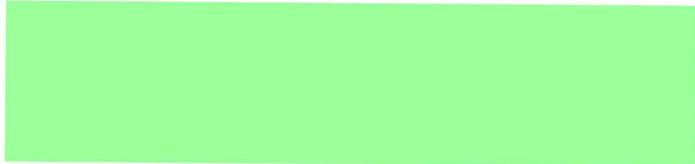


(b)(6)

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: MAR 04 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 nonimmigrant visa petition. 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 was incorporated in the State of Ohio and operates as an information management service provider. The petitioner claims to be a wholly owned subsidiary of [REDACTED] and further states that the beneficiary was employed by [REDACTED] when the petition was filed. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity as a systems analyst for a period of three years. The petitioner indicates that the beneficiary will work primarily offsite at the [REDACTED] Colorado worksite of its client, [REDACTED]

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a capacity that requires specialized knowledge. The director further determined that the beneficiary does not possess specialized knowledge and that he would be placed at the worksite of an unaffiliated employer as labor for hire, which is contrary to the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof.

### 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 parent, subsidiary, or affiliate of the foreign employer.

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.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if –

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

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. Facts and Procedural History

The record shows that in support of the Form I-129 (Petition for a Nonimmigrant Worker), which was filed on March 26, 2013, the petitioner provided a supporting statement dated March 6, 2013. The petitioner indicated that the beneficiary received a degree in information technology from [REDACTED] and is currently working at [REDACTED] in India using the company's proprietary [REDACTED] system [REDACTED] and [REDACTED]. The petitioner claimed that the beneficiary participated in upgrades, enhancements, fixes, and implementations with the [REDACTED] thus resulting in the beneficiary acquiring specialized knowledge in the following: [REDACTED] product architecture and design, offer management product architecture and design, interfaces between [REDACTED] and "[REDACTED] and between [REDACTED] and "Activation Manager," external interfaces, [REDACTED] codebase, product libraries, and customization abilities, "end to end Infinys functionality," methodologies and processes for software design and implementation, and testing methodologies, automated test suites and "QA processes." The petitioner indicated that the beneficiary played a key role in designing and developing enhancements to create the latest version of [REDACTED] for the client and further claimed that the beneficiary's proprietary knowledge of the newest [REDACTED] system and its implementation is specialized.

With regard to the beneficiary's proposed employment in the United States, the petitioner stated that the beneficiary is needed at the client's Colorado office so that he can actively provide development, implementation, and support to the client while the latest [REDACTED] version is released as part of the client's billing system. The petitioner claimed that it would take approximately one year to acquire the beneficiary's level of skill and knowledge so that the petitioner can fulfill its contractual obligation to the client. The petitioner provided a copy of the master service agreement between it and its client and stated that the beneficiary would be under the supervision and control of the petitioning entity, despite the beneficiary's offsite work location.

On April 3, 2013, the director issued a request for evidence (RFE) requesting, *inter alia*, evidence of the specialized knowledge positions abroad and in the United States as well as evidence showing the petitioner's compliance with the L-1 Visa Reform Act of 2004. Among other items, the director specifically requested more detailed information regarding the beneficiary's job duties with both entities, including the beneficiary's knowledge of each entity's product or service, special or advanced duties, and the training, if any, the beneficiary provided and would provide. The petitioner was also asked to draw a distinction between the beneficiary in his claimed specialized knowledge

capacity and other similarly skilled workers within the organization. More specifically, the petitioner was asked to explain how the beneficiary's knowledge is different as compared to other employees within the same organization or in other companies and to specify what about the beneficiary's knowledge is special or advanced.

The director noted that while the petitioner provided the beneficiary's job descriptions, it failed to explain how the beneficiary's job duties, both abroad and in the United States, involved and would involve specialized knowledge. Additionally, the director asked the petitioner to explain how the beneficiary has knowledge that cannot be easily transferred or taught to others and to provide corroborating evidence of the specific training courses the company provided to him, including the course content, dates of completion, duration, and total number of other employees enrolled in the course(s). Lastly, the director asked for documentary evidence demonstrating that the petitioner had specialized knowledge work for the beneficiary to perform during the proposed period of temporary employment and that it was in compliance with the L-1 Visa Reform Act of 2004.<sup>1</sup> In this regard, the director requested additional evidence to establish that it will supervise and control the beneficiary during his off-site employment, and further noted that the initial evidence did not describe the actual work to be performed on the client project or indicate that such work requires specialized knowledge specific to the petitioning organization.

