



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 08 2014** OFFICE: VERMONT 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:

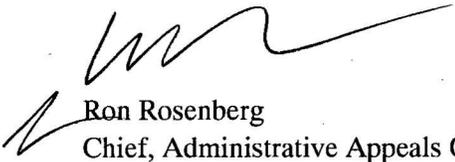
[REDACTED]

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 [REDACTED] 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 February 20, 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 petition, concluding 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.

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.

II. THE ISSUE ON APPEAL

The sole 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 March 31, 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]

The petitioner submitted the beneficiary's resume indicating that from August 2008 to the present, the beneficiary was employed by the foreign entity as "shipfitter supervisor;" from January 2007 to July 2008, the beneficiary was employed by [REDACTED] as "shipfitter specialist;" from January 2006 to

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.

December 2007, the beneficiary was employed by the foreign entity as "shipfitter specialist;" from December 2002 to December 2005, the beneficiary was employed by [REDACTED] as "shipfitter specialist;" and from July 1996 to November 2002, the beneficiary was employed by the foreign entity as "shipfitter."

In the NOIR, the director instructed the petitioner to submit payroll documents as evidence of the beneficiary's employment abroad. The director advised 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 November 7, 2010. 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 began his employment at the foreign entity in July 1996 as a "shipfitter," and in December 2002, the beneficiary was transferred to one of the foreign entity's affiliates in Japan. In January 2006, the beneficiary returned to the foreign entity and assumed the position of "shipfitter supervisor" and in March 2009, he was transferred to the petitioner in the United States, also as "shipfitter supervisor." The petitioner did not provide any information specific to the beneficiary's employment from December 2002 to January 2006.

The petitioner submitted a translation of a salary report for the foreign entity for the year of 2007. The translated document shows the beneficiary's name, the month and year, base salary, 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 [REDACTED] dated November 17, 2012, addressing the KCC's visit to the foreign entity's office in China on February 8, 2012. In the letter, [REDACTED] 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." [REDACTED] states that the KCC officers had a list of names and asked [REDACTED] 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. [REDACTED] states that Mr. [REDACTED] 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. [REDACTED] states that the KCC officers asked if the listed employees were all first-line supervisors and they answered "yes, they are group leaders." [REDACTED] 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." [REDACTED] 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, 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 consisted only of a copy of the beneficiary's 2007 salary report. 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. . . ."

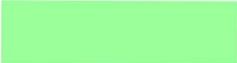
On appeal, counsel for the petitioner states that the petitioner submitted a six-page letter from the foreign entity providing a detailed employment history, a one-year salary report, and documentation that the foreign entity is a State Owned Enterprise, that is owned and operated by the Chinese government. Counsel further contends that "USCIS failed to consider the status of the foreign entity as a SOE, and therefore did not account for the fact that the documents provided by the foreign entity carry the weight of the Chinese government."

Neither counsel nor the petitioner submits any additional evidence on appeal.

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 past employment of its employees overseas with a qualifying organization. In response to the NOIR, the petitioner submitted an internally generated payroll summary allegedly from the foreign entity indicating that the beneficiary was paid throughout the year of 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 [redacted] 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 refers to "documentation that the foreign entity is a State Owned Enterprise, a company that is owned and operated by the Chinese government." In support of the petition, the petitioner submitted a corporate business license for the foreign entity, dated 2008, that stated the company was established on December 3, 1996. The translated document lists the following information:

- License-issuing authority: [redacted]
- Name of enterprise [redacted]
- Address . . . [redacted]
- Legal representatives . . . [redacted]
- Registered fund [redacted]
- Business nature: Ownership by the whole people



Operating procedure	Blank
Business scope	...

