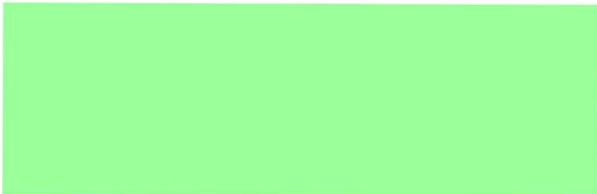


(b)(6)

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

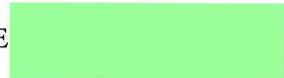


U.S. Citizenship  
and Immigration  
Services

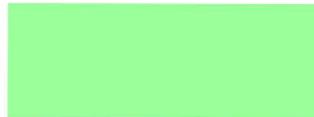


DATE: **JUN 23 2014** Office: VERMONT SERVICE CENTER

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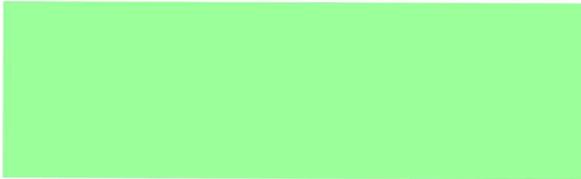


IN RE: Petitioner:  
Beneficiary:



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 extend the beneficiary's status 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 Delaware corporation established in 1984, is engaged in the design, production, and marketing of automated directory and billing systems. The petitioner states that it is an affiliate of [REDACTED]. The petitioner currently employs the beneficiary as a senior testing engineer and seeks a two-year extension of her L-1B status.

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

On appeal, counsel contends that the director's decision was arbitrary and capricious, and that it mischaracterizes the evidence and applicable law. Counsel states that the beneficiary holds advanced knowledge of the petitioner's proprietary systems that is noteworthy and uncommon in the software engineering industry. Counsel further asserts that the widely held nature of the beneficiary's knowledge within the company should not prevent it from being deemed special and advanced as defined by 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, Petition for a Nonimmigrant Worker, shall be accompanied by:

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

## II. THE ISSUE ON APPEAL

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

### A. Facts

The petitioner filed the Form I-129 on April 11, 2013. The petitioner states that it "is among the leaders of advanced, automated information systems and software for the directory and telecommunications industries." The petitioner explained that it creates "billing systems for network-based services and directory publishing systems," and has created these systems for major telecommunications companies such as [REDACTED]

[REDACTED] On the Form I-129, the petitioner stated that it has 4,103 employees in the United States and that it generates over \$2 billion in revenue annually.

In letter submitted in support of the petition, the petitioner stated that its affiliated companies abroad act as development centers that develop and test products for U.S.-based clients. The petitioner indicated that its foreign affiliate's employees are brought to the United States because "in most cases the employees have

actually developed the proprietary products for [the petitioner] and in some cases the employees have customized the products for specific clients." As a result, the petitioner stated that its foreign affiliate's employees have "advanced and unique knowledge of the specific products" and that they are specifically requested by their U.S.-based customers.

The petitioner indicated that the beneficiary worked for the foreign entity as a technical associate from August 2005 to December 2007, and later as a senior testing engineer from December 2007 to August 2010. The petitioner provided the following duty description:

In this specialized knowledge role, [the beneficiary] analyzed requirements and prepared and reviewed test cases. She executed test cases and analyzed the results, prepared a defect log, and conditioned the test accounts for QC testing on assigned workflows. She detected, classified, and reported bugs through the Defect Tracking System HP Quality Center. In addition, [the beneficiary] worked with testing groups and onsite developers to determine fault resolutions and reduces the large number of outstanding faults.

