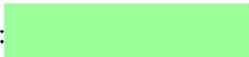


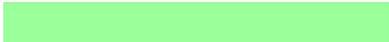


U.S. Citizenship
and Immigration
Services

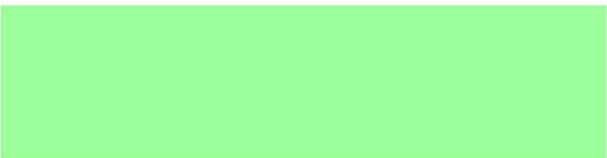
(b)(6)



DATE: **AUG 18 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

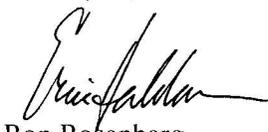
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, Vermont Service Center, 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 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 is a Delaware corporation engaged in custom computer programming services. It claims to be an affiliate of the foreign entity, [REDACTED], located in Russia. The petitioner employs the beneficiary as a functional analyst and seeks to extend his status. The petitioner indicates that the beneficiary will be based primarily at the [REDACTED] Washington worksite of its client, [REDACTED].

The director denied the petition, concluding that 'the petitioner failed to establish: (1) that the beneficiary possesses specialized knowledge or that he would be had been employed abroad or would be employed in the United States in a position requiring specialized knowledge; (2) that the beneficiary was employed with a qualifying foreign entity for at least one year in the three years preceding his admission as an L-1 nonimmigrant; and (3) that the beneficiary's employment in the United States would not be labor for hire as defined in the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director erred in denying the petition, and asserts that the beneficiary holds specialized knowledge of proprietary products which were developed for the client, but owned by the petitioning company. Counsel further emphasizes that the petitioner provided evidence that the petitioner will control and supervise the beneficiary's off-site employment and to establish that it provides project-based software development services that fall outside the scope of the "labor for hire" provisions of the L-1 Visa Reform Act. Counsel submits a brief and evidence in support of the appeal.

The AAO will withdraw the director's finding that the petitioner failed to establish that the beneficiary had the requisite one year of employment abroad within the three years preceding his admission to the United States as an L-1B nonimmigrant in 2010. The petitioner has consistently stated that the foreign entity employed the beneficiary from July 2009 to September 2010 and submitted reliable evidence in support of these claims. The remaining grounds for denial will be addressed below.

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.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

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

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. SPECIALIZED KNOWLEDGE

The first issue addressed by the director was whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

A. Facts

The petitioner filed the Form I-129 on June 3, 2013. The petitioner stated that it is a member of the [REDACTED] a successful Russian IT enterprise. The petitioner states that the foreign entity, where the beneficiary was previously employed from July 2009 through September 2010, is the petitioner's affiliate based on common ownership by [REDACTED]. The petitioner stated that its group employs over 5,400 individuals globally and 74 within the United States and that it "utilizes its deep domain and industry-specific expertise to develop high quality software for our clients' mission-critical products, processes and applications." The petitioner stated that it provides "end-to-end engineering services, specializing in Product Lifestyle Management (PLM) solutions, Computer-Aided Engineering (CAE) tools, Digital Rights Management (DRM) solutions, information protection, 3D data exchange and transformation utilities, and mobile platform development." The petitioner emphasized that it "draws its strength from the leveraging specialized knowledge & deep domain expertise and growing professionals with years of experience behind them."

The petitioner indicated the beneficiary was employed with the foreign entity for 14 months prior to his transfer to the United States under the petitioner's Blanket L petition. The petitioner stated that, during this time, he worked on "several projects" for [REDACTED] as a Lead Specialist/Functional Analyst. The petitioner provided a letter dated May 16, 2013, describing the beneficiary's specialized experience and work abroad as follows:

His responsibilities primarily included providing technical guidance and support to the development team, analyzing functional customer requirements, architecture design, development and maintenance of CATIA V5 CAA Rade based components. Also [the beneficiary] has extensive experience with a wide range of technologies including CAA V5, COM/ActiveX, Win 32 (SDK, STL, ATL), XML, XSLT, PL/SQL, J2EE and integrated development environments as Microsoft Visual Studio (98, .NET, 2005), Eclipse Project under Windows and Unix operation systems.