The petitioner's response included a statement dated May 31, 2013. The petitioner claimed that the beneficiary received training and experience in its proprietary products, processes, services, technologies, and methodologies and that he played a crucial role in designing and developing ongoing enhancements to proprietary products and software used for the company's clients. The petitioner stated that 40% of the beneficiary's time abroad was spent providing support to onshore and offshore teams relating to proprietary products and resolving complex issues, 20% was spent reviewing the design and code for test cases, another 20% was spent working on initiatives to reconfigure and address product deficiencies, 10% was spent providing estimates for enhancements that are in the design phase, and the remaining 10% was spent conducting functional walk-throughs for the operations and testing teams who work on the modules for which the beneficiary is responsible. The petitioner clarified that the beneficiary was involved in the development and testing phases of the above-referenced [REDACTED] and [REDACTED] modules.

In addressing the beneficiary's proposed position with the U.S. entity, the petitioner asserted that the beneficiary is needed at the client's work site for the purpose of overseeing the implementation of the latest [REDACTED] version and further claimed that replacing the beneficiary would result in the petitioner's failure to timely comply with its contractual obligations with its client given that the beneficiary has the knowledge pertaining to the design, development, and implementation of the

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<sup>1</sup> The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

[REDACTED] which is the petitioner's proprietary product. The petitioner also provided completion certificates that showed the names and completion dates of various internal training courses the beneficiary took during his overseas employment, as well as technical documents describing the client's current [REDACTED] and the anticipated upgrade. Additionally, the petitioner provided evidence of a client enhancement request, which identified the beneficiary as the "author" of the revision document. The petitioner claimed that despite having a staff of approximately 1,000 employees, the beneficiary "has been uniquely instrumental in fulfilling the requirements necessary for our successful [REDACTED] product solution" for the client company. The petitioner stated that the beneficiary's presence at the client's worksite would make him available to meet with clients and gather requirements to address client requests for changes or enhancements.

Lastly, in an effort to show that it was in compliance with the L-1 Visa Reform Act of 2004, the petitioner provided another copy of its master services agreement with [REDACTED] a wireless provider, which contracted with the petitioner to provide telecommunications billing services. It is noted that section 2.2 of the agreement indicates that the petitioner was to render its services according to the terms of the master service agreement as well as statements of work to be provided. Although the petitioner provided a document with an effective date of January 1, 2012 showing an amendment to the original master services agreement, the record does not show that any statements of work were provided specifically delineating the work to be performed by the beneficiary. It is further noted that the amendment is signed only by [REDACTED]. The signature page containing information that pertains to the petitioning entity does not contain a signature from the party representing the petitioner. It is therefore unclear whether the amendment was in effect.

On June 21, 2013, the director denied the petition based on the following adverse findings: (1) the beneficiary was not employed abroad in a specialized knowledge capacity; (2) the beneficiary would not be employed in the United States in a specialized knowledge capacity; (3) the beneficiary does not possess specialized knowledge; and (4) the petitioner's placement of the beneficiary at the unaffiliated employer's worksite does not satisfy the requirements of the L-1 Visa Reform Act.

Counsel, on behalf of the petitioner subsequently filed an appeal seeking withdrawal of the director's decision. Counsel submits an appellate brief in which he summarizes the petitioner's prior submissions in support of the petition and subsequently in response to the RFE. Counsel asserts that the petitioner has provided sufficient evidence to warrant a withdrawal of all of the director's adverse findings.

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was and would be employed in a specialized knowledge capacity or that he possesses specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Accordingly, the petitioner has also failed to establish that the beneficiary's placement at an unaffiliated employer's work site would satisfy the requirements of the L-1 Visa Reform Act.

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 was employed abroad and will be employed in the United States in a specialized knowledge capacity. 8 C.F.R. §§ 214.2(l)(3)(ii) and (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 his foreign and proffered positions 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.

