

(b)(6)

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JUN 19 2014**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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, a California corporation, is engaged in the packaging business. The petitioner states that it is an affiliate of [REDACTED] Ltd. located in China. The petitioner seeks to employ the beneficiary as a "stretch wrap/blow film/bag seal & cut/recycle machine specialist" in a new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign entity. Further, the director found that the petitioner did not demonstrate that the beneficiary possesses specialized knowledge or that he has been or will be employed in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel states that the director engaged in a superficial review of the evidence and improperly applied the law. Counsel contends that the petitioner demonstrated by a preponderance of the evidence that it has a qualifying affiliate relationship with the foreign entity based on common ownership by the same individual. In addition, counsel states that the beneficiary has been and will be employed in a position requiring specialized knowledge.

### 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.*

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.

The regulation at 8 C.F.R. § 214.2(l)(3)(vi) further provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

#### **I. The Issues on Appeal**

##### **A. Specialized Knowledge**

The first issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge as a result of his foreign employment and whether he will be employed in the United States in a specialized knowledge capacity.

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.

#### 1. Facts

The petitioner filed the Form I-129 on June 12, 2013. The petitioner states that it is an affiliate of the foreign entity, established in 1995, and indicates that the foreign entity "produces a wide range of plastic bags, including T-shirt bags, die cut bags, patch handle bags, handle bags, garbage bags, frosted clear bags, and garment bags and more." The petitioner explained that the foreign entity exports its products around the world and indicates that the petitioner will bring this manufacturing capability and distribution to the United States.

The petitioner further stated that the beneficiary had acted as a machine specialist for the foreign entity since July 1997 performing the following duties:

As the company's Machine Specialist, [the beneficiary's] job duties included the handling and skillful operation of the company's four main machines: 1) Stretch Wrap Machines, 2) Blow Film Machine, 3) Bag seal & Cut Machine, and 4) Recycle Machine. Therefore, [the beneficiary] has had over eight years of experience in handling the parent company's four main machines. During these eight years, [the beneficiary] learned the technical skills and expertise required to adequately handle the company's machines.

The petitioner explained that the beneficiary will be employed in a similar role in the United States and further described the machines he would be tasked with operating and the expertise required to properly operate these machines. First, the petitioner stated that the beneficiary operated a stretch wrap machine made in China which is "comparatively fast" when compared to similar machinery in the United States and noted that "it was hard to find skilled operators for the machine locally." The petitioner noted that blow film is the more popular method for manufacturing similar products in the United States. The petitioner indicated that it takes at least two years to train a new worker to become skilled in the operation of the stretch wrap machine in China. The petitioner also noted that the machine requires "manual adjustment of the machine based upon personal experience" and indicated that this manual operation is not done in the United States due to computerization. The petitioner stated that the experience necessary to manually operate the machine "can only be accumulated through daily operation." The petitioner specified that incorrect operation of the machine, such as not setting the correct temperature, could lead to materials being scrapped during the process.

Further, the petitioner indicated that the beneficiary operated a blow film machine manufactured in China to produce "layered films with 2 rotary screws." The petitioner stated that the machine operates three times faster than ordinary machines of its type in China and noted that the device blows film and prints, rather than performing these operations separately as in the United States. Again, the petitioner explained that it would take a new employee at least two years to learn how to properly operate the machine.

In addition, the petitioner stated that the beneficiary is experienced in operating a bag and seal cut machine manufactured in Taiwan that "is well utilized by many clients in China." The petitioner explained that the device is "very fast," and as a result, the operator needs to be "very skilled." The petitioner indicated that a skilled operator, such as the beneficiary, has experience in setting temperatures to correctly weld plastic bags whereas "it would be impossible for a new trainee to be fully skilled to handle this task without going through [a] demonstration" by a skilled operator. The petitioner specified that it would take a new worker one and a half years under the direction of a skilled operator to learn to operate the device correctly. Lastly, the petitioner indicated that the beneficiary will operate a recycle machine, which requires manual setting of temperatures in order to assure that plastic bags produced can be recycled.