With respect to the beneficiary's employment in the United States, the petitioner indicates that he is a functional analyst assigned to the petitioner's software projects for [REDACTED] in which his work "has been concentrated on analyzing functional solutions, creating software design, monitoring development

process, and communication with [redacted] technical specialists during and after release implementation." The petitioner identified the beneficiary as one of the lead developers of a proprietary application and software customization project for [redacted]. Specifically, the petitioner stated:

The [petitioner] product, called [redacted] was developed by [petitioner] for [redacted] to implement existing CATIA V4 application suite dedicated to airplane wiring manufacturing process support in CATIA V5 [redacted] environment.

[The beneficiary] will continue in his position as a Functional Analyst at our site in Seattle. In this capacity [the beneficiary] will continue to be responsible for the communication with [redacted] specialists to analyze and specify user requirements, configurations of [petitioner] applications into shared environment, technical consultation of [redacted] specialists during installation and configuration in [redacted] test and production environment, maintaining and testing the system. [The beneficiary] will continue to consult with engineering staff in [petitioner] to resolve technical problems, improve application performance. He will generally utilize scientific programming and system administration skills to identify and resolve any issues with applications. As needed, [the beneficiary] will develop software system testing procedures and documentation. [The beneficiary's] specific duties include the following:

- 1) Analyze customer functional requests;
- 2) Diagnose applications problems and analyze programming solutions to fix it;
- 3) Support installation and configuration of all deliverables;
- 4) Provide periodical reports to customer and work with them to overcome problems and resolve issues;
- 5) Support communication between [redacted] personnel and Moscow team.

[The beneficiary] will be responsible for providing expertise services and system support to the customer and off-shore development teams, conducting customer's problems analysis, clarification of business requirements, proposing programming solutions to resolve issues during software development, advising the customer's subject matter experts, onshore/offshore system analysts, architecture teams and project management personnel to define the solution for the customer's systems and its successful delivery.

The petitioner emphasized that the beneficiary "is critical in consulting [redacted] technical specialists in case of troubleshooting, and problem resolving in [redacted] production environment. His work requires integrated knowledge of the supported system and could be acquired only by his active participation in product development within development team in Russia." Finally, the petitioner stated that the beneficiary is "an employee with specialized knowledge of the company's proprietary systems, services, and major customized products that [petitioner] has developed for major clients internationally."

The petitioner provided a copy of the beneficiary's initial employment "Offer Letter" issued on May 24, 2010. In this letter the petitioner stated that the beneficiary's duties in the United States were to be as follows:

- Provide IT expertise services and system support to the customer and off-shore development teams.
- Conduct customer's problems analysis, clarification of business requirements and propose programming solutions to resolve issues during software development, particularly in the areas of multiple platforms for varying asset classes, the decrease of latency issues, and the enhancement of batch reporting, capacity and performance.
- Advise the customer's subject matter experts, on-shore/off-shore system analysts, architecture teams and project management personnel to define the solution for the customer's systems and its successful delivery.
- Serve as a liaison with the customer, providing status updates, incorporating customer-directed changes and obtaining agreement on customer's requirements implementation both from customers, on-shore and off-shore development teams, facilitating communication between them.

The petitioner provided what appears to be an extract of its organizational chart that identifies the beneficiary as a functional analyst of the "[REDACTED] US Team" subordinate to an engagement manager. The petitioner also provided a "Software Development Agreement" dated February 2, 2000 between The [REDACTED] and [REDACTED] (the petitioner's predecessor) outlining the petitioner's provision of services as a supplier. According to paragraph 6a "[a]ll inventions, discoveries, and improvements, whether or not patentable, conceived, or first actually reduced to practice by Supplier, Subcontractor, or Employees, either alone or with others, in the course of, or as a result of, performance of the Work shall be the sole and exclusive property of [REDACTED]. The agreement indicates that that the scope of services to be provided would be set forth in purchase contracts, which are to include all specifications, schedules, technical descriptions, statements of work and other requirements for each specific order for goods or services from [REDACTED]. The petitioner did not submit a copy of the purchase contract relevant to the beneficiary's current U.S. assignment.

