



U.S. Citizenship
and Immigration
Services

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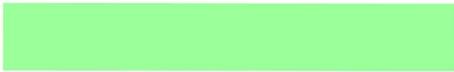


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Office: VERMONT SERVICE CENTER

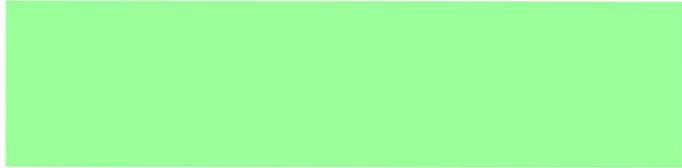


IN RE: Petitioner:
Beneficiary:



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 ("the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an L-1B 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 California limited liability company, states that it is a processor and distributor of wet and dry pet food. The petitioner claims to be the affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a formulation and manufacturing developer of specialty pet food in its Georgia office for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she would be employed in the United States in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director's decision is erroneous in light of the evidence submitted and the applicable law.

I. THE LAW

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

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

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

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

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

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

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

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

II. THE ISSUE ON APPEAL

The issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary would be employed in the United States in a position that requires specialized knowledge.

A. Facts

The petitioner indicated on the Form I-129 that it is engaged in the processing and distribution of wet and dry pet food. It further states that it has 32 employees and a gross annual income of approximately \$3.4 million. The Form I-129 indicates that the petitioner will employ the beneficiary in the position of "Formulation and Manufacturing Developer, Specialty Pet Food."

In a letter of support dated January 7, 2013, the petitioner explained that it required the beneficiary's services on a temporary basis in order to utilize her specialized knowledge and skill of several of its proprietary tools and processes to assist the U.S. company's global product development and manufacturing of its pet food products. The petitioner claimed that the beneficiary had been employed abroad with its affiliate in Thailand since March of 2003, without interruption, and indicated that she had held numerous positions within the organization during that time. The petitioner claimed that she commenced her employment in the position of Supervisor (Production – Shellfish), and was subsequently promoted to a managerial position in 2004. The

petitioner further claimed that she was appointed to her current position of Production Assistant Manager – Pet Food in 2009. Regarding her most recent duties abroad, the petitioner stated:

As the Production Assistant Manager – Pet Food, [the beneficiary] is responsible for managing pet food production, ensuring that standards of quality are met, and that the production plan is completed in a timely fashion. In addition, she oversees manufacturing to further ensure that the standards of quality are met. [The beneficiary] is also responsible for planning, developing, and managing effective processes for production and packaging including supply chain to production. Furthermore, she oversees the coordination of the follow-up tasks to resolve recurring problems in order to achieve the company's set targets for quality, production and efficiency.

The petitioner further expanded on her managerial duties, noting that in her current role abroad, the beneficiary controlled and supervised approximately 550 employees on a daily basis. Specifically, the petitioner claimed that she directly and indirectly supervised 9 managerial level employees, consisting of one Production Senior Supervisor, two Preparing Supervisors, four Pre-Mixed Ingredient/Packing/Mixing Supervisors and two Retort and Store Supervisors.

Regarding her specialized knowledge, the petitioner indicated that her knowledge is focused on four specific areas: (1) Concept5 software; (2) manufacturing machines; (3) retortable packaging; and (4) proprietary flavor system for pet foods. The petitioner briefly addressed each area of knowledge in its letter of support.

Regarding the [REDACTED] the petitioner stated:

[The beneficiary] extensively utilizes [REDACTED] to assist in formulating pet foods. The [REDACTED] was developed in the United States by [REDACTED] and is considered the gold standard for pet food and feed formulation software. [REDACTED] is loaded with a broad range of comprehensive, high productivity formulation functions and serves as the foundation for optional modules that comprise a full suite of Formulation and Management Systems. Its modular design guarantees future expansion by adding options at any time as needs change. A large capacity formulation system structured around a multi-user shared database, [REDACTED] offers a choice of configuration options, from an unlimited number of concurrent users, a single user or scaled to individual needs. [REDACTED] is used on a daily basis to tweak pet food formulas, develop new formulas, or update the nutrients in the myriad of ingredients that are used in manufacturing modern pet food at [the foreign entity].

Regarding manufacturing machines, the petitioner stated that, in the development and formulation of pet foods, the beneficiary utilizes pet food manufacturing machines in a patented proprietary configuration designed specifically for the foreign entity. Specifically, the petitioner claimed that this proprietary manufacturing machine configuration consists of a customized ribbon blender, also known as an industrial mixer; a custom configured [REDACTED] scrapped surface heat exchangers. The petitioner concluded by stating that the design and configuration of these pet food manufacturing machines "is proprietary and extremely valuable intellectual property."