Further, the petitioner stated that the beneficiary tested and is currently troubleshooting its Customer Relationship Management (CRM) and Order Management Services (OMS) products for [redacted]. The petitioner proceeded to explain its CRM product, indicating that it "is a widely implemented model for managing a company's interactions with customers, clients and sales prospects" and that it "involves using technology to organize, automate, and synchronize business processes- principally sales activities, but also those for marketing, customer service and technical support." The petitioner described its OMS product as "an automated solution to manage the service order lifecycle and help [clients] fulfill complex bundled orders quickly and accurately." The petitioner explained that the beneficiary had received "considerable training" at its training centers located in India.

The petitioner further detailed the beneficiary's assignment to the United States in August 2010, and stated that since this time, "she has tested upgrades of the Customer Relationship Management and Order Management Services products for our client for data warehouse," and that it was imperative that she continue with these duties until the client is able to use the software on its own. The petitioner stated that the beneficiary allocates her time as follows: 60% of her time on ongoing production support and delivery; 30% of her time on continuous test support and product delivery; and 10% of her time of process improvements and enhancements.

The petitioner stated that the beneficiary's responsibility for "production support and delivery" includes such duties as "leading system test activities for Data Integration from [petitioner] proprietary systems like

"managing overall engagement of work products and deliverables"; "coordinating testing strategy and test approach with the project team"; "preventing potential crisis by resolving critical issues and providing quick testing turnaround to reduce business impacts"; and "representing [the petitioner's] Business Intelligence Data Warehouse System Testing group with customer on a day to day basis." In addition, the petitioner indicated that "test and support and product delivery" involved such duties as "using [her] knowledge and experience in

telecommunication industry to test the projects;" "managing overall responsibilities within the testing team;" "coordinating activities between onshore and offshore testing teams;" and "building the test environment, tracking and reporting on test execution, analyzing results and communicating status to the client." Lastly, the petitioner asserted that "process improvements and enhancements" included some of the following duties: "streamlining the testing processes and defining testing standards," "providing Root Cause Analysis of the production defects to reduce [the] percentage of escaping defects to production," and "analyzing potential areas of improvement and analyze the key learnings to document."

The petitioner stated that the beneficiary's current position in the United States "requires specific knowledge of the configuration and implementation of the CRM and OMS modules that [s]he specifically customized for our customers' account." The petitioner indicated that the CRM and OMS modules are "very complex" and that knowledge of these applications is not found by other general practitioners in the field. The petitioner noted that the company's success is determined by meeting customer requirements and emphasized that its client relationships and Service Level Agreements (SLAs) must be maintained.

The petitioner further explained that "this product with which the employee works requires a great deal of training to perform the employee's duties due to the fact that this product provides highly specialized functionality and interfaces with multiple [petitioner] and [third-party] systems." The petitioner stated that the referenced product has a multi-tier architecture, a highly specialized back-end functionality and a "unique graphical user interface that is built on a proprietary framework. The petitioner stated that "the beneficiary was a member of the core team that developed this framework." The petitioner stated that it would take a new employee at least two years to understand the business needs and solutions specific to the beneficiary's current project. The petitioner also submitted documentation confirming that the beneficiary has a Bachelor's degree in Engineering from [redacted] in India.

Furthermore, the petitioner provided a certificate indicating that the beneficiary had completed a forty-five hour course in [redacted] in January 2009. The training was provided by [redacted]. The petitioner also submitted various power point presentations created by the beneficiary in connection with her employment in the United States and an email from January 2013 indicating her communication of system testing results to various parties.

The director later issued a request for evidence (RFE). In the RFE, the director stated that the initial evidence suggested that the beneficiary had gained her claimed specialized knowledge prior to her employment with the foreign entity. Further, the director noted that it was not apparent how the beneficiary's duties differed from those in similar positions in the industry. As such, the director requested that the petitioner submit the following evidence relevant to the beneficiary's asserted specialized knowledge capacity abroad: (1) copies of the beneficiary's training, pay or personnel records, (2) an organizational chart showing the beneficiary's department including the names, job titles, and a summary of duties for each employee, and (3) a letter from a representative of the foreign entity describing the beneficiary's specialized knowledge duties abroad, including how her knowledge is different from other similar positions in the industry, the minimum time required to obtain the beneficiary's level of knowledge, and significant assignments completed by the beneficiary.

