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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 08 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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to 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, an Indiana corporation, states that it operates as a contact center automation, unified communications, and business process automation software business. The petitioner claims to be the parent office of [REDACTED] Inc. (Malaysia Branch Office), located in Kuala Lumpur, Malaysia. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a Senior Field Engineer, for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and that the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner contends that the director relied on the wrong occupational classification and failed to properly consider all of the evidence submitted by the petitioner. Counsel submits a brief 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. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

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

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

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

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

The regulation at 8 C.F.R. § 214.2(1)(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 (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

## II. THE ISSUE ON APPEAL

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

### A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 19, 2013. The petitioner indicated on the Form I-129 that it currently has 1,400 U.S. employees and a gross annual income of \$237 million. The petitioner stated that the beneficiary will be working as a Senior Field Engineer. On the Form I-129 Supplement L, where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner stated:

07/2011 – Present. [REDACTED] in Malaysia. Contractor and Technology Consultant. Leading project members to deliver projects. Assess customer needs and provide advice regarding product optimization. Install and configure call center solutions.

07/2009 – 07/2011. [REDACTED] Inc. in Malaysia. Associate System Engineer and System Engineer. Customized, integrated and deployed proprietary software for

customers. Provide sales and technical support. Contributed to protocol knowledge to the team and provided training for new employees. Identify problems' root cause through issue reproducing and testing. Resolve and respond to customer questions.

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

Senior Field Engineer. [The beneficiary] will be responsible for delivering product solutions for large customers, strategic accounts, and partners. She will be responsible for developing a high level of expertise across additional product lines and will continue to deploy [REDACTED]. Her position will include duties within [REDACTED] technical support and sale support. She will work with the Project Manager to successfully deliver projects to clients, which includes technical implementation activities as well as post-sale transition for key customers. She will be required to prepare and review detailed functional requirements specification documentation and provide post sale support within the standards established by the Product and Service Offer. She will lead technical engineering activities within a project. She will also develop test plans and project validation. She will also regularly communicate project status by preparing and distributing weekly engagement issue logs and Project Status Reports. She will be responsible for resolving and responding to customer requests and providing escalation support to clients, as needed. Within the technical support portion of her position, she will be required to identify engagement-related problem areas and solve the issues. She will also be required to provide technical training – both internally and externally. [The beneficiary] will use her advanced, specialized knowledge of our proprietary software and company's procedures to fulfill the duties of this role.

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

From July 2009 through June 2010, [the beneficiary] was employed as an Associate System Engineer within the Software Support Services Department of [the petitioner] in Malaysia. As an Associate System Engineer, she was responsible for troubleshooting and identifying the root cause of problems and was required to test, recreate and verify the problems. In this position, [the beneficiary] was introduced to the Petitioner's patented [REDACTED] product and became an [REDACTED] certified engineer in September 2009. With this certification, [the beneficiary] was able to work on significant service and deployment assignments related to [REDACTED] through which she gained extensive specialized knowledge of the product during the course of her employment. To simplify and automate the product functions for our customers, [the beneficiary] was required to customize, integrate and install software that uses stage-based predicting based upon the patented algorithm . . . which elevates agent productivity and contact success rates. Such experience and specialized knowledge can only be gained by hands-on and advanced work with the Petitioner's product.

In July 2010, [the beneficiary] was promoted to the position of System Engineer, where she worked until July 2011. In this position, [the beneficiary] continued to gain advanced

knowledge of [REDACTED] through her responsibilities of [REDACTED] deployment, sales support and technical support. This advanced knowledge of this proprietary product was gained through mentor training, site visits and remote work performed for customers. This level of experience can only be obtained through employment within the [petitioner] family of companies, as [REDACTED] is a proprietary product developed exclusively by the [petitioner] [REDACTED] is complex and the integration of the software for a customer is even more complicated. Given the complexity of the program and the business that depends upon it, this position cannot be filled [sic] by a novice engineer. Due to the increased demand for this product and the increased business, we have actively recruited for this position for the last six months and have been unable to find a qualified candidate.

In its letter of support, the petitioner described the proposed position in the United States as follows:

The Petitioner has offered [the beneficiary] temporary, full-time employment as Senior Field Engineer at headquarters in Indianapolis, Indiana. In this position, [the beneficiary] will be responsible for delivering product solutions for large customers, strategic accounts, and partners. She will be responsible for developing a high level of expertise across additional product lines and will continue to deploy [REDACTED]. Her position will include duties within [REDACTED] technical support and sale support.