#### A. Specialized Knowledge Employment

In determining whether the beneficiary's foreign and proposed employment fit the criteria of specialized knowledge capacity, the AAO will first examine the beneficiary's job descriptions, as the beneficiary's actual duties are crucial to a determination as to the qualifying nature of his foreign and proposed employment. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Looking to the original job descriptions presented in support of the petition, the petitioner failed to provide sufficiently detailed information regarding the beneficiary's current and proposed positions. Rather, the petitioner provided general statements claiming that the beneficiary "participated in a wide range of upgrades, enhancements, and fixes and implementations" related to the [REDACTED] system during his 26 months of employment with the foreign entity. The petitioner was similarly vague in its discussion of the beneficiary's proposed employment, indicating that the beneficiary

would continue to work on the [REDACTED] project and that being present at the client's actual worksite would enable the beneficiary to more effectively and efficiently support the implementation of the latest version of the rating and billing system. Although the petitioner claimed that both of the beneficiary's positions call for specialized knowledge in ten distinct areas concerning the rating and billing system, there was no discussion explaining how the beneficiary gained the required knowledge or why such knowledge could be deemed as specialized.

The director's RFE expressly addressed the evidentiary deficiencies in the record by instructing the petitioner to provide more detailed descriptions for each of the beneficiary's positions, stating the beneficiary's tasks with specificity in layman's terms and explaining what about the stated duties is specialized or advanced. However, the petitioner's response included much of the same information that was previously provided in support of the petition. As in the original support statement, the petitioner restated the ten areas of the rating and billing management system in which the beneficiary is claimed to have specialized knowledge without further explanation as to why such knowledge should be considered to be specialized.

Moreover, despite the petitioner's repeated claims of the beneficiary's "key role in the direct and ongoing design and development of many enhancements and modifications" of the employing entity's proprietary products and software, the petitioner has not explained how the beneficiary's role and job duties performed within that role are and would be different from other systems analysts whom the foreign and U.S. entities employ or other systems analysts employed in the IT industry at large. In fact, given that the beneficiary works and will work for an organization whose work revolves around creating and enhancing a rating and billing manager and similar tools to fit the needs of its clients, it is reasonable to believe that the beneficiary is among other employees within the same organization who share similar knowledge of the organization's proprietary products and software. While the beneficiary's role may differ based on the client to which the beneficiary is assigned, the petitioner has not explained how long the beneficiary has worked with the client or explained how this client project requires the beneficiary to possess specialized knowledge that could not be readily transferred to other qualified systems analysts. The petitioner has failed to explain how the beneficiary's positions abroad and in the United States require knowledge that is specialized or advanced.

Further, the evidence of record reflects that the beneficiary had held his current position of systems analyst for only six months at the time the petition was filed. The petitioner submitted paystubs for the beneficiary that indicate that his previous job title was "associate programmer/analyst" through August 2012. The petitioner has not provided a duty description for this prior role. Even if the petitioner established that the beneficiary's current position involves specialized knowledge, it could not satisfy the regulatory requirement at 8 C.F.R. § 214.2(l)(3)(iv), which requires that the beneficiary have one full year of employment in a qualifying capacity.

Not only does the record lack a detailed "layman's" discussion of what job duties the beneficiary performs and would perform in his two respective positions, but this deficiency is compounded by the petitioner's failure to explain which elements of the beneficiary's respective positions qualify the positions as those requiring specialized knowledge. While the petitioner claims that the beneficiary has taken part in designing and developing a proprietary product, i.e., the latest version of [REDACTED]

and further states that the beneficiary assumes a key role in implementing that product within the client company's infrastructure, the petitioner fails to explain how the beneficiary's contributions rise to the level of specialized knowledge.

Although the petitioner identifies the beneficiary as a "top level IT professional," the petitioner must still describe what aspects surrounding the beneficiary's two positions indicate that specialized knowledge is required. Here, the petitioner provided a list of areas in which the beneficiary is proficient, claiming that such knowledge enables the beneficiary to review design and code for test cases, reconfigure and debug product anomalies, provide time estimates for fulfilling enhancement requests, assist operational and testing teams in the final walk-through phase for the module the beneficiary is responsible for delivering, and support on- and off-shore teams by resolving complex issues related to the proprietary product. However, the petitioner failed to explain why these job duties can only be performed by someone possessing specialized knowledge of the company's product or advanced knowledge of its processes and procedures. 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)).

Lastly, looking at the "execution copy" of the master services agreement between the petitioner and section 2.2 states that a statement of work must be executed between the client and service provider and section 2.3 of the agreement specifies that among other elements, the statement of work must include a detailed description of the services to be provided and the business requirements and technical specifications for the services to be provided. However, the petitioner has not provided a statement of work related to the work the beneficiary has performed in his position abroad or the work he would perform at the client worksite during his employment in the United States.