The director also indicated that the evidence submitted by the petitioner was insufficient to demonstrate that the beneficiary had specialized knowledge, noting that the petitioner had failed to submit training records to substantiate its claim that the beneficiary had received "considerable training." The director further stated that the petitioner had failed to provide supporting evidence to corroborate that the beneficiary was one of only two members of the organization with her asserted specialized knowledge. Therefore, the director requested that the petitioner submit: (1) a letter from the foreign employer describing the beneficiary's training and experience, including a layman's explanation of the beneficiary's purported specialized knowledge and how the knowledge is not generally found in the industry; and (2) copies of pertinent training courses completed by the beneficiary, and their duration and completion dates. In addition, the director stated that the evidence was insufficient to establish that the beneficiary would act in a specialized knowledge capacity in the United States. Specifically, the director pointed to the petitioner's contention that the beneficiary had customized proprietary products for a client, but noted that the petitioner had failed to submit supporting evidence to substantiate this claim.

In response to the RFE, the petitioner re-submitted the same U.S. and foreign duty descriptions for the beneficiary. Counsel reiterated that the petitioner's affiliate companies abroad act as development centers through which proprietary products are developed for their U.S.-based clients and later transferred. However, counsel did further note that the beneficiary "has knowledge of [redacted] which involves side-by-side implementation of both [petitioner] products-[redacted]. Consistent with this, the petitioner stated that the beneficiary handled various "modules" for which she has received specialized training, including customer service management, transaction broker, update handlers, acquisition and formatting, application monitoring and control, event processing, rater, and billing and bill formatter.

Further, the petitioner submitted a letter from [redacted] Project Manager, SI Testing Services- North America indicating that the beneficiary had been transferred to his business intelligence data warehouse (BID) project team in 2010 because she was the "best fit for our requirement," based on her "in-depth knowledge of advanced data warehousing concepts," and her "extensive experience" in the petitioner's proprietary products. Mr. [redacted] stated that the beneficiary has provided services for its client [redacted] integrating the petitioner's proprietary software, and performing system testing and change requests to enhance this client's system. Mr. [redacted] stated the following with respect to the beneficiary's capabilities:

Presently, there is nobody else on the team who can amalgamate the understanding of our proprietary product set within [the petitioner] with solid knowledge of the testing function as well as data warehousing concepts, a requisite which only [the beneficiary] purposefully meets. It equips a test engineer such as [the beneficiary] to completely interpret business flows due to integration and interdependencies between these systems.

A specialized test engineer, [the beneficiary] has been instrumental in planning and maintaining an efficient testing mechanism at BID and has demonstrated an exceptional understanding of [the petitioner's] proprietary products [redacted]

In addition, the petitioner submitted a support letter from [REDACTED] the beneficiary's former manager abroad, explaining her former roles and the specialized knowledge required for these positions. Mr. [REDACTED] stated that "[the beneficiary's] prior experience with [the petitioner's] [REDACTED] involving side-by-side implementation of [REDACTED] for [REDACTED] made her a valuable hire with the [foreign entity]." Mr. [REDACTED] indicated that the beneficiary's first assignment was with [REDACTED] based in the United Kingdom, working on the [REDACTED] "based upon the SQL and UNIX languages," and that in this position she performed testing and analysis and received training on the petitioner's proprietary products, including [REDACTED] (side-by-side implementation of [REDACTED] Mr. [REDACTED] explained that upon the completion of this project in July 2008, the beneficiary was appointed to the BID team assigned to [REDACTED] and that in this role she completed training in "the following ETL Tools to gain product expertise and expand her skillset": [REDACTED]

The petitioner further provided a list of sixteen training courses completed by the beneficiary since 2007, including introductory and orientation type courses such as "HR Induction for New Employees" completed in December 2007; courses in company proprietary technologies such as [REDACTED] and [REDACTED] completed in early 2008, and trainings in third party software such as [REDACTED] and [REDACTED] completed in August 2008 and January 2009, respectively. The training inventory also indicated that the beneficiary had completed a one hour course in [REDACTED] in February 2011. Nine of the 16 courses were completed in a few hours, while most others required one to five days.