The petitioner provided evidence of the beneficiary's educational credentials, which were evaluated as equivalent to a master's degree in information technology. The petitioner also provided the beneficiary's resume, in which he states that he has 16 years of programming experience in CAD/CAM/CAE and PLM/PDM domains and nine years of experience in component application development for CATIA V5. The resume outlines the beneficiary's experience with the [REDACTED] project (seven months), and indicates that he began working on the [REDACTED] project for [REDACTED] in July 2010.

The director later issued a Request for Evidence (RFE). In the RFE, the director advised the petitioner that its initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge, or that he had been and would be employed in a capacity requiring specialized knowledge. As such, the director requested that the petitioner submit the following evidence relevant to the beneficiary's asserted specialized knowledge capacity abroad: (1) 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; and (2) a letter from the foreign entity describing the beneficiary's specialized knowledge duties abroad including the percentage of time he spent on each duty, how the knowledge is considered advanced within the company or special in the international marketplace, and the minimum amount of time required to obtain the knowledge. Further, the director indicated that the petitioner should submit evidence in support of the letter demonstrating that the beneficiary's knowledge is not generally found in the industry and that the knowledge can only be taught through prior experience with the company. The director also suggested the

petitioner submit evidence of pertinent training courses taken by the beneficiary and/or other documentation from industry sources establishing that the beneficiary's knowledge is special or advanced. Further, the director requested that the petitioner submit a letter similar to that described above, but relevant to the beneficiary's employment in the United States.

In response to the RFE, the petitioner provided a letter from the petitioner's chief executive officer stating that the beneficiary's "specific skills are vital to complete the delivery and implementation of our customized applications for use and installation in the US operations of our major client [REDACTED]". The petitioner reiterated the beneficiary's role and duties stating:

[The beneficiary] will support continuous operation of [the petitioner's] developed application in the [REDACTED] environment. Specifically, he will be critical in consulting [REDACTED] technical specialist in case of troubleshooting and problem resolving in [REDACTED] production environment. His work requires integrated knowledge of the supported system and could be acquired only by his active participation in product development within the [REDACTED] development team in Russia. As in depth knowledge of the specific [REDACTED] application and processes is required to resolve production issues and clarify business requirements, [the beneficiary] has the necessary knowledge as a result of his employment by [the foreign entity].

The petitioner stated that it developed the product, [REDACTED] "for [REDACTED] to implement existing CATIA V4 application suite dedicated to airplane wiring manufacturing process support in CATIA V5 [REDACTED] environment." The petitioner described the applications and stated that the [REDACTED] product "was designed and implemented as a CATIA V5 application." The application was "written in C++ using Catia Application Architecture Rapid Application Development Environment (CAA RADE)." The petitioner stated that "deep knowledge of CATIA V5, CAA RADE and [REDACTED] business processes in 3-d CAD visualization were required to design, prototype and develop [REDACTED] successfully." The petitioner further stated that the specialized knowledge required for [REDACTED] development included CATIA Sketcher, CATIA Part Design, CATIA Product design, CATIA Drafting, and CATIA Electrical 3D Design and included a short description for each of these areas. The petitioner stated that "the V5 Enterprise Tool Suite is used to manage [REDACTED] PLM" and that the suite includes "Dassault System V5 tools (CATIA V5, Enovia, Delmia) as its proprietary tools compatible with V5 [REDACTED]". The petitioner stated that "Dassault System V5 Tools experience and strong knowledge of the [REDACTED] Specific 3-d CAD visualization processes are required to enhance the [REDACTED]".

