(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: MAY 0 8 2014 OFFICE: VERMONT 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, Vermont Service Center, initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke the approval of the petition and ultimately issued a notice of revocation due to the petitioner's failure to overcome the grounds for revocation. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, to classify the beneficiary as an L-1B intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a North Carolina corporation established in February 2007, states that it engages in "shipbuilding related consulting service." It claims to be a subsidiary of located in China. The petitioner seeks to extend the employment of the beneficiary in the specialized knowledge position of "shipfitter supervisor" at an offsite work location. The petitioner failed to specifically identify the actual work location of the beneficiary.

The director initially approved the petition for a one-and-a-half year period commencing on April 15, 2012. The director issued a Notice of Intent to Revoke ("NOIR") the approved petition on October 31, 2012. In the NOIR, the director notified the petitioner that the Fraud Prevention Unit at the Kentucky Consular Center (KCC) has identified and refused visas to a number of the petitioner's applicants because they found that the knowledge possessed by the applicants could not be considered an advanced level of expertise in the organization's processes and procedures, or special knowledge of the organization, which is not readily available in the United States. Additionally, the Fraud Prevention Unit of the KCC visited the foreign entity where the corporate HR department was unable to confirm a number of applicants ever worked for the foreign entity. The Fraud Prevention Unit also noted that several of the applicants did not speak English, gave conflicting statements regarding work history, and were unable to describe their prospective position in the United States or its location.

The director revoked the approval of the instant petition on four alternate grounds, concluding that the petitioner failed to establish that: (1) the beneficiary is a "professional" as defined in 101(a)(32) of the INA; (2) the beneficiary has specialized knowledge and would be employed in a capacity involving specialized knowledge; (3) the beneficiary worked for the qualifying foreign entity for one continuous year in the three years preceding admission to the United States; and (4) the placement of the beneficiary at the worksite of the unaffiliated employer is not merely labor for hire.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) failed to consider information submitted in support of the petition and misapplied the proper legal standard in its analysis. Counsel submits a brief and additional evidence in support of the 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 the three years preceding the beneficiary's application for admission into the United States.[1] 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.

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.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

> (F) 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 to the petitioning employer is necessary.

See section 412(a), Consolidated Appropriations Act, Pub. L. No. 108-447, Div. I, Title IV, 118 Stat. 2809 (Dec. 8, 2004). 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. *Id.* at § 412(b).

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[1] 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.

II. THE ISSUES ON APPEAL

A. Employment in a Specialized Capacity

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

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has 43 current employees in the United States. On the Form I-129 Supplement L, the petitioner described the beneficiary's proposed duties in the United States as follows: "Provide consulting services to U.S. shipyards regarding the techniques and strategies employed in creating shipfitting plans and supervising shipfitting staff." In support of the petition, the petitioner submitted a two-page letter describing its current projects and the beneficiary's qualifications, in pertinent part, as follows: "As a result of his experience with our parent company, [the beneficiary] is qualified to serve in the capacity of a specialized worker as a Shipfitter Supervisor."

The petitioner did not provide any additional description or information relating to the beneficiary's specialized or advanced knowledge or his proposed duties in the United States.

In the NOIR, the director instructed the petitioner to submit a detailed description of the beneficiary's duties at the U.S. company, a list of proposed duties that require specialized knowledge, an explanation as to why each of the beneficiary's duties requires specialized knowledge, an identification of which processes, procedures, tools, and/or methods the beneficiary will use and how they are specific to the petitioner, an identification of how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized by the beneficiary and how many workers possess such training, and an explanation of exactly how the beneficiary's training differs from the core training provided to other employees. The director also requested a record from the foreign entity detailing how the beneficiary has gained his specialized knowledge, to include all pertinent training courses that the beneficiary has taken while employed at the foreign entity.