In denying the petition, the director stated that the beneficiary's duty descriptions do not refer to the products in which she was claimed to have expertise. The director pointed to the fact that the petitioner has over 4,000 employees, many of which are likely software engineers performing duties similar to the beneficiary and thereby holding similar knowledge of the petitioner's processes and products. The director explained that, although the petitioner asserted that the beneficiary had completed numerous trainings, it failed to articulate how these trainings resulted in the beneficiary gaining specialized knowledge. The director further stated that the evidence appeared to show that beneficiary's claimed specialized knowledge is based on third party tools widely used in the industry. The director concluded that the petitioner had failed to establish that the beneficiary's knowledge surpassed the ordinary or usual knowledge held by similarly placed senior testing engineers.

On appeal, counsel states that the director mistakenly concluded that a clear definition of specialized knowledge does not exist and mistakenly relied on common dictionary definitions of "special" and "advanced." Counsel references a memo to USCIS Director Mayorkas in January 2012 from the American Immigration Lawyers Association reasserting the definitions of specialized knowledge laid out in a "detailed and rigorous fashion" by former INS director James A. Puleo in March 1994 and Fujie Ohata in December 2002. See Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Specialized Knowledge," March 4, 1994 (Puleo Memorandum) and Memorandum from Fujie O. Ohata, Assoc. Comm., INS,

"Interpretation of Specialized Knowledge," December 20, 2002.<sup>1</sup> Counsel asserts that the beneficiary's knowledge can only be gained by the petitioning company's engineers due to its proprietary nature, thereby making it noteworthy and uncommon. Further, counsel states that the fact that this proprietary knowledge is widely held within the petitioner's organization should not preclude it from being deemed special or advanced.

Counsel contends that the director ignored evidence demonstrating the time it would take to train another employee, the economic impact these delays would cause, and the fact that the petitioner would not be able to provide a solution to its client without the beneficiary's knowledge. Counsel further states that the director baselessly concluded that the beneficiary's knowledge was widely held amongst the petitioner's more than 4,000 employees. Lastly, counsel contends that the director inaccurately concluded that the beneficiary's training was at a basic level and asserts that he failed to consider the beneficiary's on-the-job training.

## 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 she 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

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<sup>1</sup> Counsel repeatedly mischaracterizes this January 2012 AILA Memorandum to former USCIS Director Mayorkas. Specifically, counsel states that the referenced memorandum is in fact a USCIS Policy Memorandum issued by Director Mayorkas and refers to it as "the Mayorkas memo."

not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

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

In the present matter, the petitioner has provided insufficient and contradictory explanations of the beneficiary's claimed specialized knowledge. For instance, in response to the director's RFE, the petitioner indicated that the beneficiary holds knowledge of various petitioner and third party technologies including

based upon business requirements. However, the petitioner provides no further information or documentation regarding these technologies on the record and the submitted PowerPoint presentations and emails do not reference these technologies. Further, the petitioner's description of the beneficiary's proposed duties makes no references to most of the aforementioned technologies. 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 and how the beneficiary uses it.