The petitioner stated that [REDACTED] is a suite of software applications targeted to view, manipulate and analyze large quantities of 3D design geometry and its metadata. It has been developed within [REDACTED] for more than 16 years. Since 2010 the [REDACTED] team has used [the petitioner's] assistance for Software Maintenance, Development, Regression and Content Testing tasks." The petitioner also stated that the [REDACTED] product is a major [REDACTED] application that is supported and was developed by [the petitioner]." The petitioner further described [REDACTED] applications but the description did not further mention [REDACTED].

The petitioner's letter also addressed the beneficiary's specialized knowledge, stating that the beneficiary has the "necessary knowledge for the US assignment as a result of his employment" with the foreign entity. The petitioner stated that his specialized knowledge includes:

- How [REDACTED] applications and customized by [REDACTED] V5 Enterprise tools (CATIA/ENOVIA) are used to support Product Life Cycle management.
- The [REDACTED] customized ENOVIA objects such as parts, instances, discrete assemblies and effectivities that are used to analyze, change, create, maintain, and manage Product Definition Data.
- The specific [REDACTED] entities such as [REDACTED] FULL_PATH_INSTANCE, Interference disposition, CVN and Line numbers identifiers are used to keep, perform and present data extracted from ENOVIA in a more efficient way in [REDACTED]
- Formats of internal [REDACTED] files (like *.info, *.dat, *.ivtq, *.ivts, . .) are used for communications between [REDACTED] applications.
- Detail understanding of [REDACTED] IM application processes (Data synchronization, Search of Clashing Candidates, Clashing, Interference Treatment, Reports Generation)
- [REDACTED] Enovia and [REDACTED]-Update Implementation mechanisms and approaches
- Standard technologies and application background ENOVIA, CATIA, CAA, UNIX/WINDOWS, C++, Java, Perl, Berkley DB.

The petitioner stated "specific application and process knowledge is required to resolve production issues and clarify business requirements" and that "a deep understanding of [REDACTED] customized objects is necessary to support requirements, deliveries and maintenance activities." The petitioner asserted that the beneficiary gained a "strong knowledge base in CAD/CAM objects structure and lifecycle management of the key elements of [the petitioner's] software development products prepared for [REDACTED]" while employed with the foreign entity during the CATIA/ENOVIA design and development which was a "great benefit in allowing him to perform [REDACTED] development needs." Finally, the petitioner asserted that the beneficiary has specialized knowledge of its proprietary systems and major customized products developed for [REDACTED]. The petitioner provided a similar letter from the foreign entity dated September 17, 2013 that corroborated the petitioner's assertions regarding the beneficiary's duties and experience abroad.

The petitioner submitted an organizational chart for the [REDACTED] Program which lists the beneficiary as an analyst on the [REDACTED] services team which also has a lead architect, a development lead and at least six other developers. The beneficiary is also listed as an analyst on the [REDACTED] IM stream team which includes another analyst, a development lead, two architects, and five developers. The [REDACTED] program also has several other teams including an [REDACTED] test team staffed by over 16 individuals. Overall the charts reflect that the [REDACTED] program has over 60 employees working in the United States, Russia and Vietnam.

In a letter accompanying the petitioner's RFE response, counsel for the petitioner stated that "[t]he beneficiary developed valuable and very specialized experience in [REDACTED] CATIA and related [REDACTED] applications while employed in Russia by [the foreign entity], receiving training which is available only to [REDACTED] employees and [REDACTED] major contractors." However, the petitioner did not further address or document any specialized training the beneficiary completed.

The director denied the petition, determining that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he had been or would be employed in a capacity requiring specialized knowledge. The director concluded that, while the beneficiary has significant expertise with a wide variety of third-party technologies, the petitioner has not established that such knowledge qualifies as specialized or

advanced. The director acknowledged the petitioner's claim that [REDACTED] was developed by the petitioner, but emphasized that CATIA is a product developed by Dassault Systems, and its modification by the petitioner to meet [REDACTED] needs is not sufficient to establish specialized knowledge.