In response to the NOIR, the petitioner submitted a letter describing the beneficiary's daily duties as follows:

> [The beneficiary's] work for [the petitioner] is based on these revolutionary techniques developed by our parent company. His work involves the following sub-fields of the shipbuilding process:
>
> - Vertical/Horizontal position welding
> - Manually welding of a flat plate
> - Confined space welding
> - Welding of tugboat tail shaft
> - Cross welding of 4 parts

> He provides consulting services to various shipyards in the United States, including supervising and coordinating the activities of workers engaged in welding and cutting of products and structures. He applies this knowledge of welding and cutting techniques, as well as the use of the proper materials, equipment, and fabrication requirements. Also, based on our revolutionary techniques, he analyzes the work orders and blueprints of local shipyards in order to determine the need for supplies and sequence of operations required. He is therefore involved in the requisition of supplies, such as weld rods, gas, flux, and fixtures. He also trains local workers in the operation of equipment so that the jobs are performed by local individuals rather than less efficient machines. He supervises the fitting and assembly of structural frames, and also supervises workers in electric-weld jobs, such as making tubing from flat steel strips by electric-weld.
>
> All of these jobs that he performs stem from the specialized techniques developed by our parent company. Workers trained in U.S. shipyards simply do not have access to these types of production techniques, and therefore our consulting services are in high demand.

The petitioner's letter went on to provide the following comparison of the beneficiary's training to other employees as follows:

> Please be advised that [the beneficiary's] specialized training from our parent company is similar to the other employees that work for our company. The purpose of [the petitioner] is to provide administrative control and oversight of specialized workers from our parent company, [the foreign entity]. . . . Therefore, the beneficiary's training does not differ from our other employees, who are also present in the United States under L1B status.

The petitioner submitted a letter from the foreign entity, dated November 20, 2012, describing the beneficiary's employment history, qualifications, training, and expertise acquired while employed at the foreign entity. The letter states that the beneficiary was employed at one of the foreign entity's affiliate companies as a "shipfitter" from January 1998 to October 2006, and in October 2006, the beneficiary was transferred to the foreign entity as "shipfitter" through December 2007. In August 2008, the beneficiary was again employed at the foreign entity and assumed the position of "shipfitting supervisor." The letter described his duties in the most recent position as follows:

> His main responsibilities and duties are included the following [*sic*]:
>
> - Evaluate existing methods and develop more efficient ship fitting procedures.
> - Work execution according to the valid quality standards.
> - New layouts, fabrication, assembly and installation works.
> - Diagnose, troubleshoot, and solve ship-fitting problem.
>
> In October 2009, he was transferred to our affiliate in the United States, [the petitioner], to serve as a Shipfitting supervisor.

The letter went on to describe the beneficiary's qualifications and training. The letter stated that the beneficiary obtained a "high level skilled shipfitter certificate issued by " It states that the certification includes the completion of several exams and evaluations through the "certificated institute" and provides the proper, objective, and scientific observation and evaluation of a worker's welding technique. The letter did not indicate when the beneficiary obtained this certification. The letter also states that the beneficiary attended the "21st advance-level training program" by the foreign entity from October 11, 2006 to August 23, 2007. The letter states that this is a private training course provided by the foreign entity to train their first-line supervisors. The letter goes on to describe its "skill training system," but does not specifically describe any courses, particularly the training course the beneficiary attended for 10 months and 12 days. The letter then described the beneficiary's "nature of expertise," stating that his special knowledge is derived from his 13 years of experience at the foreign entity. The letter states that of the foreign entity's 50,000 skilled workers, about 5% have made training advancements similar to the beneficiary. The letter states that the beneficiary's training includes an expertise in specific methods of vertical and horizontal welding, which the beneficiary will teach to local welders in the United States. The letter states that the beneficiary is one of its highly-skilled workers and based on his training and experience, he has knowledge of shipbuilding techniques that only a small percentage of employees have.

The petitioner submitted a copy of the beneficiary's training completion certificate of the 21st advance-level training program by the foreign entity.

The director revoked the approval of the petition on June 13, 2013 concluding, in part, that the petitioner failed to establish that the beneficiary has specialized knowledge and would be employed in a capacity involving specialized knowledge. In revoking the approval of the petition, the director found that the petitioner failed to demonstrate that the beneficiary's listed training was special or advanced in relation to other welders in the industry or within the petitioner's organization. The director observed that the petitioner stated that 5% of its 50,000 skilled workers received the advanced training held by the beneficiary, but the director found that experience alone does not equate to advanced or specialized knowledge and the training received by the beneficiary does not appear specialized or advanced in relation to others as it appears all welders take the same training. The director further found that the petitioner's claimed technological accomplishments were not supported by documentation from industry sources who recognize such techniques as specialized or advanced.

