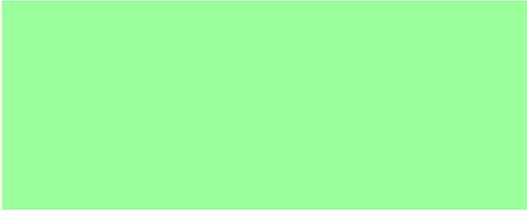
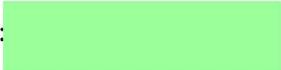


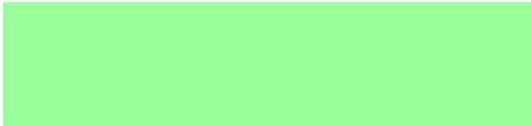


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 30 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker (Form I-129)), seeking to employ 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 states that it is a California corporation established in December 2009, and that that it operates an audio/video engineering solution business. The petitioner claims to be an affiliate of [REDACTED] located in [REDACTED] Russia. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as head engineer, for a period of three years.

The director denied the petition on two alternative grounds, concluding that the petitioner failed to establish that: (1) the United States and foreign entities are qualifying organizations; and (2) the beneficiary's employment abroad was in a position that was managerial, executive, or involved specialized knowledge, the beneficiary possesses specialized knowledge, and the beneficiary's position in the United States involves 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 for the petitioner asserts that a qualifying relationship exists between the foreign entity and the U.S. company and that the beneficiary meets the L1B requirements. Counsel for the petitioner submits a brief on appeal.

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 three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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 ISSUES ON APPEAL

A. Qualifying Relationship

The first issue addressed by the director is whether the petitioner has established that the United States and foreign entities are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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.
 - (J) *Branch* means an operating division or office of the same organization housed in a different location.
 - (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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 1, 2013. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as [REDACTED] and stated that the companies have an affiliate relationship.

In a letter dated July 29, 2013, the petitioner stated that [REDACTED] is the sole owner of both the foreign entity and the U.S. company.

The petitioner submitted its Articles of Incorporation indicating that it is authorized to issue a total of 1,000 shares at no par value. The petitioner submitted its Minutes of the First Meeting of the Board of Directors of the U.S. company, dated January 21, 2010, which indicate that [REDACTED] was issued 100 shares of the U.S. company at \$10.00 per share. The minutes further state that no other shares have been issued. The petitioner also submitted a "Subscription" statement, signed by [REDACTED] as sole shareholder, advising that he transferred \$1,000 to the U.S. company for his subscription of 100 shares on January 21, 2010. The "Subscription" statement includes a photocopy of a check issued by [REDACTED] to [REDACTED] in the amount of \$1,000, which is dated January 29, 2010. The petitioner further submitted a copy of a "business deposit ticket" from [REDACTED] showing a deposit to the U.S. company's bank account for \$1,000 on February 17, 2010. The petitioner submitted its Minutes of Annual Shareholders' Meeting, dated May 6, 2013, which states that the shareholder, [REDACTED] intends to continue funding the corporation during the 2013 fiscal year within the limit of the corporation's budgeted expenses.

The petitioner submitted a copy of its stock ledger showing that [REDACTED] was issued certificate number one for 100 shares of the U.S. company on January 21, 2010. The petitioner also submitted a copy of its share certificate number one, issued to [REDACTED] for 100 shares on January 21, 2010.

The petitioner submitted an "Extract from the Uniform State Register of Legal Entities" for the foreign entity showing that [REDACTED] is the sole founder of the foreign entity and bears the title general director.

The director issued a request for additional evidence ("RFE") on August 12, 2013, instructing the petitioner to submit, *inter alia*, evidence of a qualifying relationship between the U.S. company and the foreign entity.

In response to the RFE, counsel for the petitioner asserted that [REDACTED] owns both companies, which qualifies them as affiliates. Counsel contended that the petitioner is also doing business as [REDACTED] and registered this name as a fictitious name on October 4, 2010.

The petitioner submitted duplicate copies of the evidence listed above in reference to its qualifying relationship with the foreign entity. Although specifically listed by the director as evidence that should be

submitted, the petitioner did not submit any copies of its federal or state income taxes filed with the Internal Revenue Service (IRS).