Regarding her knowledge of retortable packaging, the petitioner stated that the [REDACTED] which owns a majority share in both the foreign entity and the U.S. petitioner, was the first company to introduce pet food packaged in retortable, plastic packaging. Specifically, the petitioner stated that the packaging is made of multiple layers and can be made into various forms such as cups or pouches. Despite its multiple advantages, the petitioner claimed that only a limited number of manufacturers in the United States use this packaging. The petitioner further stated:

All of this technology is very proprietary and is considered so confidential that patents have not been filed because the patents would require the company to disclose too much information with regards to the technology. There are an extremely limited number of people in the entire world with the specialized knowledge and skills that were developed with extensive practical experience with this type of technology.

The petitioner further stated that this specialized knowledge and the extensive practical skills associated with the packaging can only be acquired through direct experience with the technology through employment with the petitioner's affiliates. The petitioner concluded that the beneficiary gained such knowledge through her ten years of employment with the foreign entity.

Finally, with regard to the beneficiary's claimed proprietary knowledge of its proprietary flavor system for pet foods, the petitioner stated, in pertinent part:

The proprietary flavor system was developed internally by the [REDACTED] and the know-how of the system and its use are only known within the [REDACTED] of companies. The proprietary flavor system was created to enhance the palatability of pet foods and is extremely important in the production of pet food as it determines how well the pet food is received by the target group.

With regard to her U.S. employment, the petitioner claimed that the beneficiary's exemplary performance at the affiliate company abroad qualified her for the proffered position of Formulation and Manufacturing Developer, [REDACTED]. Noting that the U.S. petitioner was a start-up company, the petitioner stated that it was critical to employ personnel with the production experience possessed by the beneficiary to facilitate development. The petitioner noted further that the beneficiary's duties would include research and development projects as well as quality assurance. Specifically, the petitioner stated:

As a Formulation and Manufacturing Developer, [REDACTED], [the beneficiary] will also serve as a critical liaison with other technical services functions such as Process Engineers, Thermo-Process Staff, Production, Marketing & Sales, and Nutritionists. Additionally, she will be responsible for production in order to meet applicable safety and quality criteria as outlined by the company's Standard Operating Procedures. She will review and make final dispositions on products as necessary. By using knowledge of chemistry, microbiology, and other sciences through processes, she will monitor and guide staff to follow developed [*sic*] or improve methods of processing, packaging, storing and delivering foods.

The petitioner further stated that the U.S. entity would be installing four [REDACTED] at its U.S. location. It claimed that the beneficiary possessed intricate knowledge of these machines since the foreign affiliate had 10 machines in operation. The petitioner claimed that the beneficiary would train U.S. operators on the use of these machines, which it described as high-tech heat sealing machines designed and manufactured exclusively in Italy.

Finally, the petitioner explained that the beneficiary's knowledge of pet food production, formulation, and manufacturing, as well as her specialized knowledge of the [REDACTED] retortable packaging, and the company's proprietary flavor system for pet food, would be beneficial to the U.S. company. It stated:

Currently, [the petitioner] has multiple employees who can start the pet food production machines, but none with the integration knowledge of how all of the specific ingredients interact with blending, mixing, heating, and pressure to produce an exceptional product. There are numerous degreed nutrition programs available throughout the U.S. However, it would still take an individual, even with a nutritional degree, several years to achieve the level of training, education, and experience [the beneficiary] possesses. There is no individual or combination of employees whom possess the same level of experience, skills, and specialized knowledge that [the beneficiary] possesses.

Regarding the training and experience required for the position, the petitioner explained that a college-educated individual would need 3 to 5 years of experience to achieve the same level of competence currently held by the beneficiary. Regarding the beneficiary's individual training, the petitioner stated that the petitioner's affiliate invested approximately \$40,000 into various pet food training courses for the beneficiary, which included topics such as "Pet Food Production Planning" and "Pouch Pet Food Sealing Method." The petitioner claimed that this training, combined with her bachelor's degree in science (Agro-Industry) uniquely qualified the beneficiary to perform the duties of the proffered position.

The petitioner also submitted a copy of the U.S. company's organizational chart, demonstrating that the beneficiary would be part of the petitioner's Research and Development department, along with a copy of the annual report for the petitioner's parent company.