Further, the petitioner asserts that the beneficiary's specialized knowledge is based upon unique customizations of its proprietary products that have been provided to its client [REDACTED]. However, the petitioner's description of the beneficiary's duties does not demonstrate that the beneficiary is or has been engaged in customizing a solution for [REDACTED]. Indeed, the submitted PowerPoints and emails make no mention of [REDACTED]. Further, at the time of filing, the petitioner expressly stated that the beneficiary is "currently troubleshooting" two specific products [REDACTED] for a different client, [REDACTED]. The petitioner also stated that the time of filing that the beneficiary was "part of the core team" that developed a proprietary framework for a graphical user interface incorporated into one of its products. On appeal, counsel denies this statement, asserts that "we never claimed that [the beneficiary developed any proprietary system," and contends that the director should not have requested evidence that she did. Overall, the petitioner's explanations of the beneficiary's claimed specialized knowledge have been inconsistent and have not been adequately described in the context of her present and past duties and assignments. 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 petitioner's description of duties, therefore, does little to clarify exactly what body of special or advanced knowledge is required for performance of the role of senior testing engineer, or how such knowledge will be applied. Specifics are plainly 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). The petitioner fails to adequately articulate or document the manner in which the beneficiary has been and will be employed in a specialized knowledge capacity. Going on record without 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'l Comm'r 1972))

In addition, the petitioner has not provided evidence that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that her knowledge is special or advanced. The beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other software engineers in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Therefore, as detailed above, the director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced. However, the petitioner's response to the RFE included minimal evidence relevant to comparing the beneficiary against similarly employed workers, and therefore it failed to establish her 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).

Overall, the petitioner simultaneously provided varied claims with regard to the beneficiary's specialized knowledge that have not consistently explained the nature or specifics of the claimed knowledge, documented when or how she acquired such knowledge, or explained why such knowledge is necessary to the performance of her proposed job duties in the United States. As such, the evidence as a whole is insufficient to support a finding that the beneficiary possesses special knowledge by virtue of her training or experience as a senior test engineer. Moreover, the proprietary qualities of the petitioner's products do not establish that any knowledge of these products is "specialized." Rather, the petitioner must establish that qualities of the process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

Counsel states on appeal that the definition of specialized knowledge is clearly defined in the Puleo and Ohata memorandums and contends that this USCIS policy guidance establishes that knowledge need not be narrowly held within an organization to be considered specialized. In addition, the memos indicate that undue financial hardship related to training another employee can be considered in determining whether a beneficiary's knowledge is specialized. However, this represents only one potential factor to be considered in making a determination of specialized knowledge. In fact, both the Puleo and Ohata memos state the following with respect to a petitioner's burden in demonstrating specialized knowledge:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the

submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

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

Further, the petitioner indicates that the beneficiary gained relevant knowledge and experience with the petitioner's proprietary products while working for an unrelated employer and has not established that she completed any lengthy period of training with those products during her tenure with the foreign entity. These facts undermine the petitioner's claim that the knowledge the beneficiary possesses cannot be gained outside the petitioner's organization. Although the petitioner states that the beneficiary is only one of two employees who possess an advanced level of knowledge needed for the U.S. assignment, the petitioner does not identify the other asserted employee or provide other evidence to substantiate this claim. 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.

Although we concur that specialized knowledge need not be narrowly held within an organization, it is also true that a petitioner must demonstrate that any proprietary knowledge the beneficiary holds is specialized when compared to that possessed by similarly-employed workers in the beneficiary's field. As previously indicated the petitioner has provided no comparison or supporting evidence to corroborate that the beneficiary's knowledge is noteworthy or uncommon. Likewise, although the petitioner lists the beneficiary's training, her level of training is given no meaningful context through a comparison with the typical training completed by her colleagues or others similarly placed in the field, leaving it with limited probative value.

As stated in the Puleo 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 states that the foreign entity's proprietary technology is uncommon and unique, but presents no evidence to support this assertion. In fact, the petitioner simply states that the product on which the beneficiary works "must outperform any other similar product to keep [the petitioner] as the leader of the telecommunications industry." The petitioner need not offer an entirely unique, proprietary product, but it must submit sufficient information to establish that the

knowledge required to work with its products could not be readily conveyed to another software test engineer with similar skills, such that the knowledge is truly special or advanced. 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 or that she will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

### III. Conclusion

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

**ORDER:** The appeal is dismissed.