In light of the deficiencies described above, the petitioner has failed to establish that either the beneficiary's position with the foreign entity or his position in the United States require knowledge that is special or advanced. Therefore, it cannot be concluded that the beneficiary has been and would be employed in a qualifying specialized knowledge capacity.

#### B. The Beneficiary's Specialized Knowledge

The next issue to be addressed in this matter is whether the petitioner established that the beneficiary 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.

The record shows that the director sought to elicit this key information in the RFE by instructing the petitioner to provide a detailed explanation, in layman's terms, of the specialized knowledge the beneficiary obtained through training and education. The petitioner was asked to provide documents showing the length and subject matter of any offered training and to indicate how many other employees were enrolled in similar course work. Although the petitioner addressed the director's

request by providing training certificates for a total of six courses, none of the certificates indicated the duration of the training and no separate documentation was provided to explain the content of the courses completed.

The course certificates are for the following training modules: Hibernate, Order Management, Offer Management, PL/SQL Tuning, Servlet/Jsp, and Rating and Billing. Notably, the beneficiary completed courses in Order Management and Offer Management in October and November 2011, and a course in Rating and Billing in January 2012. Given that the petitioner claims that the beneficiary has been working with its [REDACTED] rating and billing, order management and offer management modules since joining the foreign entity in January 2011, it appears that he was able to perform his duties with no formal training in the company's proprietary technologies. The petitioner cannot establish that the beneficiary possesses specialized knowledge based solely on a claim that the knowledge is proprietary; the petitioner must still establish that the knowledge the beneficiary possesses is either special or advanced, such that it is different from general knowledge possessed by similarly employed workers within the industry. The record does not support the petitioner's claim that it would take one year to train an otherwise qualified systems analyst to perform the beneficiary's duties.

The petitioner also failed to state how many other employees, if any, were enrolled in the same courses; nor did the petitioner establish that the courses for which completion certificates were submitted enabled the beneficiary to gain specialized knowledge and if so, the specific nature of the specialized knowledge. The petitioner's repeated claims that the beneficiary acquired specialized knowledge of the rating and billing system developed by the employing organization is not sufficient to establish that knowledge of this proprietary product is truly specialized as compared to the knowledge of other systems analysts within the same organization.

The petitioner also relies on the beneficiary's claimed two years of experience working on the petitioner's proprietary [REDACTED] and its implementation within the client's infrastructure to establish that the beneficiary's knowledge is special and advanced. However, the fact that the beneficiary possesses very specific experience with a particular client's project does not establish that the beneficiary's knowledge is indeed special or advanced. The petitioner has not identified with any specificity the aspects of the [REDACTED] product that distinguishes it from other software support and maintenance projects carried out by the petitioner and foreign employer or other software companies offering services in this sector. Furthermore, while the petitioner broadly stated that the beneficiary has "extensive knowledge" of the petitioner's processes and methodologies for software design and implementation, the petitioner did not specifically identify the processes and methodologies or explain what characteristics they possess that would establish that the beneficiary's knowledge of them is specialized or advanced.

Lastly, the petitioner stated that the beneficiary has assumed a lead role in "critical Order Management modules" and provided documentation to show that the beneficiary "was the latest [petitioner] employee to author revisions to the document." While these facts indicate that the beneficiary was responsible for carrying out the client's enhancement requests, the petitioner did not establish the specialized nature of the tasks the beneficiary performed or explain the significance of the beneficiary's role as "author" of revisions to the client's project. In other words, the petitioner did not clarify or

provide evidence establishing the knowledge required to author the type of revisions the beneficiary authored. Without a detailed discussion of these critical elements the AAO cannot determine that the beneficiary has acquired knowledge that rises to the level of what is deemed to be specialized.

In summary, the core of the petitioner's claim is that its [REDACTED] is proprietary and the beneficiary's training and experience in implementing, utilizing, and enhancing this software has resulted in the beneficiary acquiring specialized and advanced knowledge. However, the petitioner does not establish what specific aspect of the software could not be conveyed to similarly trained and experienced IT professionals. Rather, the petitioner provided a list of the beneficiary's broadly stated job duties, course completion certificates that fail to provide information about the duration and specific course content, and an enhancement document that identifies the beneficiary as the "author" of enhancements without an explanation as to what specific knowledge the "author" possesses that qualifies him for the role and distinguishes him from other systems analysts within the same organization.