The director denied the petition on October 7, 2013, concluding, in part, that the petitioner failed to establish that it has a qualifying affiliate relationship with the foreign entity. In denying the petition, the director found that, based on a copy of a stock certificate and an illegible copy of a bank receipt, with no other information provided to clarify the ownership and control of the U.S. company, the record does not establish that the U.S. entity is owned and controlled by the [REDACTED] as claimed.

On appeal, counsel for the petitioner reiterates the evidence listed above and asserts that it is sufficient evidence to demonstrate that [REDACTED] owns the U.S. company and has paid \$1,000 in consideration for his shares, and that he also owns the foreign entity.

Upon review, 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 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 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 instant matter, the petitioner's share certificate number one, stock ledger, and meeting minutes all indicate that [REDACTED] owns 100 shares of the U.S. company. However, the petitioner has not demonstrated that [REDACTED] has actually purchased said shares. The petitioner submitted a statement from [REDACTED] with a copy of a check for \$1,000 indicating that it was for his purchase of the U.S. company's shares. The petitioner also submitted a deposit ticket at [REDACTED] for \$1,000 with the petitioner's name written in as the account title and an account number beside it. The deposit ticket does show a transcription from the bank indicating that the deposit was accepted for the same account number. However, there is insufficient evidence in the record to connect the monies represented by the photocopy of the check which is paid to the order of [REDACTED] to [REDACTED]. The petitioner did not submit a copy of an account statement or other document to demonstrate that [REDACTED] "subscription monies" were actually deposited into the petitioner's account. Further, although specifically listed as possible evidence of ownership of the U.S. company, the petitioner failed to submit any copies of its federal or state income taxes showing its current ownership. 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)).

Based on the evidence submitted and the deficient information listed above, the petitioner has not established that a qualifying relationship exists between the U.S. company and the foreign entity. Accordingly, the appeal will be dismissed.

B. Specialized Knowledge

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

1. Facts

On the Form I-129, the petitioner indicated that it currently has two employees in the United States and a gross annual income of \$264,242. The petitioner stated that the beneficiary will be working as Head Engineer. On the Form I-129 Supplement L, where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner stated:

Audio/Video Systems Design (50%)

- Develop graphic presentations, including projection options, acoustical treatment designs, connection diagrams, power and grounding diagrams;
- Develop technical specifications, identify potential issues;
- Prepare diagrams of structural and functional circuits;
- Develop method statements and risk assessments;
- Prepare technical calculation parameters and properties of projection video systems, sound systems, security systems, home theaters; [sic]

Project Management (30%)

- Develop the standards for the company's project design documentation and standards for the project processes
- Develop AV system installation programs, time lines, assign responsibilities to the team members;
- Plan and coordinate the team work on the project, set objectives, monitor implementation, resolve conflicts; [sic]

Technology Analysis and Process Development (10%)

- Investigate existing models of equipment for implementation in projects;
- Analyze the risks associated with the introduction of equipment during each stage of the project; [sic]

Technology Development (10%)

- Research the latest technology (recording and storage of multimedia data, communication and commutation techniques, audio/video signal processing) for use in projects . . .

On the Form I-129 Supplement L, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated:

Audio/Video Systems Design (70%)

- Develop graphic presentations, including projection options, acoustical treatment designs, connection diagrams, power and grounding diagrams;
- Develop technical specifications, identify potential issues;
- Prepare diagrams of structural and functional circuits;
- Develop method statements and risk assessments;
- Prepare technical calculation parameters and properties of projection video systems, sound systems, security systems, home theaters; [sic]

Technology Analysis and Process Development (10%)

- Investigate existing models of equipment for implementation in projects, analyze the risks associated with the introduction of equipment

Technology Development (10%)

- Research the latest technology (recording and storage of multimedia data, communication and commutation techniques, audio/video signal process [sic])

Recruiting and training personnel (10%)

In its letter of support, the petitioner described the beneficiary's experience and specialized knowledge as follows:

The Beneficiary's theoretical education is in engineering specialty directly related to control systems, communications and transfer of information. . . . [the beneficiary] worked at the [REDACTED] Russia, as the Head of Technical Department where he developed real-time video processing system allowing to place overlay advertisement text in low-frequency signal to two main real-time TV channels broadcasted in the city of [REDACTED]. In addition to his work with TV systems, [the beneficiary] worked on the radio. He participated in the creation of the first totally automated commercial radio station . . . in the [REDACTED] . . .