Upon review of the initial record, the director issued a request for evidence (RFE). The director requested that the petitioner provide additional evidence in support of its contention that the beneficiary possesses specialized knowledge and would be employed in a specialized knowledge capacity in the United States. The director also requested evidence regarding the beneficiary's training and how it differentiated from general training provided to all core employees of the company. The director further requested the percentages of time that the beneficiary would devote to various tools and methodologies.

In response to the RFE, counsel for the petitioner submitted a detailed letter also signed by a representative of the petitioner which addressed the director's requests. The petitioner also submitted an expert opinion letter from [REDACTED], professor and evaluator of credentials in the Department of Food Science and Technology for [REDACTED] in support of the beneficiary's claimed specialized knowledge.

The letter submitted in response to the RFE restated most of the duties previously outlined in the initial letter of support that accompanied the petition, with the addition of the percentages of time the beneficiary would devote to each stated area. The petitioner clarified that formulation of new pet foods would require specialized knowledge of raw materials, intimate familiarity with applicable regulatory agency regulations, and unique knowledge of the company's pet food manufacturing machines. The petitioner broke down the beneficiary's primary duties into percentages, indicating that the beneficiary would spend: 10% of her time utilizing the [REDACTED] software; 21% of her time utilizing the proprietary pet food manufacturing machines in a patented configuration; 15% of her time managing the operation of the company's proprietary flavor system for pet foods; 27% of her time supervising the use of retortable packing in pet food production; and 27% of her time utilizing retortable packaging for the production of pet foods.

Counsel for the petitioner addressed the director's queries regarding training, noting that it is the entire body of specialized knowledge possessed by the beneficiary, and not specific training on individual machines, software, or products, that establishes specialized knowledge. The petitioner reiterated that no other employees have the combination of knowledge possessed by the beneficiary. The petitioner claimed that the beneficiary's specialized knowledge was acquired through her ten years of employment experience with the foreign affiliate.

The petitioner also submitted copies of certificates earned by the beneficiary as well as a list of training courses, along with the beneficiary's resume, in support of her claimed specialized knowledge. Finally, counsel referenced a United States Citizenship and Immigration Services (USCIS) memorandum in support of her contention that the beneficiary possesses specialized knowledge.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she would be employed in the United States in a capacity requiring specialized knowledge. In denying the petition, the director found, based on the evidence submitted, that the petitioner had not established that the beneficiary's knowledge, education, training, and employment with the foreign entity, in the field of pet food formulation is significantly different from that possessed by similarly employed workers in the petitioner's industry. Based on the evidence submitted, the director found that the petitioner failed to establish that the beneficiary's knowledge is specialized or advanced in relation to others in the petitioner's organization or the industry as a whole. The director determined that the petitioner had not furnished evidence sufficient to demonstrate that the beneficiary's duties involve specialized knowledge of the petitioner's product, tools, processes, or procedures, as opposed to the skills required merely to use such products.

On appeal, counsel for the petitioner reiterates that the beneficiary possesses specialized knowledge based on her experience, training and work product with the foreign entity. Counsel further asserts that these elements, coupled with the beneficiary's involvement and utilization of the company's proprietary processes and procedures, clearly establishes the beneficiary's eligibility in this matter. Counsel contends that the evidence on record is legally sufficient to establish that the beneficiary possesses specialized knowledge and will be employed in a position that requires specialized knowledge. Counsel asserts that the petitioner has provided evidence to establish that the beneficiary has both: (a) a special knowledge of the company product and its application in international markets; and (b) an advanced level of knowledge of processes and procedures of the company.

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that she would be employed in a position that requires specialized knowledge.

In order to establish eligibility, the petitioner must show that the beneficiary will be employed in a specialized knowledge capacity. See 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS, however, cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence, which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. *Id.* As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge. All employees can be said to possess unique skill or experience to some degree; the petitioner, however, must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

In the present case, the petitioner's claims are based on both prongs of the statutory definition. The petitioner claims that the beneficiary maintains direct responsibility over numerous facets of the company's food line that are proprietary to the organization, and that her ability to create a manufacturing process is based on these proprietary facets that are exclusive to the company and not found elsewhere in the pet food industry. Further, the petitioner contends that the beneficiary's ten years of experience working for the foreign affiliate, the last four of which involved the management of pet food production lines, demonstrate that she possesses an advanced level of knowledge of the company's processes and procedures.