On appeal, counsel for the petitioner simply asserts that "the letter from dated July 11, 2013 . . . serves as documentation from an industry source recognizing the foreign employer's technological accomplishments, and in turn the beneficiary's techniques as specialized and advanced." Counsel submits a letter from dated July 11, 2013, stating that it has been using the services of the petitioner because the techniques developed by the Chinese shipyard are unique within the industry. The letter states that is contracting with the petitioner in order to learn how to implement the petitioner's welding techniques into its own production.

Upon review, counsel's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary possesses specialized knowledge or will be employed in a position requiring specialized knowledge.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and 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. 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.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

In examining the specialized knowledge of the beneficiary, 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.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

In the present matter, the petitioner has not submitted a position description or list of job duties for the proposed position in the United States that adequately describes the beneficiary's actual tasks on a daily basis. The petitioner has not described any duties that would require the beneficiary to possess knowledge not possessed by other similarly experienced shipfitter welders working at the foreign entity. The petitioner repeatedly

states that the welding techniques internally developed by the foreign entity are specialized or advanced enough to warrant the beneficiary possessing specialized knowledge due to his training and experience in the described welding techniques. The petitioner also provides contradictory statements in comparing the beneficiary's training to its other employees. In response to the NOIR, the petitioner's letter states that the beneficiary's specialized training from the foreign entity is similar to the other employees that work for the company. In the foreign entity's letter, it states that, of the 50,000 skilled workers, about 5% have made training advancements similar to the beneficiary. 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).

In response to the NOIR, the petitioner provided a letter from the foreign entity stating that the beneficiary received advanced training from the foreign entity, specifically a course with duration of 10 months and 12 days. The letter did not list any additional information regarding this training, including course curriculum, basic requirements to be eligible for the training, or the skills obtained in completing the training. Considering that the beneficiary would have been in training for almost an entire year, the petitioner could have provided some information describing the actual courses and skills learned throughout the training. 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)).

On appeal, counsel for the petitioner does not make any statements in regards to this issue. Rather, counsel refers the AAO to a letter from stating that the petitioner's welding techniques are unique within the industry, and that the petitioner is teaching how to implement the techniques into their production. This statement, coupled with the petitioner's own statement that one of the beneficiary's duties will be to train local workers, indicates that the welding skills obtained by the beneficiary and other petitioner staff is not sufficiently specialized and can be readily learned by other individuals who otherwise possess the requisite technical background in shipbuilding and welding. Therefore, the AAO cannot determine that the beneficiary possesses a level of knowledge that is special or advanced within the company or the industry.

Based on the petitioner's representations, it appears that its specialized welding processes and methodologies, while highly effective and valuable to the petitioner and the foreign entity, are skills that can be readily learned on-the-job and through training from the beneficiary to local workers at client sites, as stated in the petitioner's description of the beneficiary's position. For this reason, the petitioner has not established that knowledge of its processes and procedures alone constitute specialized knowledge.

Furthermore, the petitioner does not provide sufficient information relating to the beneficiary's position abroad. On the Form I-129 Supplement L, where asked to describe the beneficiary's duties abroad, the petitioner stated "supervise workers engaged in working on high-pressure systems; train new workers in use of equipment and tools; perform duties as described under SUPERVISOR Master Title; inspect completed processing systems to determine conformance to specifications; develop new or modify current welding methods, techniques and procedures; [and] do new layouts, fabrication, assemble and installation works [*sic*]." According to a letter from the foreign entity, the beneficiary performed the same or similar duties

abroad as those of the proffered position. As determined above, these duties do not involve specialized knowledge. As such, the petitioner has not established that the beneficiary's position abroad involved specialized knowledge.

The AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, as explained above, the evidence does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that is common among shipfitting welders and supervisors at the foreign entity. Furthermore, it is not clear that the performance of the beneficiary's duties would require more than basic proficiency with the company's internal welding processes and methodologies. Although the petitioner repeatedly claims that the beneficiary's knowledge is specialized, the petitioner failed to provide independent and objective evidence to corroborate such claims. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

It is reasonable to conclude, and has not been shown otherwise, that all shipfitting welders and supervisors assigned to the petitioner and their clients must use the same processes and methodologies to train the local staff of its clients. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is advanced in comparison to that possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other shipbuilding companies, such that knowledge of such processes alone constitutes specialized knowledge.