In her role as Senior Field Engineer, she will work with the Project Manager to successfully deliver projects to customers, which includes technical implementation activities as well as post-sale transition for key customers. She will be required to prepare and review detailed functional requirements specification documentation and provide post-sale support within the standards established by the Product and Service Offer. She will lead technical engineering activities within a project. She will also develop test plans and project validation. She will also regularly communicate project status by preparing and distributing weekly engagement issue logs and Project Status Reports. She will be responsible for resolving and responding to customer requests and providing escalation support to customers, as needed. Within the technical support portion of her position, she will be required to identify engagement-related problem areas and solve the issues. She will also be required to provide technical training – both internally and externally. [The beneficiary] will use her advanced, specialized knowledge of our proprietary software and company's procedures to fulfill the duties of this role.

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

The only way the Petitioner can deliver on these new contracts is to add an additional Senior Field Engineer with the skills and specialized knowledge of the product to immediately develop and deploy requirements. As described above, the Petitioner has actively recruited for this position for several months; but because the [REDACTED]

product is patent-protected, it has been impossible to find any applicants with the requisite experience. The Petitioner estimates it would take a minimum of two (2) years to train a Field Engineer with no [petitioner] experience to become familiar enough with its products and technology, and then an additional one (1) year to acquire sufficient specialized knowledge with the [redacted] product to perform the duties required for this position. When its recruitment efforts were unsuccessful, the Petitioner additionally considered whether it could train current engineers assigned to other groups on the [redacted] product, but the Petitioner estimates it would take one (1) year or more to train such professionals. With its current team completely leveraged and new contracts finalized at such a rapid pace, the Petitioner must employ an experienced engineer with specific [redacted] knowledge to meet the contract deliverables.

The petitioner submitted a letter from the foreign entity verifying the beneficiary's employment abroad and describing her duties as the petitioner described above.

The petitioner submitted copies of the beneficiary's "Degree of Bachelor of Engineering (Telecommunication)," conferred on August 12, 2009, and the following certificates: [redacted] dated July 25, 2012; [redacted] dated November 21-25, 2011; [redacted] dated August 31 to September 4, 2009; [redacted] dated August 24-28, 2009; and [redacted] dated August 10-21, 2009.

The petitioner submitted a document titled, Senior Field Engineer Job Description, describing the beneficiary's proposed position in the United States as follows:

- [redacted] 70%
- Work with the Project Manager to successfully deliver projects
  - Technical implementation activities, including post-sale transition for key customers
  - Prepare and review functional requirement specification documentation
  - Provide post sale support within the standards established by the Product and Service Offer
  - Lead technical engineering activities within a project
  - Develop test plans and project validation
  - Communicate project status by preparing and distributing weekly engagement issue logs and Project Status Reports
  - Resolve and respond to customer requests
  - Provide escalation support

- Technical Support 20%
- Identify engagement-related problem areas and solve the issues
  - Provide technical training – both internally and externally
  - Assist the support group by performing service calls and maintenance activities, as required

- Sales Support 5%
  - Provide advanced technical pre-sales support for sales opportunities when the depth or scope of the technical expertise required exceeds the abilities of the sales team
  
- Administration 5%
  - Time sheets, expense reports, engagement issue logs and project-related forms
  - Update internal best practice documents
  
- Continuing Education Up to 80 hours per year
  - Stay abreast of changing technology through manufacturer training, lab development and industry standard certifications

The petitioner also submitted evidence of its patent obtained for [REDACTED] on October 12, 2004.

On June 28, 2013, the director issued a request for additional evidence ("RFE"), instructing the petitioner to submit evidence of the beneficiary's specialized knowledge position abroad, evidence that she possesses specialized knowledge, and evidence that the proposed position in the United States required specialized knowledge.

In response to the RFE, the petitioner submitted a new letter where it describes in more detail the [REDACTED] product. The petitioner states that, due to the proprietary nature of its product and the lack of exposure to outside engineers, the beneficiary is the only candidate with the skills and knowledge necessary to fill the proposed position in the United States.