During his time on radio and television as a Head of Technical Department, [the beneficiary] gained unique knowledge and experience in processing and transmission of audio and visual signals. He brought this unique knowledge and experience to our affiliated company [the foreign entity] in Russia, where he started working 10 years ago. field of professional TV and radio broadcasting are very high [sic]. These criteria have become the benchmark of design solutions developed by a team of engineers led by [the beneficiary] in [the foreign entity].

The Beneficiary has been employed by our affiliated company in Russia for 10 years. He has been with the company since its inception and has been in charge of building the Technical Department from zero to seven engineers and programmers, whom he trained and who are currently under his supervision [The beneficiary] is a mastermind behind our technical projects and he has a unique and proprietary knowledge of our methods and processes, which he developed over time. During his employment at [the foreign entity] in Russia [the beneficiary] developed unique interface algorithms (integration) of the various control systems and telecommunication equipment. He has unparalleled ability to find approaches and develop solutions to highly complex technological tasks.

. . . Each of our projects is unique, there is no standard that we can use again and again. We install audio and video systems in multimillion dollar mansions, luxurious private yachts and private planes. In contrast to commercial projects, our clients do not provide technical specifications. . . . [The beneficiary] has extensive experience in developing creative engineering solutions to the most unusual and challenging requests.

. . . Therefore, we have to adapt this special equipment for use in a completely different setting than it was designed for. . . . Due to various locations of our projects, we design them in order to be able to provide remote monitoring and diagnostics. Due to the uniqueness of our customer's requirements, we are forced to deal with the maximum attention to the integration of our equipment into the interior. A lot of devices are placed in the furniture. We have to take into account the issues of power supply, ventilation, access to services, etc. The Beneficiary is responsible for developing detailed 3d [*sic*] diagrams of special AV-cabinets, niches, etc. . . . Our projects always include elements of mechanization lifts for projectors, mirrors and speakers. On top of the above, our clients always make changes to the projects "on the go." So we have to be always ready for this [*sic*]. Our projects require special attention to the quality of power supply. Most of our projects require an upgrade of the existing power supply system by installing isolation transformers, uninterruptible power supply sources, additional means of power supply protection [*sic*]. The Beneficiary designs Clean Power Systems, Power and Grounding diagrams based on the special requirements. . . . The Beneficiary is also responsible for developing projection systems using automated mirrors, system interface equipment with different management protocols (TCP/IP, LonTalk, KNX, Modbus, CIR), multi-channel distribution systems of low-frequency sound (Bass management system), system distribution of audio / video signals using optical fiber. When designing out projects, [the beneficiary] uses his experience and his profound knowledge of signal processing to make sure there is room for the modernization of the system without compromising its functionality and reliability. . . . There is no other person in the company with the same level of knowledge about all aspects of the projects and ability to assess the potential issues and the need for the modifications.

* * *

As demonstrated above, our projects are unique and highly complex. For many years [the beneficiary] has been in charge of the technical aspects of our projects. He developed the processes our company follows whenever we take on a new project. He knows how to use our team of engineers to ensure seamless project implementation. He holds meetings with developers, representatives of our clients, as well as representatives of authorities involved in the process. [The beneficiary's] technical expertise in audio/video signal processing combined with the "out-of-the-box" thinking distinguishes him from other engineers in our company and from other engineers in our industry.

Throughout the above description, the petitioner referred to various diagrams and examples of the beneficiary's work also submitted with the petition. The petitioner went on to describe the beneficiary's employment abroad by stating, "[t]he Beneficiary has been employed by the Petitioner's affiliated company in Russia for more than 10 years. He is the Chief Technical Officer of the company and the Head of the Project Department. The Beneficiary leads a team of seven engineers and programmers." The petitioner then provided the same list of duties provided on the Form I-129 with a few additional tasks listed under "project management" and "technology development."

In its letter of support, the petitioner provided the same list of duties provided on the Form I-129, with an additional task listed under "technology development" to describe the beneficiary's proposed position in the United States.