Accordingly, given the deficiencies discussed above, the evidence submitted fails to establish that the beneficiary possesses specialized knowledge and the appeal will therefore be dismissed.

#### C. L-1A Visa Reform Act

The remaining issue addressed in the director's decision is whether the petitioner's placement of the beneficiary at the unaffiliated employer's worksite satisfies the requirements of the L-1 Visa Reform Act.

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003). If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998); *Matter of Obaigbena*, 19 I&N Dec. at 534.

If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner

bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

### 1. Control and Supervision of Beneficiary

Under section 214(c)(2)(F)(i) of the Act, the petitioner must establish that the beneficiary will be controlled and supervised principally by the petitioner, and not by the unaffiliated employer. Although the director failed to enter a specific finding on this issue, the AAO concludes that the petitioner has not satisfied this prong of the L-1 Visa Reform Act test.

The L Classification Supplement to Form I-129, Section 1, question 13 requires the petitioner to "describe how and by whom the beneficiary's work will be controlled and supervised," and to provide "a description of the amount of time each supervisor is expected to control and supervise the work." The petitioner referred to its attached letter, which states that "the beneficiary will remain an employee of [the petitioner] and will continue to be under the supervision and control of [the petitioner]." The petitioner did not provide the specific information requested in the Form I-129 or copies of work orders, contracts, or other evidence referencing the beneficiary's specific assignment to the unaffiliated employer's worksite. It provided a copy of its Master Services Agreement with the client, signed in 2008, which states that each party would be responsible for "all aspects of labor relations" with their own employees and contractors. The petitioner also provided a copy of "Amendment No. 3 to Master Services Agreement" which indicates that the petitioner would provide 20 full-time equivalent resources to support the client's logical and physical non-production environments on a 24x7 basis. The petitioner did not provide any previous amendments to the master agreement.

The director requested "additional competent, objective evidence" in support of the petitioner's claim that the beneficiary will be supervised and controlled by the petitioner. The director also advised the petitioner that "the submitted project documentation does not describe the actual work to be performed on the proposed project." The director requested, among other items, "copies of statements of work, work orders, between you and the unaffiliated employer for the services or products to be provided." The petitioner re-submitted the Master Service Agreement and the above-referenced amendment in response. The 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).

Further, the Form I-129 specifically requires that the petitioner "describe how and by whom the beneficiary's work will be controlled and supervised," and provide "a description of the amount of time each supervisor is expected to control and supervise the work." The petitioner has not provided this information. 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. 1972)).

Therefore, the petitioner has failed to meet its burden of establishing that the beneficiary would be controlled and supervised principally by the petitioning company and has not satisfied the requirements of section 214(c)(2)(F)(i) of the Act.

## 2. Necessity of Specialized Knowledge Specific to the Petitioning Employer

The second issue under the L-1 Visa Reform Act analysis is whether the petitioner has established that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F)(ii) of the Act.

The petitioner must demonstrate in the first instance that the beneficiary's offsite employment is connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is specific to the petitioning employer. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

As discussed above, the petitioner has not submitted a complete copy of the agreement governing the work to be done by the beneficiary at the unaffiliated employer's worksite. The petitioner indicates that the work will involve the new release of the petitioner's own [REDACTED] system, but did not provide the statement of work for the beneficiary's project assignment. The submitted amendment to the Master Service Agreement indicates that the petitioner agreed to provide 20 employees to the client to perform support functions on a 24x7 basis. The beneficiary was one of four foreign entity employees listed on a chart submitted with this agreement. The petitioner provided no further explanation regarding the significance of the beneficiary's inclusion on the chart or any additional details regarding the services to be performed by the employees provided in connection with the January 2012 amendment to its agreement with the client. Thus, the evidence raises questions as to the nature of the beneficiary's assignment.

Moreover, for the reasons discussed in the previous sections of the instant decision, the petitioner has not shown that the beneficiary possesses specialized knowledge or that he was and would be employed in a position requiring specialized knowledge. As a result, the petitioner also fails to meet the requirement that the beneficiary's placement be related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary, and the petition may not be approved.

## IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.