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

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

B. Employment Abroad for One Year

The second issue addressed by the director is whether the petitioner established that the beneficiary had at least one year of full-time employment with a qualifying foreign entity within the three-year period preceding the beneficiary's admission to the U.S., as required by 8 C.F.R. § 214.2(l)(3)(iii).

On the Form I-129, the petitioner stated that the beneficiary commenced employment with the foreign entity on October 11, 2009. Where asked to describe the beneficiary's duties for the three years preceding the beneficiary's admission to the U.S., the petitioner stated the following:

- supervise workers engaged in working on high-pressure systems
- train new workers in use of equipment and tools
- perform duties as described under SUPERVISOR Master Title
- inspect completed processing systems to determine conformance to specifications
- develop new or modify current welding methods, techniques and procedures
- do new layouts, fabrication, assemble and installation works [*sic*]

In the NOIR, the director instructed the petitioner to submit payroll documents as evidence of the beneficiary's employment abroad and that the payroll documents should establish that the beneficiary was employed by a qualifying organization and that the employment was full-time for one continuous year within the three years prior to October 11, 2009. The director specifically requested that, based on the KCC's findings, the petitioner should provide documentation from the foreign employer on company letter and government tax documents identifying the foreign company as the beneficiary's employer.

In response to the NOIR, the petitioner submitted a letter from the foreign entity, dated November 20, 2012, stating that the beneficiary was employed at one of the foreign entity's affiliate companies as a "shipfitter" from January 1998 to October 2006, and in October 2006, the beneficiary was transferred to the foreign entity as "shipfitter" through December 2007. In August 2008, the beneficiary was again employed at the foreign entity and assumed the position of "shipfitting supervisor." The petitioner did not provide any information about the beneficiary's employment from December 2007 to August 2008.

The petitioner submitted a translation of a salary report for the foreign entity from December 2006 to November 2007. The translated document shows the beneficiary's name, the month and year, and total amount due in RMB. The translated document does not specifically identify the actual source of the report, who compiled the report, or the run date of the report. The petitioner also submitted the beneficiary's Forms W-2, Wage and Tax Statement, for 2010 and 2011 indicating that the beneficiary was employed by the petitioner in the U.S. in those years.

The petitioner also submitted a letter from Manager , dated November 17, 2012, addressing the KCC's visit to the foreign entity's office in China on February 8, 2012. In the letter, states that he "served as the host of the meeting and was present during the entire meeting" and the information provided in the NOIR is "completely inaccurate." states that the KCC officers had a list of names and asked manager of human resources, to check the computer system in order to verify that the names on the list were employees of the foreign entity. states that Mr. verified that all of the names listed were employees of the foreign entity and printed an official statement for the KCC officers including the name of the worker, their occupation, dates they worked for the company, and the name of their supervisors. states that the KCC officers asked if the listed employees were all first-line supervisors and they answered "yes, they are group leaders." states that the KCC officers asked if the listed employees would have difficulty working for the subsidiary in the U.S. due to limited English skills and they answered "no because they are needed for their ship-building techniques, and a translator would be necessary only in limited circumstances." then states that the KCC officers concluded the meeting at that point and said that there was no problem and that they would process the pending visa applications as soon as possible.

The director revoked the approval of the petition concluding, in part, that the petitioner failed to establish that the beneficiary worked for the qualifying foreign entity for one continuous year in the three years preceding admission to the United States. In revoking the approval of the petition, the director observed that the petitioner's evidence of the beneficiary's employment at the qualifying foreign entity solely consisted of a copy of the beneficiary's 2009 salary report.[2] The director found that "[b]ased on the concerns identified by the Fraud Prevention Unit at the Kentucky Consular Center (KCC) in regards to [the petitioner's] employees['] employment with the qualifying foreign employer . . . an internally generated salary report for one year, alone is not sufficient. . . ."