On appeal, counsel states that although CATIA is a CAD/CAE software suite developed by Dassault Systems, the petitioner developed a unique set of proprietary algorithms in designing, developing and implementing [REDACTED] for [REDACTED]. Counsel asserts that the director may have misinterpreted the evidence by concluding that the petitioner was merely updating existing client or third party software. Counsel reiterated that the beneficiary was a lead specialist and functional analyst for the [REDACTED] project while he was employed abroad and that the [REDACTED] software product is not merely a modification of another company's product but is the petitioner's proprietary product provided to [REDACTED] and developed to "to function in addition to existing CATIA applications."

On appeal, counsel also asserts that the petitioner has been retained by [REDACTED] to design and develop a complete revision of [REDACTED]. Counsel states that "[REDACTED] was started in 2012" and the goal is to replace the current [REDACTED] subsystem. Counsel also asserts that the beneficiary has been involved in the re-architecting of the [REDACTED] but that the director's decision ignored this assignment.

Counsel contends that the beneficiary, as "senior developer of [REDACTED]" in Russia, has a special knowledge of the petitioner's product that cannot be found in the United States. Counsel states that the petitioner developed code that "consists of 4 frameworks, 27 modules, and more than 8 hundred source files" which is reflected in approximately 150,000 lines of code written by the petitioner's engineers. "[The beneficiary] supervised approximately 30% of the [REDACTED] systems development."

Regarding the beneficiary's specialized knowledge duties in the United States, counsel asserts that the beneficiary's "primary focus has been on the continuing development of integration of the [REDACTED] additional functionality into [REDACTED] existing CATIA V5 environments."

Counsel explains that the petitioner's products are developed primarily in Russia which is where the beneficiary gained specialized and advanced knowledge of its products and services. Counsel further states that prior to working with the foreign entity, the beneficiary obtained general skills that gave him a foundation to take a senior role in the development of the petitioner's products and services. Counsel asserts that the "Director appears to have confused the essential bedrock knowledge which the beneficiary had prior to his employment with [the foreign entity], with the special and advanced experience."

In addition, counsel submits two new support letters from the petitioner and the foreign entity further explaining the advanced nature of the beneficiary's knowledge. The letter from the foreign entity again emphasizes that "[the beneficiary] was one of the key developers of the proprietary application and software application project for our client, [REDACTED] namely making reference to the [REDACTED] application. The foreign entity indicates that [REDACTED] application was completely designed and implemented by the company for [REDACTED] and that it consists of 4 frameworks, 27 modules, more than 800 source files and 150,000 lines of code. The foreign entity explained that the beneficiary led 30% of the development of the [REDACTED] application and provided a list of components developed or supervised by the beneficiary. Further, the foreign entity explains the beneficiary's knowledge of [REDACTED] suite of applications, his design work related thereto, and its complexity. Lastly, the foreign entity states "it is important to mention that when [we] won the contract for [REDACTED] with [REDACTED] we led

extensive search all over Eastern Europe to find people with specific knowledge of CAD/CAM 3-d algorithms and manufacturing practices," including the beneficiary.

Likewise, the petitioner submitted a similar letter from its CEO and HR manager based in the United States largely reiterating the same information set forth in the aforementioned foreign entity letter about the beneficiary's expertise in [REDACTED] applications. The letter indicates that the company's relationship with [REDACTED] began in 2000, that it is actively developing 60 [REDACTED] systems, and that its expected revenue from [REDACTED] in 2013 will be an estimated \$30 million.

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 this matter, the petitioner has not established that the beneficiary possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the beneficiary had been or will be employed in a capacity requiring specialized knowledge.

The petitioner contends that the beneficiary possesses both specialized and advanced knowledge necessary to support continuous operation of [REDACTED] applications in the [REDACTED] environment. However, to support its claim, the petitioner must distinguish the beneficiary's knowledge as different from knowledge that is commonly held by other engineers and analysts in the industry or advanced in comparison to similarly-employed workers in the petitioner's organization. Merely stating that the beneficiary holds proprietary knowledge or establishing that such knowledge is technically complex is not sufficient.