The petitioner went on to explain the impact of hiring a new employee to perform the services required by the U.S. position as follows:

We need to have [the beneficiary] in the US in order to be able to take on medium and large projects. Any project requires personal presence during meetings, site visits, discussions with contractors [*sic*]. The company's development will be stalled unless we have [the beneficiary] on board in the US.

We plan to follow a model of our company in Russia and to form a technical department in the US. Local (US) engineers are very narrowly specialized and will require at least 5-7 years of getting the necessary experience and knowledge to work in our projects. To reduce this adaptation of time, it has become necessary for us to have a Head Engineer who will be in charge of our projects and who will be gradually building our technical department. The company plans to gradually (over 2-4 years) recruit and train new hires under the Beneficiary's leadership. [The beneficiary] is the only person who has the knowledge and the experience that will allow our company in the US to develop into a full technical service company, as it has been done in [the foreign entity] in Russia.

Having worked for our affiliated company in Russia for over 10 years, [the beneficiary] is the author of most of the methods and processes used in the implementation of our projects. This knowledge is proprietary to our business and is a key factor in the development of all our current and future projects.

* * *

The Beneficiary's experience and knowledge gained during his 10 years of experience in our affiliated company in Russia makes him an ideal and the only candidate for the position of the Head Engineer at [the petitioner].

The petitioner submitted the beneficiary's resume listing the following "brief description of responsibilities" for his position as "Head of Project Department," from May 5, 2003 to the present, at the foreign entity:

- Organization and management of the project team involved in the design of [redacted]
- Development and implementation of [redacted] internal standards for the production of project design documentation.
- Recruitment and training of engineers in the company.
- Preparation of estimates, project presentation to the customer and its agencies.
- Control project to ensure that the project implementation is in conformity with the project design and estimates, conflict resolution.

- Participation in negotiations with clients, representatives of management companies, heads of technical services and related subcontractors.
- Participation in the commissioning of the systems.
- Participation in the final delivery-acceptance process.

The beneficiary's resume also lists the following "brief description of responsibilities" for his position as "Chief Technical Officer," From February 15, 2007 to the present, at the foreign entity:

- Participate in the business strategy of the Company.
- Supervise engineering staff.
- Develop design solutions, technical specifications, estimates, sketches, and project presentations.
- Form project teams, plan and coordinate their work, set targets, monitor performance, resolve conflicts.
- Organize and participate in the internal project presentation process.
- Organize and participate in the presentation of the project to the customer.
- Organize and participate in negotiations with clients, representatives of management companies, heads of technical services and related subcontractors.
- Systems design
- Project planning and implementation control
- Develop installation plan
- Develop systems commissioning and programming plan
- Participate in the installation, commissioning and programming of the systems

The petitioner submitted copies of the beneficiary's degree of "Radio Engineer" in the specialty of "Radioelectronic Systems and Complexes," awarded on March 4, 1996, and the following certificate: Construction of Buildings and Structures, dated March 31, 2003 to April 11, 2003.

The petitioner submitted multiple diagrams and photographs of "speakers and screen design," "equipment placement in furniture design AV cabinets, game ports," "clean power systems design isolation transformers, power and grounding," "audio/video and control systems design system wiring, connection diagrams, racking," "acoustical treatment design master bedroom multimedia system design acoustic absorbent materials, diffusers, sound insulation, recommendations for building contractors," "projection system design (A) short throw distance, wide multi-format screen, special requirements for image brightness and contrast," "projection system design (C) living room projection system, special requirements for image brightness and contrast, limits in space for the projector port," and "on site supervision of the installation room component check lists, operating program, method statement, risk assessment."

The petitioner submitted an organizational chart for the foreign entity depicting the beneficiary as "CTO" reporting to the CEO and supervising five engineers and two programmers. The two programmers both focus on "AMX, Crestron, RTI, KNX, LON, BECKHOFF systems programming." One engineer focuses on "audio/video systems design and installation;" one engineer focuses on "electrical systems design and installation;" one engineer focuses on "technical supervising, installation;" one engineer focuses on "audio/video, telecommunication systems design and installation;" and the last engineer focuses on "CCTV, security, fire alarm systems design and installation."

