



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **NOV 28 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 ("the director"), denied the nonimmigrant visa petition and 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 (Form I-129) to classify the beneficiary as an intracompany transferee in a specialized knowledge capacity 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 California corporation, is a subsidiary of [REDACTED], located in Japan. The petitioner states that it imports, markets and sells copyrighted software developed by its parent company. It seeks to employ the beneficiary in the position of Lead Technical Developer for a period of three years.

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

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, the petitioner asserts that the director failed to fairly evaluate that facts and evidence submitted. The petitioner 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. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

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

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

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

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

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

Finally, 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. FACTS AND PROCEDURAL HISTORY

The petitioner is a subsidiary of [REDACTED] a Japanese company engaged in the development, creation and marketing of computer software games for game machines, home and business use. The petitioner was established in 2009 to import, market and sell its parent company's copyrighted software in the North American market. It has six employees and annual revenue of \$1.3 million.

The petitioner has offered the beneficiary the position of Lead Technical Developer. In a letter submitted in support of the petition, the petitioner explained that the beneficiary will apply specialized knowledge he gained in Japan to develop video game software for next-generation game consoles such as the [REDACTED]. Specifically, the petitioner stated that he will utilize proprietary information and techniques acquired through his employment with its parent company to perform the following duties:

- Design, develop and test high-performance engines, systems, components and plug-ins for [REDACTED] video game software development for multiple platforms including [REDACTED] and [REDACTED]. These job duties will comprise 25% of [the beneficiary's] time.
- Review [the petitioner's] code base and extensions conforming to the standards of [the foreign entity] to ensure that all code is scalable, clean and well-structured and that code base

is held to the highest coding standards and best practices by keeping up with latest development standards and regulations. These job duties will comprise 25% of [the beneficiary's] time.

- Collaborate regularly with senior management in both [the petitioner and foreign entity] to define project parameters, technical specifications, and technology needs as well as to ensure project deadlines, requirements and forecasts. These job duties will comprise 20% of [the beneficiary's] time.
- Collaborate with art directors and producers for integration of media assets such as designs, motion graphics, cinematic, videos, and audio. These job duties will comprise 10% of [the beneficiary's] time.
- Evaluate technology vendors, contractors and software products for each respective project, platform, and console in accordance with the standards set by both [the petitioner and foreign parent]. These job duties will comprise 10% of [the beneficiary's] time.
- Oversee testing, troubleshooting, and bug fixing to ensure to that appropriate solutions are found and documented. These job duties will comprise 5% of [the beneficiary's] time.
- Prepare accurate project documentation throughout phases and builds of the development process. These job duties will comprise 5% of [the beneficiary's] time.

The petitioner stated that the beneficiary is qualified for the offered position based on his five years of employment in progressively responsible positions with the foreign entity. The petitioner stated that the beneficiary was initially employed as a programmer in April 2008, where he was assigned to work on the [redacted] game for the [redacted] consoles. The petitioner explained that the beneficiary became familiar with the foreign entity's "code base, game engines, graphics engines, cinematic and audio systems, and language localization code" during this time. The beneficiary received a promotion to the position of technical developer in April 2009 and was responsible for defining, developing and extending audio and cinematic tools and code in support of [redacted] as well as managing the framework, technical workflow, quality control and troubleshooting associated with the game's audio and cinematic components.

The petitioner stated that the beneficiary was assigned as technical developer for [redacted] in April 2010, where "he defined and extended the audio and cinematic work he had accomplished in the game's previous iteration," as well as developing and extending localization tools and systems. In September 2011, the beneficiary was promoted to the position of Lead Developer responsible for overseeing development for [redacted], a Japanese exclusive release for the iOS operating system. His role involved overseeing and managing a team of programmers, defining technical and design needs, delegating programming responsibilities and reviewing code. The beneficiary served in a similar role as Lead Developer for an iOS and Android game titled [redacted] beginning in September 2012. Finally, the petitioner stated that the beneficiary was appointed as Lead Developer for [redacted] a wrestling game for the [redacted] console in July 2013 in preparation for his transfer to the United States.

According to the information provided on the Form I-129, the beneficiary completed a two-year course in Game Software at the [redacted] Japan in March 2008.

The petitioner also submitted a letter from its parent company's Human Resources Executive Officer, [REDACTED] who confirmed the beneficiary's assignments in Japan and further described the claimed specialized knowledge he possesses. Mr. [REDACTED] stated that the beneficiary possesses specialized knowledge in four areas, as follows:

Game Engines and Systems – As Technical and Lead Developer for the [REDACTED] . . . [the beneficiary] gained highly specialized knowledge regarding our software's internal game engine, graphics processing engines, as well as secondary and tertiary software modules. These engines are the heart of the software and have been streamlined, customized and upgraded over years of development. [The beneficiary] who was directly involved in and later on in charge of these game engines and systems, possesses highly detailed and intimate knowledge of their inner workings and machinations.

Localization Tools – [The beneficiary] redeveloped and redesigned our localization tools for all platforms for which we design games, including [REDACTED] As a direct contributor to the development of these tools, [the beneficiary] possesses specialized and advanced knowledge regarding their programming, usage and integration. Further, [the beneficiary] gained this knowledge as the primary developer and thus possesses unique knowledge regarding their technical specifications and development history. This knowledge could only be gained through directly participating in the development of these localization tools at our company.

Audio and Cinematic Modules - Through the course of his extensive work experience, particularly his direct involvement in their use and development, [the beneficiary] has gained specialized knowledge regarding our audio and cinematic programming process, protocols and capabilities. Specifically, [the beneficiary] gained specialized knowledge of our 3D programming and rendering techniques for multiple platforms as well as our audio virtualization techniques used to extend and enhance audio capabilities for titles under development.