The petitioner indicates that it hired the beneficiary specifically to work on the [REDACTED] project, and recruited him based on his extensive software engineering experience in CAD/CAM and Dassault Systems' CATIA technologies. The evidence submitted also suggests that the beneficiary began working on the petitioner's [REDACTED] application immediately upon commencing employment with the foreign entity. No training in the petitioner's technology or applications was documented, suggesting that the beneficiary's general knowledge of the industry and relevant experience was all that was required for the position. Further, although counsel asserted that the beneficiary completed "training which is available only to [REDACTED] employees and Boeing's major contractors," this training also remains undocumented. While we do not doubt that the beneficiary contributed to the [REDACTED] application's development, the petitioner has not explained how the development of this program required the application of knowledge that is not possessed by other software professionals who are experienced with CATIA V4 and CATIA V5. Despite the director's specific request, the petitioner failed to state the minimum time required to obtain the knowledge necessary for this [REDACTED] "proprietary" program to include training and actual experience after completion of training. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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)).

In fact, the petitioner stated that the design and development of [REDACTED] required "deep knowledge of CATIA V5, CAA RADE and [REDACTED] business processes in 3-d CAD visualization." The petitioner did not explain how any of these areas of expertise are specific to the petitioner's group of companies. Rather, it appears that the position could have been filled by any similarly experienced software professional with the requisite CATIA experience. The petitioner provided substantial evidence relating to the [REDACTED] program and explained that the program is not merely a modification of existing program but rather uniquely designed and developed program customized for its client. Nevertheless, it cannot be concluded that employees engaged in developing and implementing solutions by modifying existing applications, without more, can be considered as having specialized or advanced knowledge. Rather, this type of customization appears to be common in the petitioner's industry and among IT professionals who work for consulting companies.

Further, although the petitioner's specialized knowledge claims are based largely on the beneficiary's involvement with the [REDACTED] project, the beneficiary indicates in his resume that the duration of his

assignment to this project was only seven months, and the project appears to have been completed well before he was transferred to the United States. Even if the petitioner had established that knowledge of [REDACTED] alone constitutes specialized knowledge, the evidence of record does not establish that the beneficiary still works with this application or that it is related to his current assignment to the [REDACTED] program. There is no mention of CATIA or [REDACTED] in the petitioner's lengthy description of the beneficiary's duties on the [REDACTED] project submitted on appeal. The petitioner specifically states that [REDACTED] "is not within CATIA environment."

With respect to [REDACTED] it is described as a suite of software applications developed by [REDACTED] more than 16 years ago, which enables the viewing, manipulation and analysis of large quantities of 3D design geometry and data. The petitioner states that it has assisted [REDACTED] with software maintenance, development regression and content testing tasks related to [REDACTED] since 2010. Despite stating that [REDACTED] developed [REDACTED] for its own use, the petitioner went on to state that it developed [REDACTED] for [REDACTED]. The petitioner has not submitted the purchase contract, statement of work, or other documentation related to the [REDACTED] program to support its claim that it developed [REDACTED]. In fact, the petitioner stated that "a deep understanding of [REDACTED] customized objects is necessary to support requirements, deliveries and maintenance activities." While the petitioner has a large team of 60 or more software professionals dedicated to the [REDACTED] program, it has not established that its ongoing support and maintenance of this [REDACTED]-developed technology requires specialized knowledge specific to the petitioning company.

Further, the petitioner has not demonstrated that the beneficiary developed special or advanced knowledge of [REDACTED] during his period of employment in Russia. Rather, it appears that the beneficiary was transferred to the U.S.-based [REDACTED] team only two to three months after being assigned to the [REDACTED] team in Russia, and that he is currently one of 60 or more team members. His knowledge of [REDACTED] has not been differentiated from that possessed by others assigned to the same large project. In addition, the petitioner indicates that it is currently assisting [REDACTED] with approximately 60 different projects, which suggests that knowledge of the [REDACTED] operating environment is widely known within the petitioning company. The petitioner has not established how the beneficiary's knowledge specific to the [REDACTED] project qualifies as special or advanced, especially since the petitioner failed to provide any formal or informal training requirements relating to the position.