In response to the RFE, the petitioner described the beneficiary's specialized knowledge position abroad as follows:

Job Duties Abroad. As Senior Systems Engineer for the Petitioner's branch office, more than 80% of [the beneficiary's] time was dedicated to job duties that required the use of [REDACTED] [The beneficiary's] responsibilities included researching, resolving and responding to technical [REDACTED] issues. This required in-depth technical knowledge of the product, its complex features, and the interaction of the product with clients' individual systems. In this specialized knowledge position, [the beneficiary] responded to system related questions through e-mail, chat, and phone, which required her to address and "translate" complex information into layman's terms for customers. Such responses could only be accomplished with a clear understanding and advanced knowledge of the product and systems. [The beneficiary] was also required to analyze customers' systems, identify solutions and troubleshoot problems, including hardware, software and system functionality for [REDACTED] [The beneficiary] designed, developed, documented, analyzed and tested systems to enhance quality or efficiency of support service with a team of engineers. As Senior Systems Engineer, [the beneficiary] mentored junior systems engineers regarding [REDACTED] as it was integrated with customers' software and resolved customers' problems. She was also responsible for providing accurate and technical solutions for user problems with [REDACTED]

In addition to honing her extensive knowledge [of] [REDACTED] as described above, [the beneficiary] spent the remaining 20% of her time with work related to travel and continuing legal education to stay abreast of changing technology through manufacturer training, lab development and industry standard certifications.

The petitioner went on to provide percentages of time allocated to specific duties performed by the beneficiary. The petitioner then described the beneficiary's training as follows:

[The beneficiary] earned her [REDACTED] certification, and as [the beneficiary] began working with the program, she quickly demonstrated an exceptional ability to comprehend, design, and deploy new products. Each of the hundreds of deployments that she completed provided [the beneficiary] with additional opportunities to learn more about [REDACTED] coding and interactive behavior. In July 2010, [the beneficiary] was promoted to the position of Senior System Engineer, where she worked until July 2011 and gained additional advanced, proprietary knowledge of [REDACTED]. Reporting directly to the company's Director, [REDACTED] she gained significant advanced knowledge of [REDACTED] and the nuances of the software through hundreds of real time deployment opportunities. In comparison to other [REDACTED] certified employees within the company, [the beneficiary] has more experience and a more complete understanding of [REDACTED] than any other employee abroad.

The petitioner provided a copy of the beneficiary's certification in [REDACTED] [REDACTED] dated August 10-21, 2009, along with a copy of the lab manual and classroom manual.

In response to the RFE, the petitioner described the beneficiary's proposed position in the United States exactly as described on the Form I-129 and in its initial letter of support and adds that the beneficiary will spend approximately 95% of her time on technical [REDACTED] activities. The petitioner then provided the same break down of duties as listed on the Senior Field Engineer Job Description submitted with the petition.

The petitioner also described its current employees abroad and in the United States and the requisites for obtaining the beneficiary's level of specialized knowledge as follows:

The Petitioner currently employs 364 individuals outside of the United States (thirty of whom are based at the branch office in Malaysia), but no other Senior Field Engineers are employed abroad, and there are no current employees with [REDACTED] certification who have specialized knowledge and experience with [REDACTED] equivalent to [the beneficiary]. As noted above, it is impossible to have gained the level of experience with [REDACTED] outside of the Petitioner's organization, but even with [REDACTED] certification, additional extensive hands-on technical experience with the proprietary [REDACTED] product and deployment and technical support of the product is required to be even minimally qualified for the Petitioner's U.S. role. The Petitioner estimates it would take a minimum of one (1) year to train even an experienced engineer within the company to adequately perform the [REDACTED] duties required for the U.S. position. The skills and specialized knowledge required for that role are

simply more complex than other engineering roles due to the complex technology involved with this patented product. . . . All of the current engineers [at the foreign entity] have been employed with the office for less than one (1) year and do not possess the level of experience and specialized knowledge required for the U.S. position, even if they were otherwise available for a transfer. None of these professionals could be assigned to the [redacted] team, as they simply do not have the specialized knowledge to contribute as required.

\* \* \*

. . . continued success depends on the Petitioner's ability to meet contract deliverables. The Petitioner has sought an additional Senior Field Engineer for this purpose, but the degree of skill, technical experience, and specialized knowledge required for a role like this has been impossible to identify. The [redacted] product is based on proprietary and patented technology, so only professionals with direct experience with company and product have the required experience necessary for this position. While all engineers assigned to [redacted] projects require extensive technical knowledge, the Senior Field Engineer position is distinct from other engineering roles because of the deployment and support duties required. The Senior Field Engineer position must understand all technical issues related to the software, but beyond simply understanding that application, the position requires specialized knowledge of how the technology affects and is integrated with clients' systems. . . .