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized

knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner has not shown that the beneficiary possesses a level of knowledge that is specialized or advanced. The beneficiary had been employed by the petitioner's foreign affiliate for approximately ten years at the time the petition was filed, performing similar duties to those she will perform in the United States. The petitioner indicates that the beneficiary's knowledge of its proprietary tools and processes, such as its flavor system for pet food, along with her knowledge of the development process, distinguishes her knowledge from that possessed by other employees at the company and in the industry in general. However, the petitioner has not demonstrated how this knowledge sets the beneficiary apart from any other individual in the same or similar position within the company or the industry. Although the petitioner repeatedly claims that the beneficiary is the only one to possess this special knowledge, the petitioner provides no details regarding the actual number of Formulation and Manufacturing Developers employed by the foreign entity or in its affiliate companies.

The petitioner indicates that the beneficiary would typically supervise and oversee the work of approximately 550 employees per day while working abroad, providing general oversight and supervision through intermediate supervisory personnel. It further indicates that 32 persons are employed by the U.S. petitioner. The beneficiary may in fact be one of few employees in Thailand trained in the development and manufacturing processes discussed above. However, there is no way for the AAO to determine that the beneficiary's knowledge and duties are different or more complex than his coworkers or other managerial employees employed in similar formulation and development positions either by the petitioner or within the petitioner's industry. Merely asserting that the beneficiary is the only one with this knowledge, or one of a select few, without providing evidence to support this claim, will not suffice. 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)).

As the petitioner has not established the beneficiary's knowledge and duties are different or more complex than others within the foreign entity or in the petitioner's industry, the petitioner may demonstrate that the beneficiary's knowledge of and experience with the petitioner's claimed proprietary tools and methodologies, by itself, constitutes specialized knowledge. The AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. Cf. 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). 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." Simply claiming that the knowledge is proprietary by itself will not satisfy the statutory standard.

Here, the petitioner has not established how its internal machines and systems used in the manufacture and development of pet food differs from similar machines and systems utilized by other individuals or companies engaged in pet food production, and therefore has not established that knowledge of these machines and systems rise to the level of specialized or advanced.

For example, the petitioner indicated that the beneficiary possesses a unique knowledge of its various software, machines, and systems that qualify her for the specialized knowledge position in the United States.

Both the petitioner and counsel repeatedly assert that the beneficiary has specialized knowledge of a proprietary flavor system for pet food as well as proprietary, patented manufacturing machines. However, the petitioner has provided no documentation pertaining to this system or these machines, such as their names, evidence of patents or pending patent applications or other related intellectual property claims, or general documentary evidence establishing their existence. The petitioner also emphasizes the beneficiary's specialized knowledge and extensive practical experience with its retortable pet food packaging technology, claiming such knowledge can only be acquired through direct experience working within the petitioner's group of affiliated companies. The petitioner also claims that this technology is *so* proprietary that the filing of patents would require the company to disclose too much information, yet simultaneously claims that a limited number of other U.S. companies are also using this technology. This statement raises questions regarding the legitimacy of the petitioner's proprietary claims, since a general presumption exists that a company who invents a unique and proprietary process or technology would immediately take steps to secure its exclusive right to make, use and sell such a technology.¹

Since it appears that other companies in the petitioner's industry, who undoubtedly employ individuals in similar positions to that of the beneficiary, are using this same type of packaging and thus require individuals familiar with its technology, the uniqueness of the beneficiary's claimed knowledge, therefore, is also questionable. 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).

The AAO has also reviewed the opinion letter prepared by [REDACTED] which states in pertinent part:

[A]n otherwise competent Formulation and Manufacturer Developer, [REDACTED], (but who lacked proprietary, product-specific knowledge gained at [the foreign affiliate] or another affiliate with the [REDACTED]) would be unable to successfully meet the requirements for the position, perform the position's essential knowledge transfer role, ensure the successful implementation of the company's proprietary processes and systems at [the petitioner], ensure product quality and plant safety, and facilitate the necessary, ongoing evolution and advancement of the products in accord with company-specific product roadmaps and the specific requirements of a growing customer base.

The AAO acknowledges [REDACTED]'s observations. However, while individual companies will develop methodologies, products, processes, and procedures tailored to their own needs, it has not been established that similarly employed persons in the field could not readily acquire such company-specific knowledge. As a matter of discretion, USCIS may accept expert opinion testimony. However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is

¹ The AAO notes the claims in response to the RFE, which indicate that retortable packaging was first invented in 1978. However, the petitioner also claims that its parent company invented retortable packaging for pet food, thereby further raising questions with regard to the petitioner's failure to secure its intellectual property rights with regard to such an invention.

ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

The record does not establish that the beneficiary possesses advanced or unique knowledge of the petitioner's proprietary tools or technologies, since there is no documentary evidence establishing the existence of these claimed proprietary assets. As previously stated, 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. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, the petitioner has provided little to no probative evidence or other information relating to the beneficiary's education or training, such that her knowledge could be established as specialized and unique from that of her fellow employees or other similarly-employed individuals in the pet food industry. In response to the RFE, the petitioner provided a thirteen-page list of courses which the petitioner claims were completed by the beneficiary since commencement of her employment with the foreign affiliate in 2003. The extensive list includes courses dealing with pet food issues, but also identifies courses such as "conversational English," "personal hygiene," and "safety rules at work." While this list is extensive, it does little to establish that the beneficiary possesses specialized knowledge that sets her apart from other employees of the company or within the industry in general. There are no details provided about the objectives of each course, and most importantly, the list is not accompanied by a statement or explanation as to how training is conducted for employees within the petitioner's organization. The record does not clarify whether all employees are required to complete the same courses as the beneficiary, nor does it clarify the petitioner's guidelines for on-the-job training. The AAO recalls that the beneficiary supervises 550 employees in the foreign affiliate; however, the record contains no documentation or explanation with regard to how these employees are trained or how and over what period of time they acquire their knowledge of the petitioner's practices. It is noted that the petitioner claims it will take at least 3-5 years for a college-educated individual employed by the petitioner's affiliates to gain the same level of competence as the beneficiary possesses currently. The petitioner has failed to identify how many of the 550 employees of the foreign affiliate have this many years of work experience with the company and why their knowledge is not similar or identical to that of the beneficiary.

Another claim by the petitioner is that the beneficiary is an expert on how to conduct "change-overs" (converting a processing line or machine from one product to another). The petitioner, however, fails to explain how the beneficiary has obtained expert status in this area when compared to her fellow employees, who total at least 550 and many of whom undoubtedly have at least 3-5 years of hands-on work experience with the foreign affiliate. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The 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). In this matter, the director specifically requested that the petitioner submit evidence explaining exactly how the beneficiary's training differs from the core training provided to the beneficiary's co-workers, including the number of workers who possess similar knowledge and who are similarly employed with the organization. The petitioner failed to submit the requested evidence.

Moreover, the petitioner claims that the beneficiary's educational background, i.e., a bachelor's degree in science (agro-industry) is useful in the performance of her formulation and manufacturing duties. The petitioner, however, has not claimed that a bachelor's degree in a related field is uncommon among similar pet food formulators or manufacturers, or suggested that this degree conveyed any specialized knowledge specific to the company's internal systems and processes to the beneficiary. Other than its assertions that the beneficiary is one of a select few individuals with specialized knowledge of its tools and technologies, the petitioner has not adequately demonstrated how the beneficiary possesses a level of knowledge that is specialized or advanced. The petitioner has not submitted any probative evidence of the knowledge and expertise required for the beneficiary's position abroad and in the United States that would differentiate that employment from similar positions within the pet food sector either within the company or at other employers within the industry.

Therefore, although the petitioner asserts that the beneficiary's positions in the United States and abroad require specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a description of the beneficiary's current and proposed job duties, and an extensive training history that is neither explained or quantified, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests that rises to a level that is special or advanced. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the same or similar position at other employers within the industry. The petitioner's claim that the knowledge is proprietary, in reference to its internal tools and technologies, must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; and any claimed proprietary knowledge must still be "special" or "advanced." Again, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

On appeal, counsel for the petitioner relies on the Puleo Memorandum as a basis for her arguments. Specifically, counsel asserts that the memo does not require that knowledge be narrowly held within a company, but merely that it be advanced knowledge. For the reasons discussed in detail above, counsel failed to provide sufficient evidence to support the petitioner's contentions that the beneficiary's knowledge was so advanced that other employees of the foreign affiliate or the petitioner, or in the industry in general, who hold similar positions, could not perform her stated duties. Again, 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). Consequently, since the record contains no independent evidence establishing that the beneficiary's knowledge is advanced and thus not expendable, it is not possible to conclude that her knowledge is specialized and that she thus qualifies for the benefit sought. Furthermore, despite counsel's numerous assertions on appeal, the assertions of counsel will not satisfy the petitioner's burden of proof without documentary evidence to support the claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534;

Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. CONCLUSION

In visa petition proceedings, 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.