On appeal, counsel for the petitioner asserts that "the service's dismissal of a salary report by the foreign entity is unduly restrictive [and that] the foreign employer is a Chinese State-Owned Enterprise (SOE), and as such any document issued by the employer carries the authority of the Chinese government." Counsel further asserts that the documentation from the submitted on appeal, serves as documentation of the beneficiary's employment that is not internally generated by the foreign employer.

In support of the appeal, the petitioner submits a translation of a report titled, ' for the year 2008. The translated document shows the name of the company as the foreign entity and lists the beneficiary's name, year, month, and additional insurance payment numbers.

Upon review, the evidence in the record is not persuasive. Here, the KCC Fraud Prevention Unit identified concerns with the foreign entity's human resource department and its ability to verify the employment of its employees overseas. In response to the NOIR, the petitioner submitted an internally generated payroll summary allegedly from the foreign entity indicating that the beneficiary was paid from December 2006 to November 2007. The petitioner has not submitted documentary evidence substantiating the accuracy or completeness of this summary. The translated document does not include an identifying source and the run date of the summary, and there is no indication it is certified by the foreign entity. The petitioner also submitted a letter from disputing the KCC Fraud Prevention Unit's findings upon their visit to the foreign entity, but failed to submit any tangible evidence to support the dispute. Without documentary evidence to support the claim, the assertions of one individual will not satisfy the petitioner's burden of proof. 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)).

In support of the appeal, counsel for the petitioner simply submits a translated report from the insurance fund indicating that some sort of payment was made for the beneficiary in 2008. This document is not sufficient evidence of the beneficiary's employment at the foreign entity. The insurance fund summary bears no explanation as to how it relates to the foreign entity or how it proves that the beneficiary was employed by the foreign entity, the petitioner has failed to establish that the beneficiary had at least one year of full-time

[2] The director's reference should have been to the foreign entity's salary report from December 2006 to November 2007, a time period covering only 11 months, not one-year. This is the only salary report from the foreign entity in the record.

employment with a qualifying foreign entity within the three-year period preceding the beneficiary's admission to the U.S., as required by 8 C.F.R. § 214.2(l)(3)(ii). Furthermore, the petitioner failed to provide any information about the beneficiary's employment from December 2007 to August 2008, yet the insurance fund summary includes information for January through July of 2008, without any clarification as to the beneficiary's actual employment during that time. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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).

Due to the inconsistencies and deficiencies listed above, the petitioner failed to establish that the beneficiary had at least one year of full-time employment with a qualifying foreign entity within the three-year period preceding the filing of the petition. Accordingly, the appeal will be dismissed.

C. L-1 Visa Reform Act

The last issue addressed by the director is whether the placement of the beneficiary at the unaffiliated employer's worksite is an arrangement to provide labor for hire in violation of section 214(c)(2)(F)(ii) of the Act.

The Form I-129 solicits information specifically related to the proscriptions created by the L-1 Visa Reform Act. On the Form I-129 Supplement L, at Section 1 Question 13, the form asks if the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer. If the petitioner answers this question in the affirmative, the form then solicits information regarding: 1) how and by whom the beneficiary will be controlled and supervised; and 2) the reasons why placement at another worksite is necessary, including a description of how the beneficiary's duties relate to the need for his or her specialized knowledge.

The petitioner answered "yes," indicating the beneficiary would be stationed primarily offsite at the worksite of an unaffiliated employer, and answered each question as follows:

> The beneficiary will be supervised solely by the President of [the petitioner], Mr. and the executive committee of [the foreign entity] in China. . . .
>
> The beneficiary will spend time at numerous shipyards across the United States providing consulting services in [the foreign entity's] techniques. . . .

The petitioner did not provide any additional information relating to the beneficiary's placement at an offsite location.

In the NOIR, the director instructed the petitioner to submit a copy of the contract for services between the petitioner and the employer where the beneficiary will be primarily stationed. The director specifically instructed the petitioner that if the contract does not contain information specific to the terms and conditions

of the beneficiary's employment, the petitioner should submit an addendum establishing who retains the authority to hire and fire the beneficiary, who is responsible for administering the beneficiary's time and pay, and to what degree the beneficiary will be controlled and supervised by the offsite employer, rather than the petitioner.