There are a limited number of current employees with this level of specialized knowledge, but the project deliverables for new contracts are beyond the capacity of the Petitioner's current staff. With such a limited field of potentially qualified candidates, the Petitioner has actively recruited prior employees with [redacted] certification and extensive product knowledge and experience to re-join the company to fill this critical role.

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Only five to six engineers employed by the Petitioner in the United States have comparable experience to [the beneficiary] as required for this role, but these employees are currently working in a support role or development and are unable to absorb support of professional service. The only way the Petitioner can deliver on these new contracts is to add an additional Senior Field Engineer with the skills and specialized knowledge of the product to immediately develop and deploy the software.

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The Petitioner estimates it would take a minimum of two (2) year to train a Field Engineer with no [petitioner] experience to become familiar enough with its products and technology, and then an additional one (1) year to acquire sufficient specialized knowledge with the [redacted] product to perform the duties required for this

position. The Petitioner additionally considered whether it could train current engineers assigned to other groups on the [REDACTED] product, but the Petitioner estimates it would take one (1) year or more to train such professionals because their current level of experience is not sufficient to perform the complex and technical duties required for the Senior Field Engineer role.

The director denied the petition on August 19, 2013, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director found that the petitioner failed to sufficiently explain or evidence how the use of its tools, processes, and procedures in the execution of the beneficiary's everyday job duties involves specialized knowledge, as opposed to simply utilizing the knowledge in performing her daily duties. The director observed that, based on the description, the beneficiary performs the same or similar duties as other workers in a similar position in the field. The director further found that the description does not compare and contrast the beneficiary's duties with others performing the same type of work nor does it indicate why others have not acquired this "special" or "advanced" level of knowledge. The director finally found that insufficient evidence was presented to show that the position of senior field engineer involved a special or advanced level of knowledge in the sales field or related occupation.

The director determined that the evidence does not demonstrate that the beneficiary possesses knowledge or experience that is significantly different from that possessed by similarly employed workers in the same business activity. The director found that the petitioner did not provide information relating to the beneficiary's specified training, such as content, duration, completion date, number of employees enrolled in each course, etc., to establish that the beneficiary's specialized knowledge gained through specific training courses establish a "special" or "advanced" level of knowledge of the company's equipment, system, product, technique, service, processes, or procedures when compared to other employees within the company. The director observed that the petitioner has a proprietary tool; however, the petitioner failed to indicate whether others in the field could obtain such knowledge in sufficient time so as to not disrupt or interrupt business operations. The director compared the beneficiary's proposed position to that of a typical senior field engineer or related occupation working in the sales field. The director found that it appears that the beneficiary will perform the same duties as other workers in a similar position and the record contains insufficient evidence to show that the proposed position in the U.S. involves a special or advanced level of knowledge in the sales or related occupation. The director finally found that the petitioner has not established that similarly employed persons in the field could not readily acquire its company-specific knowledge.

On appeal, counsel for the petitioner contends that the director relied on the wrong occupational classification in making its decision. Counsel contends that the director suggests that the beneficiary's positions abroad and in the United States are akin to any sales engineer position, which is not accurate. Counsel contends that even when compared to a more appropriate occupational classification, the [REDACTED] application is so unique that extensive engineering experience on other platforms does not transfer to the specialized skills required for the beneficiary's proposed position. Counsel contends that the director did not fully consider the detailed description of the beneficiary's duties and the duties' reliance on the beneficiary's technical and complex knowledge of the petitioner's proprietary software. Counsel further contends that the beneficiary possesses specialized knowledge and reiterates the petitioner's assertions that it would take three years to fully train a new employee to the same level of the beneficiary. Counsel asserts that the beneficiary's proposed

position in the United States involves specialized knowledge in that the senior field engineer must anticipate, respond to, and support client requirements and uses, which requires a level of specialized knowledge and experience even beyond that of the engineers developing the application and improvements.

### B. Analysis

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

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(I)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(I)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence, which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

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

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

In examining the beneficiary's specialized knowledge and whether the offered position requires specialized knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(I)(3)(ii). The petitioner must submit a

detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner indicates that only an experienced field engineer with specific [REDACTED] knowledge possesses the specialized knowledge required to perform the duties of the proposed position. Therefore, one of the critical questions before the AAO is whether the petitioner has supported its claim that the beneficiary's knowledge of the [REDACTED] application alone constitutes specialized knowledge.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that its [REDACTED] application is proprietary and the beneficiary's training and experience in working with this application has resulted in the beneficiary's specialized and advanced knowledge. The petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced."