In sum, based on the experience explained above, the petitioner stated that it requires the services of the beneficiary to operate these same machines in the United States. The petitioner also submitted the third-party manufacturers' specification sheets for the referenced machines.

The director issued a request for evidence (RFE) instructing the petitioner to provide evidence that the beneficiary has been and will be employed in a capacity requiring specialized knowledge, emphasizing that the petitioner must demonstrate that the beneficiary's knowledge is distinguished, noteworthy, or uncommon. Specifically, the director indicated that the description of the beneficiary's foreign employment was insufficient to establish that the beneficiary acted in a specialized knowledge capacity, further noting that it failed to compare and contrast the beneficiary's duties with others performing similar work. As such, the director asked that the petitioner provide: (1) a more detailed description of the beneficiary's duties abroad including the percentages of time the beneficiary spends on his duties; (2) an indication of whether others have acquired the special or advanced level of knowledge held by the beneficiary and how the beneficiary's knowledge is different from similarly employed workers in the company and in the industry at large; (3) a foreign organizational chart listing the members of the beneficiary's immediate department, their job titles, and a summary of their duties; (4) a letter from the beneficiary's supervisor abroad describing the beneficiary's training and experience; (5) an indication of the number of employees in the company with the same knowledge as the beneficiary, including job descriptions for those working in similar positions as the beneficiary; (6) documentation showing any training received by the beneficiary and an explanation of how this establishes his knowledge as special or advanced; (7) a detailed description of the beneficiary's proposed duties in the United States including the minimum amount of training and experience required to perform the duties; (8) a detailed description of any training that the beneficiary will provide to U.S. workers, including the amount of time it will take to train these employees; and (9) an organizational chart for the U.S. entity naming all members of the beneficiary's department including their names, job duties and immigration status.

In response, the petitioner submitted a support letter from the its human resources department stating that the beneficiary has over ten years of experience operating the foreign entity's manufacturing machines. As a result of this experience, the petitioner stated that "he is now one of the few people in the United States with the knowledge to train new machine operators in operating these highly complex machines." The petitioner indicated that the beneficiary will devote his time to the following tasks in the United States:

Operating the stretch-wrap machine - 30% of time

Operating the Blow Film Machine - 30% of time  
Operating the Bag Seal & Cut Machine - 20% of time  
Operating the Recycle Machine - 20% of time

The petitioner reiterated that in order to properly operate the machines an operator must have approximately two years of experience, and again set forth much of the same information about the machines and the beneficiary's experience that was submitted in support of the petition. For instance, the petitioner indicated that the devices required specific manual temperature setting and calibration and operators need experience in handling their increased speed. The petitioner stated that the beneficiary's many years in operating the machines set him apart from a "typical machine operator in the United States" and that very few had the same level of experience as the beneficiary. The petitioner indicated that it would need to "scrap all of their expensive machines and spend thousands of dollars to repurchase simpler machines" in the event that it is not able to secure L-1B status for the beneficiary.

With respect to the beneficiary's duties in China, the petitioner submitted a letter from the foreign entity specifying that the beneficiary allocates 60% of his time operating the blow film machine, and 10% of his time operating each of the other three types of machine. The foreign entity stated that most of its employees cannot operate these machines without supervision.

Further, the petitioner submitted a proposed U.S. organizational chart indicating that the new company planned on hiring four additional machine operators by the end of 2013. In addition, a provided organizational chart for the foreign entity indicated that the beneficiary worked in the blow film department with six other "blow film personnel." The foreign organizational chart also reflected that fifteen "cut & seal personnel" worked in the cut & seal department.