The petitioner also submitted a translated "consolidated balance sheet," dated December 31, 2010, and translated pages of the foreign entity's website. It is unclear how this evidence establishes that the foreign entity is owned by the Chinese government or how any documents internally generated by the foreign entity constitute documentation issued by the Chinese government. This information, combined with the 2007 salary report, is not sufficient evidence of the beneficiary's employment at the foreign entity. As noted above, the translated internally generated payroll summary does not identify the actual source of the report with any specificity, does not identify who compiled the report, or the run date of the report. Accordingly, it is also insufficient 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, as required by 8 C.F.R. § 214.2(l)(3)(iii). Furthermore, the beneficiary's resume states that he was employed at the foreign entity and at [REDACTED] throughout the entire year of 2007, the only year where the petitioner provides a salary report for the beneficiary. Therefore, it remains unclear whether the beneficiary had one year of full-time employment with the qualifying foreign entity. 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.

III. EMPLOYMENT IN A SPECIALIZED CAPACITY

Beyond the decision of the director, the petitioner has not established whether the beneficiary possesses specialized knowledge and would be employed in the United States in a position that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner stated on the Form I-129 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 [redacted] 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 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 submitted the beneficiary's resume listing his work experience as follows:

- a. August 2008 – Present. [redacted] Corporation, Shipfitter Supervisor
 - evaluate existing methods and develop more efficient ship fitting methods, techniques and procedures.
 - work execution according to the valid quality standards.
 - make daily work plan.
 - diagnose, troubleshoot, and solve ship-fitting problem.
- b. January 2007 – July 2008. [redacted] Shipfitter Specialist.
 - do new layouts, fabrication, assembly and installation works.
 - diagnose, troubleshoot, and solve ship-fitting problem.
 - organize the needed transportation equipment.
- c. January 2006 – December 2007. [redacted] Corporation, Shipfitter Specialist.
 - do new layouts, fabrication, assembly and installation works.
 - inspects installation of equipment.
 - diagnose, troubleshoot, and solve ship-fitting problem.

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 response to the NOIR, 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 began his employment at the foreign entity in July 1996 as a "shipfitter," and in December 2002, the beneficiary was transferred to one of the foreign entity's affiliates in Japan. In January 2006, the beneficiary returned to the foreign entity and assumed the position of "shipfitter supervisor." The letter described his duties in the most recent position as follows:

In this position, his responsibilities included the following:

- diagnose, troubleshoot, and solve welding problem
- do new layouts, fabrication, and repair work
- perform quality control to check each finished work

In March 2009, he was transferred to our affiliate in the United States, [the petitioner], to serve as a Shipfitter 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 [redacted]" 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 "20th advance-level training program" by the foreign entity from June 3, 2006 to April 17, 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 11 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.

Upon review, the petitioner has not established that the beneficiary possesses specialized knowledge or will be employed in a position requiring specialized knowledge in the United States.

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.

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 11 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)).

In response to the NOIR, the petitioner specifically stated that one of the beneficiary's duties will be to train local workers. This statement 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.

Although 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; 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, the record is insufficient to support the petitioner's claim that the actual duties 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.

IV. L-1 VISA REFORM ACT

Beyond the decision of the director, the petitioner has not established that the placement of the beneficiary at the unaffiliated employer's worksite is not an arrangement to provide labor for hire in violation of section 214(c)(2)(F)(ii) of the Act.

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).

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. [REDACTED] 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.

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). Again, 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 petitioner failed to submit any evidence related to the beneficiary's off-site work location or copies of any agreements in place with the petitioner's clients. Due to the deficiencies in the record, the AAO finds that the petitioner failed to establish that 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 also 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 indicate the specific off-site location of the beneficiary's employment or the specific services he would be providing to the off-site employer. In its description of the beneficiary's duties in the United States, the petitioner simply stated that the beneficiary will provide consulting services to U.S. shipyards regarding the foreign entity's techniques and strategies. Based on the limited evidence, it appears that the beneficiary's placement at the worksite of the unaffiliated employer essentially is 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 finds 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.

V. CONCLUSION

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises v. United States*, 229 F. Supp. 2d 1025,1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

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.