The petitioner indicates that it is a combination of the beneficiary's training and specific [REDACTED] experience, which provided her with her claimed specialized knowledge. The petitioner further indicates that it would take a minimum of two years to train a field engineer with no prior experience with the petitioner to become familiar enough with its products and technology to then continue training for one additional year just to acquire sufficient specialized knowledge with the [REDACTED] application to perform the duties required for the beneficiary's position abroad and in the United States. However, the petitioner stated that the beneficiary joined the foreign entity in July 2009 where she was introduced to the [REDACTED] product and became an [REDACTED] certified engineer in September 2009, just two months after joining the foreign entity.<sup>1</sup> Then, in July 2010, only 10 months after completing the certification, the beneficiary was promoted to system engineer where she continued to gain advanced knowledge of the [REDACTED] application, which suggests an elevated level of technical responsibilities, despite the fact that she had no prior exposure or documented experience with the petitioner's product. The pattern of the beneficiary's training and experience at the foreign entity suggests that an individual hired for the first time can receive [REDACTED] training/certification within two months of being hired and then continue to acquire advanced knowledge of [REDACTED] through on-the-job experience.

The petitioner has documented the beneficiary's completion of one 4-day [REDACTED] certification and two additional [REDACTED] certifications completed consecutively over 15 days prior to the [REDACTED] certification. Based on this evidence, the petitioner has not established that the beneficiary completed extensive training before assuming the technical role of system engineer within the [REDACTED] application. The petitioner indicated that it only has five to six engineers in the United States with comparable experience to the beneficiary, but they are all currently working in other roles within [REDACTED]. The petitioner further indicated that it considered training current engineers assigned to other groups within [REDACTED] but concluded that it would take one year or more to train those engineers because their current level of experience is not sufficient to perform the complex and technical duties required for the beneficiary's proposed position in the United States. However, the duration of the [REDACTED] certification is only four days, and even if the [REDACTED]

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<sup>1</sup> Although the certification was completed on September 4, 2009, the beneficiary began training on August 10, 2009.

certifications are also required, it only extends the certification process by an additional 15 days. Thus, the petitioner has not supported its claim that it cannot reasonably train another individual within the company to perform the tasks of the beneficiary's proposed position.

The petitioner did not provide the information needed to make a comparison between the beneficiary's training and experience and that possessed by others or within the industry as a whole, nor did it provide information that would establish that knowledge of its application alone constitutes specialized or advanced knowledge. Therefore, while the record establishes that the beneficiary possesses the knowledge and skills required to maintain, enhance, and support the product, the petitioner does not establish that this knowledge is significantly different from that possessed by others within the company working on the same product or others who work with similar software products designed for the related industry. Additionally, given the 4-day certification and the fact that the beneficiary received the certification within two months of being hired and became a system engineer within 10 months after completing the certification, it is reasonable to expect that the petitioner can provide the same 4-day certification to a current employee working within the application to perform the same tasks of the beneficiary's position.

Although the petitioner asserts that the beneficiary's position in the United States requires specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a description of the beneficiary's current and proposed job duties and an explanation of how those duties require knowledge of the petitioner has not identified any aspect of the beneficiary's position which involves knowledge that rises to a level that is special or advanced. Specifically, the petitioner has not demonstrated what aspects of implementing and maintaining its proprietary software would require knowledge that is particularly complex or different from what is commonly held by experienced software professionals with the same skills in third-party technologies.

Overall, the evidence does not reflect how the knowledge and experience required for the beneficiary's position would differentiate that position from similar positions at other employers within the industry. Again, the petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Finally, there are inconsistencies in the record with respect to the training and experience requirements imposed on other candidates for this position. The petitioner indicated that two years of experience with the petitioner's business is required prior to an additional one year of experience with the proprietary application. However, in the instant matter, the beneficiary barely had two months of experience with the foreign entity when she received the certification and 10 months after that, was promoted to system engineer with the application. Based on the record, this clear inconsistency makes it difficult for the AAO to ascertain the actual requirements for training of a new employee and undermines the petitioner's claim that the beneficiary actually possesses knowledge that rises to the level of being specialized or advanced. 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 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 has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.