The petitioner submitted an organizational chart for the U.S. company depicting the beneficiary as head engineer reporting to the CEO. According to the organizational chart, the beneficiary does not have any subordinates, nor are there any other engineers or programmers at the U.S. company.

The director issued an RFE and instructed the petitioner to submit, *inter alia*, evidence of the beneficiary's specialized knowledge position abroad, evidence that she possesses specialized knowledge, and evidence that the proposed position in the United States required specialized knowledge.

In response to the RFE, the petitioner submitted a new letter where it describes in more detail the beneficiary's specialized knowledge. The petitioner specifically states that the beneficiary has specialized knowledge in the following areas:

- Design of custom solutions for Home Cinema, Multi-room Audio Video, Intelligent Lighting, Home Automation, CCTV, Security;
- Design of multi-room media server systems with music, DVD/Blu-ray movies, 3D support;
- Design of custom speakers;
- Design of advanced video projection systems (systems designed for extreme distances, systems that include calculations of reflections from mirrors, special optics);
- Design, programming and tuning of Special Purpose Audio Signal Processing Systems (Home Theater Bass management systems);
- Acoustical treatment of room;
- Creating automated control systems for various purposes.

The petitioner went on to state that the beneficiary "has developed unique approaches and processes that we use in our projects in Russia and in the US." The petitioner then described the "clean power approach," "equipment integration into interior," "high-speed communication systems," "digital signal processing (DSP) usage in audio systems – stereo or [3D] sound," "advanced programming process," "advanced telemetry and monitoring," "silhouetting systems calculations," and "unique project documentation" and how the beneficiary's role is vital to the development of these internal processes. The petitioner provided multiple examples of the beneficiary's work on different projects and described his education, training, and experience at length.

The petitioner also described the difference between the beneficiary and other engineers within the foreign entity and throughout the industry as follows:

[The foreign entity's] team engineers perform their duties according to their technical specialization. Some knowledge of each employee intersects with the areas of [the beneficiary's] special knowledge, but none of the engineers in our company have [the beneficiary's] scope of knowledge and skills in design and troubleshooting. Most of the engineers in the Audio/Video design industry have a very narrow focus on their particular competency. . . . [The beneficiary] has the unique experience of creating audio-video systems. More than ten years in practice working on both Russian and foreign projects has allowed him to develop his own, unique style of work that is unparalleled in the industry.

. . . [The beneficiary] performs an accurate simulation and makes drawings that allow the contractors involved in furniture and interior decoration to identify the critical points in their designs and design solutions in advance. This service is not offered by other companies in our industry.

[The beneficiary] is the creator of all design methods, which are used in our projects in Russia and in the U.S.

* * *

The minimum amount of time required to obtain the above-described knowledge is at least five years of full-time experience of designing and implementing customized high-end audio/video systems. This experience must be preceded by specialized technical education on a Master's degree level.

The petitioner provided the same description as provided with the petition, of the beneficiary's proposed position in the United States and added the following:

It is impossible for us to find a local professional with the necessary expertise to head our projects in the US. Therefore, we decided to find a group of specialized engineers and have [the beneficiary] train them. As the Head Engineer, [the beneficiary] will be responsible for building our technical department in the US. He will spend approximately 10% of his time recruiting, hiring and training engineers, most, if not all of whom will be US nationals. This responsibility requires extensive experience of working on our projects.

The petitioner also submitted letters from the beneficiary's previous supervisors attesting to his knowledge and experience at the foreign entity and other previous positions.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director found that the description of the beneficiary's duties abroad are similar and typical of an electronics engineer or related occupation working in the architecture and engineering field. The director found that it appears that the beneficiary performs the same or similar duties as other workers in a similar position in the field, and as such, insufficient evidence was presented to establish that the position of Head Engineer involves a special or advanced level of knowledge in the architecture and engineering field or related occupation. The director further found that, based on the evidence submitted, it cannot be concluded that the beneficiary, as a result of his knowledge, education, training, and employment with the foreign entity, has knowledge or experience in the field of architecture and engineering that is significantly different or advanced from that possessed by similarly employed workers in the same business activity. The director finally found that the record does not establish that the position of Head Engineer at the U.S. company involves a special or advanced level of knowledge in the architecture and engineering field or related occupation. The petitioner failed to establish that the proprietary knowledge it claims the beneficiary possesses actually rises to level of special or advanced knowledge required for this classification.