The current 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 knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." Without more, merely claiming that the beneficiary's knowledge is proprietary will not satisfy the standard. On appeal, counsel relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. In the present matter, the most pertinent memorandum is the Memorandum from [REDACTED] Assoc. Comm., [REDACTED] "Interpretation of Special Knowledge," March 4, 1994 ([REDACTED] Memorandum). The [REDACTED] Memorandum concluded with a note about the burden of proof and evidentiary requirements:

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.

Here, the petitioner has not submitted sufficient evidence to set the beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. Again, basing this claim on its proprietary or customer-specific nature or its technically complex nature is not alone sufficient. The petitioner has not sufficiently compared the beneficiary's knowledge to that possessed by his colleagues or other similarly employed workers as necessary to demonstrate that his knowledge is specialized, beyond simply stating that he holds knowledge of the [REDACTED] program and [REDACTED] program. 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.

We do not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is not uncommon among IT professionals in his field. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. 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)).

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. BENEFICIARY'S ASSIGNMENT TO THE UNITED STATES AS "LABOR FOR HIRE"

The next issue to be addressed is whether the beneficiary's placement primarily at the petitioner's worksite is considered labor for hire as defined in section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2).

A. Facts and Procedural History

As previously noted, the petitioner stated that the beneficiary will be posted at the petitioner's facility or various [REDACTED] client sites in the [REDACTED] Washington area. The petitioner stated that the beneficiary will be responsible for "providing expertise services and system support to the customer and off-shore development teams, conducting customer's problems analysis, clarification of business requirements, proposing programming solutions to resolve issues during software development, advising the customer's subject matter

experts, onshore/offshore system analysts, architecture teams and project management personnel to define the solution for the customer's systems and its successful delivery."

The petitioner stated in a letter submitted along with the petition that "[the beneficiary] will remain at all times on the [petitioner's] payroll and under [the petitioner's] exclusive control and supervision."

As previously mentioned, the petitioner submitted a "Software Development Agreement" dated February 10, 2000 between The [redacted] (now the petitioner) pursuant to which it provides professional services. Section 6.a. of the agreement indicated that all "inventions, discoveries, and improvements" created pursuant to the agreement would remain the "sole and exclusive property of [redacted]". In addition, section 5.a. of the agreement titled "qualified employees" stated that "no Employee unsatisfactory to [redacted] will be assigned to perform any of the Work." The section further indicated that [redacted] was entitled to request resumes, references, or other information relevant to the qualifications of assigned employees. Section 5.b. also stated that "if any Employee is or becomes unsatisfactory to [redacted] Supplier [redacted] or its Subcontractor, as the case may be, shall provide a qualified replacement satisfactory to [redacted] in a timely fashion." The section further indicates that [redacted] may cancel the work or contract without obligation if a satisfactory replacement employee is not provided. However, section 5.c. indicated that "all Employees shall at all times be and remain employees of Supplier or its Subcontractor, not employees of [redacted]" and that "supplier shall pay Supplier's employees." An offer letter issued to the beneficiary on May 24, 2010 indicated that the beneficiary would be paid, and remain an employee of, the petitioner.

In the RFE, the director stated that the evidence submitted was insufficient to establish the control and supervision of employees while assigned to the client location and the record does not establish that the beneficiary's placement at the client's location is not an arrangement to provide labor for hire. Therefore, the director requested that the petitioner submit, among other documents: (1) copies of contracts, statements of work, work orders and/or service agreements specifying who retained the authority to fire the beneficiary, who was responsible for his time and pay, and how much the beneficiary was controlled and supervised by the client as compared to the company, and (2) an explanation as to why the beneficiary is not labor for hire and/or how the beneficiary will be primarily supervised and controlled by the petitioner.