Ultimately, the director denied the petition, concluding that the petitioner did not establish that the beneficiary was employed in a capacity requiring specialized knowledge or that he will be employed in the United States in a role involving specialized knowledge. In denying the petition, the director stated that the petitioner did not adequately explain or demonstrate with supporting evidence how the beneficiary's knowledge is specialized or how it is significantly different from others performing similar duties in the field. The director found that the evidence suggested that the beneficiary has performed, and will perform, duties that are the same or similar to others similarly placed in the field.

On appeal, counsel contends that the beneficiary will act in a specialized knowledge capacity because his knowledge cannot be imparted to others without undue economic hardship to the company. Again, counsel states that the foreign entity operates machines that are three times faster than typical manufacturing machines and indicates that training others would cause the petitioner economic hardship due to the costly scrapping of materials and products inherent to this training. Counsel asserts that while the Chinese manufacturing sector is "transient" the beneficiary has been working for the foreign entity as a machine specialist since 1997, making him uniquely experienced within the organization. Counsel further emphasizes that the foreign entity uses atypical machines that are seldom used in China, specifically the Blow Film and Bag Cut & seal machines, which "run far too quickly for most operators to manage," thus making his knowledge of these

machines "truly rare and specialized." Lastly, counsel indicates that the facts of the current matter are "perfectly analogous" to a hypothetical scenario involving specialized knowledge that was offered in a 1994 Immigration and Naturalization Service (INS) policy memorandum. *See* Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Specialized Knowledge," March 4, 1994 (Puleo Memorandum).

## 2. Analysis

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

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

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

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is advanced or special, and that the beneficiary's position requires such knowledge.

In the present matter, the petitioner has not provided evidence that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that his knowledge is uncommon or advanced. The petitioner's claim that the beneficiary holds complex or advanced technical knowledge or skills is insufficient to demonstrate that the beneficiary's knowledge is special or advanced. The knowledge must be distinguished as different from knowledge that is commonly held among machine specialists in the plastic film and plastic bag manufacturing sector or among other similarly-employed workers in the petitioner's organization. Therefore, as detailed above, the director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced. However, the petitioner's response to the RFE included minimal evidence relevant to comparing the beneficiary against similarly employed workers, and therefore it failed to establish his knowledge as special or advanced. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner suggested that, due to high turnover in its manufacturing groups, most of the foreign entity's specialists do not acquire the necessary knowledge to adequately operate the company's machines. The petitioner contends that because the Chinese manufacturing industry is "highly transient," the beneficiary's experience gained since 1997 is unique. However, it fails to articulate the experience of his colleagues or to otherwise corroborate this contention with supporting evidence. The foreign entity's organizational chart shows a total of 29 employees in the printing, machine operation, blow film, and cut & seal departments, and the petitioner indicated that some of the foreign entity's machines run twenty four hours per day and require three shifts of operators. It is unclear how the company could maintain its manufacturing operations without a full staff of qualified machine operators/specialists. While the beneficiary may have a longer tenure than some of his colleagues, the petitioner has not identified any differences in duties and functions between his machine specialist position and the machine specialist positions that are lateral to his position on the organizational chart. The petitioner's unsupported claim that other employees cannot independently operate the machines in their assigned departments is not persuasive.

The petitioner merely states that the beneficiary is the most experienced of these employees, but fails to provide specific explanations or supporting evidence to substantiate this assertion. As such, without sufficient evidence with respect to the experience of the beneficiary's colleagues or the typical experience of other similarly-employed workers in the field, it cannot be determined whether the beneficiary's knowledge is special. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the petitioner states that the manufacturing equipment utilized by the foreign entity is abnormally fast and unique due to the manual operation of the machines, but the petitioner has provided no supporting evidence to substantiate these claims. The limited evidence in the record indicates that the foreign entity acquires its manufacturing equipment from third-party companies. It is reasonable to assume, and has not been shown otherwise, that these third-party companies sell the same equipment to other plastic film and bag manufacturers. The petitioner has not indicated that the machines have been customized for the foreign entity or that they otherwise differ in their operation when purchased and used by other plastic bag manufacturers. Further, the petitioner has offered no evidence in support of its contention that the machines have unusual

characteristics that would require an experienced machine specialist in the industry to undergo extensive additional training. Most of the petitioner's claims are based on claims regarding the uncommon speed of the machines or their "atypical" nature, but the petitioner does not explain or provide evidence of what types of machines are typically used in its industry, either in China or in the United States.