On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge, was employed abroad in a position involving specialized knowledge, and will be employed in the U.S. in a position involving specialized knowledge. Counsel reiterates the petitioner's support letters and their descriptions of the beneficiary's specialized knowledge and involvement of specialized knowledge in the position abroad and in the United States. Counsel does not add any additional information on appeal.

2. Analysis

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge and has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 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 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.

In the present case, the petitioner's claims are based on both prongs of the statutory definition. Specifically, the petitioner states the beneficiary has expert knowledge of its proprietary processes and the skills to design and implement audio/video systems to match customer requirements.

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 indicates that only an experienced engineer with at least five years of experience designing and implementing customized high-end audio/video systems and a specialized technical Master's degree possesses the specialized knowledge required to perform the duties of the proposed position. Therefore, one of the critical questions before the AAO is whether the petitioner has supported its claim that the beneficiary's experience in audio/video design and implementation and knowledge of the petitioner's internal processes constitutes specialized knowledge.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that the beneficiary developed internal processes for specific audio/video systems and enhancements and that his experience in this field and with the foreign entity developing these processes has resulted in the beneficiary's specialized and advanced knowledge. However, the petitioner has not provided probative evidence establishing that its processes for specific audio/video systems and enhancements are significantly different than others in the same industry. Every audio/video design solution provider seeks to install systems and enhancements to a client's satisfaction. Although the petitioner has described nuances the beneficiary has developed to provide the best audio/video experience for designers and its clients, the petitioner has not established how this knowledge is different from what is generally possessed in the industry. Moreover, the petitioner has not established how this knowledge, even if proprietary, is "special" or "advanced." Accordingly, the record does not include the requisite supporting evidence establishing that the "nature" of the beneficiary's knowledge is specialized knowledge. The record is deficient in this regard. As such, we affirm the director's determination that insufficient evidence was presented to establish that the position of Head Engineer, as herein described, involves a special or advanced level of knowledge in the architecture and engineering field or related occupation.

The petitioner also claims that it is a combination of the beneficiary's training and specific experience at the foreign entity, which provided his specialized knowledge. As noted above, the petitioner claims that it would take a minimum of five years of full-time experience designing and implementing customized high-end audio/video systems, having already obtained a specialized Master's degree, to obtain the same level of knowledge possessed by the beneficiary. However, the petitioner does not provide the necessary evidence to support this claim. The record does not include the information needed to make a comparison between the beneficiary's training and experience and that possessed by others at the foreign entity or within the industry as a whole. Although the petitioner states that none of the engineers subordinate to the beneficiary at the foreign entity have the beneficiary's scope of knowledge and skills in design and troubleshooting, the petitioner does not detail the type or amount of training that would allow other engineers at the foreign entity to advance to the position of Head Engineer. Rather, the petitioner notes that performing the work the beneficiary has performed, work that has not been established as requiring specialized or advanced knowledge, for five years is sufficient.¹ Therefore, while the record establishes that the beneficiary possesses the knowledge and skills required to maintain, enhance, and support the design and implementation of high-end audio/video systems, the petitioner does not establish that this knowledge is significantly different from

¹ As determined above, nor did the petitioner provide supporting evidence that would establish that knowledge of its internal processes of audio/video design and implementation alone constitutes specialized or advanced knowledge.

that possessed by others within the company working on the same processes or others who work with similar processes designed for the related industry. Accordingly, the petitioner has not established that the beneficiary possesses specialized or advanced knowledge.

Although the petitioner asserts that the beneficiary's position in the United States requires 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 explanation of how those duties require knowledge of its internal processes for designing and implementing audio/video systems, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge that rises to a level that is special or advanced. Specifically, the petitioner has not demonstrated what aspects of designing and implementing its internal processes would require knowledge that is particularly complex or different from what is commonly held by experienced engineers with the same skills.

Overall, the evidence does not reflect how the knowledge and experience required for the beneficiary's position would differentiate that position from similar positions at other employers within the industry. Again, the petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." 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. 158, 165 (Comm'r 1998). 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).

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

III. CONCLUSION

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.*

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.