In response, counsel stated that "[the beneficiary] is part of a software development team that is working at [redacted] facilities to provide [redacted] with expertise in the maintenance, development, regression and content testing of [redacted] application." The petitioner's letter of support simply states that the beneficiary will support continuous operation of applications developed by the petitioner in the [redacted] environment." The petitioner also provided the beneficiary's pay stubs from the petitioner covering the month of July and August 2013 and the petitioner's organizational chart identifying the beneficiary as an analyst on the [redacted] team and one of only two employees on his team that is physically located in the United States.

In denying the petition, the director stated that the evidence submitted failed to provide insight as to whether the beneficiary would be under the supervision and control of the petitioner during his assignment to the client location. Further, the director found that the evidence demonstrated that the beneficiary's value to the project primarily involves his knowledge of the client's software, methodologies and procedures, rather than specialized or advanced knowledge of the petitioner's products or services.

On appeal, counsel contends that the petitioner has positioned itself as a high end software solutions provider and that it is not in the business of providing labor for hire. Counsel notes that the beneficiary has a matrix reporting structure. For projects, the beneficiary reports to Russia-based Project (release) managers for [REDACTED] and [REDACTED] systems. Administratively, the beneficiary is supervised by "a US (Seattle) based Engagement Manager who reports to Director of Seattle delivery Organization."

The petitioner asserts that its "approach is always to keep full control on its scope of work, be responsible for deliverables milestones, and manage software development as projects as opposed to providing individual contractors." The petitioner asserts that it retains full control over the statement of work, deliverables, and the milestones of the beneficiary's project. Counsel asserts that the director ignored submitted evidence, including the service agreement between the petitioner and [REDACTED] and the organizational charts, which demonstrate that the beneficiary is under the supervision and control of the petitioner while at the client site. Counsel points to a letter from the petitioner's president stating that the beneficiary will remain under the supervision of release managers located in Russia and an engagement manager located in Seattle. The petitioner's president stated that the beneficiary receives instructions from the release managers abroad and that he is prohibited from taking assignments or directions directly from [REDACTED] personnel.

B. Analysis

Here, the petitioner has not submitted sufficient evidence to establish that the beneficiary is primarily under the supervision and control of the petitioner. In fact, the submitted evidence indicates that the beneficiary is one of only two petitioner personnel located at [REDACTED] location, working primarily on the client's [REDACTED] application, and that his supervisors work off location. Further, the service agreement between the petitioner and [REDACTED] reflects that the client retains the right to remove the beneficiary at will and choose his replacement. Despite the requests of the director, the petitioner has failed to provide specifics or requested supporting evidence to corroborate that the beneficiary is primarily supervised and controlled by the petitioner's staff. The petitioner has not provided the purchase contract or statement of work specific to the beneficiary's project. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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)).

Further, the evidence submitted demonstrates that the beneficiary will predominantly provide knowledge of the client's software, methodologies and procedures, rather than specialized or advanced knowledge of his company's products or services. Counsel contends on appeal that the petitioner developed the [REDACTED] application for [REDACTED] benefit and that this represents a proprietary product of the petitioner. However, the agreement between the petitioner and [REDACTED] states otherwise, indicating that that all "inventions, discoveries, and improvements" created pursuant to the petitioner's services will remain the "sole and exclusive property of [REDACTED]" Further, the beneficiary's current project appears to involve the [REDACTED]-develop [REDACTED] suite of applications and not the [REDACTED] application. The petitioner has not submitted statements of work, work orders, emails, or other such documentation to corroborate its claims that the petitioner will primarily direct the beneficiary's provision of services, or that the services to be provided require knowledge specific to the petitioning organization. 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).

Indeed, the preponderance of the evidence suggests that the petitioner is significantly engaged in providing maintenance and support of [REDACTED] application, rather than developing this system, because it is performing such duties as providing "expert service and systems support," "conducting customer problem analysis," and "resolving production and [REDACTED] testing issues." In the present matter, the petitioner has failed to provide sufficient detail and other supporting evidence to overcome the weight of evidence indicating a labor for hire arrangement for the beneficiary. Therefore, for this additional reason, the appeal must be dismissed.

IV. 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.