Again, claiming that the beneficiary has technical knowledge of complex equipment is not sufficient to establish that he possesses specialized knowledge. The petitioner still has the burden to establish that the knowledge is either special or advanced. In the current matter, the petitioner has not provided sufficient evidence to differentiate the beneficiary's knowledge. 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)).

Here, the evidence presented suggests that the beneficiary is skilled in operating the company's equipment, but it does not demonstrate that this knowledge rises to the level of specialized knowledge as defined in the Act and the regulations. As noted, the petitioner has not provided any specific comparisons of the beneficiary against his similarly placed colleagues both within and outside the company, and only vaguely indicates that the equipment utilized by the foreign entity is unique when compared to other equipment utilized in the field. Further, the petitioner has not adequately articulated or documented how this equipment differs from that used by U.S. manufacturers in the petitioner's industry. The petitioner's unsupported assertion that U.S. manufacturers do not use stretch wrap machines is insufficient to meet its burden of proof. As such, without sufficient evidence in support of its claims, the record as currently constituted establishes that the beneficiary acts as a skilled operator of plastic film and bag manufacturing equipment, but falls short of establishing that he has been or will be employed in a capacity requiring specialized or advanced knowledge specific to the petitioner's organization.

The petitioner states that the beneficiary will act in a training role in the United States, training all other machine specialists it hires. However, the petitioner's job duties do not indicate that the beneficiary will spend any time training new hires, but only that he will allocate all of his time to operating machinery. Further, the petitioner has not specifically explained or documented the nature of this training, as requested by the director. The petitioner states that training another employee to the beneficiary's level of knowledge would cause the company undue financial hardship based upon scrapping inherent to the training process. However, the petitioner's business plan suggests that it will nevertheless hire and train local workers during the first year of operations. Although requested by the director, the petitioner did not identify the job titles of the local workers hired to date.

On appeal, counsel references a memo issued by former Immigration and Naturalization Service (INS) director James Puleo on March 4, 1994 and asserts that the memo states that a petitioner need only demonstrate undue financial hardship in training another employee to establish that a beneficiary's knowledge is specialized. Further, counsel states that the Puleo memo contains an example of specialized knowledge which is "perfectly analogous" to the current matter. However, the aforementioned memo only referenced potential financial hardship as one potential factor to be considered in making a determination of specialized knowledge. The Puleo memorandum does offer various scenarios, hypothetical examples, and a list of six

"possible characteristics" of aliens that would possess specialized knowledge. The memorandum also stresses that the "examples and scenarios are presented as general guidelines for officers" and that the examples are not "all inclusive." *Id.* at pp. 3-4. Therefore, even though the Puleo memorandum does not constitute a binding legal "standard," it does describe possible attributes that would support a claim of specialized knowledge. A petitioner's burden cannot be met by simply making a comparison to a hypothetical example from the memorandum without submitting sufficient supporting evidence.

The Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements:

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

The record establishes that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner's organization. However, as explained above, the evidence does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other workers employed by the petitioning organization or by similarly-employed machine operators employed elsewhere. The beneficiary's duties and technical skills demonstrate that he possesses knowledge that would reasonably be held by an experienced machine specialists working in the plastic bag and film manufacturing industry. 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. at 165.

As stated in the cited memo, the petitioner must establish 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. Here, the petitioner merely states that the foreign entity's equipment and manufacturing techniques are uncommon and unique, particularly when compared to those utilized in the U.S. marketplace. However, the petitioner presents no evidence to support this assertion beyond unexplained specification sheets related to the equipment. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

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.