In response to the NOIR, the petitioner submitted an "Employee Leasing Agreement," dated February 7, 2011, between and the petitioner. The agreement specifically states that the petitioner is to provide a "Chinese welding supervisor with specialized knowledge on various projects." The agreement addresses the control of employees as follows:

> ARTICLE 7. CONTROL OF EMPLOYEES: [The petitioner].
>
> Assumes responsibility for the payment of wages of employees without regard to payments by the Client Company to [the petitioner].--
>
> 1, Assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on employees;--
>
> 2, Retains the right to hire, fire, discipline, and reassign employees, and;--
>
> 3, Retains the right of direction and control over the management of Wroker=s [*sic*] Compensation claims, claim filings and related procedures.

The petitioner also submitted a "Master Service Agreement No. dated April 26, 2012, between LLC and the petitioner. The agreement merely provides a method for LLC to "establish and maintain a list of eligible contractors and to offer work or contracts only to those contractors who are included on such approved list;" it does not establish a specific agreement for work or labor with the petitioner. The agreement specifically states that LLC "shall have no right or authority to supervise or give instructions to the employees, agents, or representative of [the petitioner]."

The director revoked the approval of the petition concluding, in part, that the petitioner failed to establish that the placement of the beneficiary at the worksite of the unaffiliated employer is not merely labor for hire. In revoking the approval of the petition, the director found that it appears from the contracts provided that the placement of the beneficiary outside the petitioning organization is essentially an arrangement to provide labor for hire rather than the placement in connection with the provision of a product or service. The director found that the service the petitioner is providing is, essentially, technical support and enhancement to the client's pre-existing shipbuilding processes and methodologies. The director further found that the knowledge the beneficiary possesses appears to be that of the petitioner's tools, procedures, and methodologies to be applied to the client's existing processes and methodologies, and therefore, may only be tangentially related to the performance of the proposed offsite activity.

On appeal, counsel for the petitioner did not address this issue.

Upon review, the petitioner has not established that the placement of the beneficiary at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the Act.

The L-1 Visa Reform Act amendment was intended 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); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at http://www.judiciary.senate.gov/hearings/testimony.cfm?id=4f1e0899533f7680e78d03281fef82ef&wit_id=4f1e0899533f7680e78d03281fef82ef-0-3 (accessed on April 28, 2014).

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 nor 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. 533, 534 (BIA 1988).

If the petitioner fails to establish either of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

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.

1. Supervision and Control

The director did not dispute the claim that the petitioner will supervise and control the beneficiary's work. In response to the NOIR, the petitioner provided two separate agreements with and LLC, which indicated that any of the petitioner's employees will be supervised by the petitioner. The AAO notes that the agreement with LLC is dated after the filing of the instant petition. However, as the director did not specifically address this particular issue in the denial, the AAO will not assess whether the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of section 214(c)(2)(F)(i) of the Act.

2. Specialized Knowledge Specific to the Petitioning Employer

The petitioner, however, failed to provide relevant and probative evidence regarding its provision of a product or service at the unaffiliated employer's worksite for which specialized knowledge specific to the petitioning employer is necessary.

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. Section 214(c)(2)(F)(ii) of the Act. 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. *Id.*

In the instant matter, the petitioner did not identify the specific off-site location of the beneficiary's employment or the specific services he would be providing to the off-site employer. In response to the NOIR, the petitioner simply stated that "[beneficiary] provides consulting services to various shipyards in the [U.S.], including supervising and coordinating the activities of workers engaged in welding and cutting of products and structures. . . . Also, based on our revolutionary techniques, he analyzes the work orders and blueprints of local shipyards in order to determine the need for supplies and sequence of operations required." The director concluded that the beneficiary's placement at the worksite of the unaffiliated employer appears to be essentially an arrangement to provide labor for hire. Based on the description of the beneficiary's duties and the lack of evidence that the petitioner provided regarding the beneficiary's services in connection with the provision of a product or service directly related to the beneficiary's claimed specialized knowledge, the AAO agrees with the director's finding that it appears the beneficiary will be providing technical support and enhancement to the client's pre-existing shipbuilding processes and methodologies.

The evidence submitted fails to establish that the beneficiary's placement at the unaffiliated employer's worksite meets the conditions of Section 214(c)(2)(F)(ii) of the L-1 Visa Reform Act. Accordingly, the appeal will be dismissed.

III. 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.