**B. Qualifying Relationship**

The remaining issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the foreign entity.

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

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

\* \* \*

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, . . . [.]

1. Facts

The petitioner stated in support of the Form I-129 that the petitioner is a subsidiary office of the foreign entity, [REDACTED] Ltd., based upon [REDACTED]'s 100% ownership of both of these entities.

In support of this assertion, the petitioner submitted a Chinese "Corporation Business License" issued in [REDACTED] on June 23, 2010. This document indicates that the "shareholder (founder)" of [REDACTED] Ltd is [REDACTED] Ltd. and states that the company is "solely owned by [a] foreign corporation and that the registered capital of the company is \$140,000." It further stated that [REDACTED] is the "legal representative" of the foreign entity.

The petitioner also submitted the articles of incorporation of the foreign entity dated January 2000, which indicate that the "investor" in the company was [REDACTED] Ltd. in an amount of \$140,000 in registered capital. This document also indicates that the "Chairman of the Board is the legal representative of the Company." Further, the petitioner submitted a "Resolution of the Board of the Directors" dated July 15, 2003 appointing [REDACTED] to replace [REDACTED] as the chairman of the board of the foreign entity and a "Letter of Appointment/Dismissal" indicating the appointment of [REDACTED] as the chairman of the board, replacing [REDACTED] on May 18, 2007.

The petitioner further provided its articles of incorporation in the State of California dated May 1, 2012 and its bylaws. The bylaws indicated that Mr. [REDACTED] had been appointed the chief executive officer and chairman of the board of directors. The petitioner also submitted a stock certificate dated May 1, 2012 indicating that Mr. [REDACTED] was issued 500,000 shares. Lastly, the petitioner provided its 2012 IRS Form 1120 U.S. Corporation Income Tax Return stating in Schedule G that Mr. [REDACTED] holds 100% of its stock.

The director later issued an RFE requesting additional evidence from the petitioner to establish that it has a qualifying relationship with the foreign entity. Specifically, the director stated that the petitioner could submit some, or all, of the following to demonstrate ownership in the petitioner: (1) minutes of petitioner meetings indicating stocks issued; (2) stock certificates, (3) a stock ledger; and (4) evidence of a stock purchase, such as wire transfers or bank statements. Further, the director noted that submitted documentation

stated that the foreign entity is owned by [REDACTED] Ltd., rather than by Mr. [REDACTED] and that based upon this information, she was unable to determine whether the companies have common ownership. The director also requested that the petitioner submit a detailed list of the owners of the foreign company and their percentages of ownership.

In response to the RFE, the petitioner stated that it and the foreign entity are both wholly owned by the same individual, Mr. [REDACTED] and that they qualify as affiliates pursuant to the regulations. In support of this assertion, the petitioner submitted an English translation of a "Grant Deed" document dated May 18, 2007 stating that [REDACTED] transferred 100% of his wholly owned interest in [REDACTED] Ltd. to Mr. [REDACTED] and that he "will no longer participate in the operation management of the Company and will not assume pertinent legal responsibility."

The petitioner also submitted a business plan indicating that its parent company is the foreign entity. Further, the petitioner submitted a number of illegible wire transfer documents. The petitioner also resubmitted documentation, including a stock certificate and Schedule G of the petitioner's 2012 IRS Form 1120 reflecting that Mr. [REDACTED] owns 100% of the U.S. company's stock.

In denying the petition, the director stated that the petitioner had failed to provide evidence to establish that [REDACTED] had owned 100% of the foreign entity, and therefore, that he had the ability to transfer full ownership to [REDACTED] in 2007. The director stated that the evidence suggested that the foreign entity is owned by a third party company and not by Mr. [REDACTED] as asserted.

On appeal, counsel contends that the director incorrectly concluded that Mr. [REDACTED] did not have the authority to transfer full ownership from [REDACTED] Ltd. to Mr. [REDACTED]. Counsel emphasizes that at the time of the transfer, Mr. [REDACTED] was the legal representative of [REDACTED] and as such, was able to transfer [REDACTED] stock held to the beneficiary.

Counsel further asserts that the director misread the foreign entity's 2010 business license and contends that the license states that [REDACTED] Ltd is the founder of [REDACTED] not its current sole shareholder, and therefore this documentation "does not conflict with Mr. [REDACTED]'s claim to ownership" of the Chinese company. Counsel contends that the petitioner established by a preponderance of the evidence that both the petitioner and the foreign entity are wholly owned by Mr. [REDACTED] thereby establishing a qualifying affiliate relationship.

In support of the appeal, the petitioner submits a copy of an article titled [REDACTED] published by the law firm of [REDACTED]

## 2. Analysis

Following a review of the petitioner's assertions and the evidence submitted, the petitioner has not established that it has a qualifying relationship with the foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the present matter, the petitioner has not submitted sufficient evidence to demonstrate who currently owns the foreign entity. As previously discussed herein, documentation submitted in support of the Form I-129, including a Chinese "Corporation Business License" document dated June 23, 2010 and articles of incorporation of the foreign entity dated January 2000 indicate that the sole "shareholder (founder)" and "investor" in the foreign entity was [REDACTED] Ltd. However, in response to the RFE, the petitioner asserted that ownership had been transferred to Mr. [REDACTED] by the acting chairmen of [REDACTED] board of directors, Mr. [REDACTED] through a "Grant Deed" dated May 18, 2007. The petitioner did not submit this evidence previously on the record. In fact, the evidence submitted demonstrated that the sole owner of the foreign entity as of June 2010 was [REDACTED] Ltd., and not Mr. [REDACTED].

On appeal, counsel notes that the business license identifies [REDACTED] Ltd. as the "sole shareholder/founder." Counsel indicates that [REDACTED] is named on the business license because it was the foreign entity's founder; counsel state that the business license does not indicate that [REDACTED] is the foreign company's current sole shareholder. Counsel's suggestion that the term "sole shareholder" on the business license should simply be disregarded is not persuasive, particularly since this document was issued in 2010, well after the claimed transfer of ownership to Mr. [REDACTED]. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

While the petitioner has submitted an article summarizing Chinese laws regarding the powers of legal representatives, there is nothing in the submitted article which would indicate that a legal representative has the authority to transfer a Chinese corporation's stock from its sole foreign shareholder to an individual solely by signing a "grant deed." In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). The corporation business license explicitly states that "when the registered items have been changed, a change registration shall be filed with the business registration agency for a replacement . . . ." The petitioner does not attempt to explain why the foreign entity's Corporation Business License issued in June 2010 states that it is a "Limited liability company (solely owned by foreign corporation)," a fact which directly contradicts the petitioner's claim that the foreign entity has been solely owned by Mr. [REDACTED] since 2007.

Further, the petitioner has not submitted sufficient evidence to demonstrate that ownership in the foreign entity was actually transferred to Mr. [REDACTED] pursuant to the grant deed, nor articulated whether consideration was paid by Mr. [REDACTED] for this ownership interest. On appeal, the petitioner does not submit any further objective evidence of Mr. [REDACTED] purported ownership interest in the foreign entity to overcome the discrepancies on the record, but merely contends that Mr. [REDACTED] had the power to effectuate this transfer of ownership in 2007. 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).

Therefore, the petitioner has submitted inconsistent and insufficient evidence to establish who currently owns the foreign entity, and fails to remedy these evidentiary deficiencies on appeal. As such, it cannot be concluded that the petitioner and the foreign entity are affiliates or that they otherwise have a qualifying relationship. For this additional reason, the appeal must be dismissed.

### **III. Conclusion**

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

**ORDER:** The appeal is dismissed.