Graphics Shader Programming – During his past and present projects at [the foreign entity], [the beneficiary] has been integral in developing and programming shaders for several of our major titles, including [REDACTED] Through this work, spanning almost 5 years, [the beneficiary] gained highly advanced knowledge of the shader tools we use as well as the programming processes and protocols associated with it. Specifically [the beneficiary] gained knowledge of the design, implementation and tuning processes of our 2D and 3D rendering capabilities, through streamlining existing tools and implementing new technologies.

Mr. [REDACTED] stated that the beneficiary's specialized knowledge, "includes advanced information regarding our game engines and systems, project management and task assignment policies and procedures, programming language framework and coding syntax, and quality control and bug fixing protocols" that is highly complex and "could only be acquired through extensive employment at our company in an advanced

technical position such as a Lead Developer." He explained that the beneficiary has contributed to the development of the company's growth and overall profitability, as the [REDACTED] series of games have been critical and commercial successes that have shipped over 8 million copies and sold millions more digital downloads. He stated that the company wishes to replicate this success in the United States and wishes to transfer the beneficiary to manage and oversee the development of the [REDACTED] title for the [REDACTED] console. The beneficiary is expected to "imbue [the petitioning company] with his specialized knowledge in developing a critically and commercially successful video game product and directly contribute to [the petitioner's] competitiveness and profitability."

Mr. [REDACTED] stated that "it would require a minimum of 4 years of experience in similar positions within our company to amass the advanced and specialized knowledge that [the beneficiary] has acquired and now possesses."

The petitioner submitted its organizational chart which depicts the beneficiary's proposed position in its Research & Development department. The department's other employees include a senior computer software development engineer, three computer software development engineers and a senior technical artist. The petitioner also provided the foreign entity's organizational chart. The beneficiary's position is in the "Programming Division" led by the Senior Technical Director (who, according to the chart, concurrently serves as the senior computer software development engineer for the petitioner and resides in the United States). The senior technical director position supervises another senior technical director with 12 employees, and a technical director, who supervises the beneficiary and a chief developer. The chart shows that the beneficiary and the chief developer each supervise three programmers.

The petitioner also submitted a screenshot from the "[REDACTED] game database [REDACTED] which shows the global sales of [REDACTED]. The petitioner also submitted a corporate overview from its parent company's website, which lists the [REDACTED] among the company's releases.

The director subsequently issued a request for evidence (RFE) advising the petitioner that the initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge or that he has been and would be employed in a specialized knowledge capacity. The director requested that the petitioner explain in additional detail, and in layman's terms, the beneficiary's specialized knowledge, and also compare and contrast his knowledge to that possessed by others performing the same or similar duties in the petitioner's industry. The director further suggested that the petitioner identify the minimum amount of time required to obtain the specialized knowledge in terms of training and experience, and requested that the petitioner indicate whether others in the petitioner's group or in the industry at large possess the same knowledge. The director also requested documentation of any training the beneficiary has received with the company, further explanation regarding any proprietary knowledge the beneficiary may hold, a more detailed description of the beneficiary's duties abroad, and corroborating evidence to support the petitioner's assertions that the beneficiary possesses knowledge that is either "special" or "advanced."

In a January 17, 2014 letter submitted in response to the RFE, the petitioner clarified that the beneficiary has acquired and applied his specialized knowledge in the positions of Technical Developer and Lead Developer since April 2009. The petitioner asserts that these are "specialized knowledge positions requiring the application of advanced company knowledge, including proprietary video game systems, modules and software." The petitioner provided a more detailed description of the beneficiary's current duties as lead developer, noting that he utilizes "proprietary operational information and software development techniques" in order to lead the design and development of video game software applications, functionality and architecture design concepts. The petitioner stated that the beneficiary provides "proprietary operational information and technical guidance of [the foreign entity's] technology relating to the software application, software platform, graphical shaders and engines, localization tools, code implementation of features, and supporting process improvement initiatives."

The petitioner provided a lengthy description of the beneficiary's current duties, noting that he utilizes the foreign entity's "proprietary information and software development techniques" in all aspects of his daily work. Briefly, the petitioner stated that the beneficiary allocates 20% of his time to planning, prioritizing and organizing technical work for projects; 15% of his time coordinating design activity on technical aspects relating to projects and defining software development best practices within projects; 15% of his time analyzing and writing software requirements and design specifications for every technical component during video game software development; 10% of his time reviewing progress and evaluating results of assigned technical projects; 10% of his time implementing, testing, debugging and integrating highly complex code; 10% of his time serving as technical expert and providing direction, guidance and delegation and project management within a team; 10% of his time acting as subject matter expert providing guidance to engineering teams or other departments on technical matters and product designs or working with vendors and customers; and 10% of his time maintaining documentation of all work.

The petitioner also submitted a new letter from Mr. [REDACTED] dated January 17, 2014. With respect to the company's "proprietary operational information and software development techniques," he stated:

As a Lead Programmer in our organization, all the proprietary information and techniques must be easily accessible and utilized very fluidly in accordance with the rapid changes in the industry. The expertise of selecting and utilizing our proprietary information and techniques as Lead Programmer is critical and can only be performed after they have acquired the experience from over many years of on the job training at [the foreign entity] and only [the foreign entity], that cannot be acquired by other software programmer[s] in the gaming industry. Once a Lead Programmer understands [the foreign entity's] proprietary information and techniques, they are able to then guide and direct a team of programmers to develop various aspects of software source codes and protocols that are unique and proprietary that creates the foundation of [the foreign entity's] success. In line with this history [the beneficiary] has been instrumental in the development of [the foreign entity's] unique source codes and engine protocols that have been recognized and revered in our industry.

Mr. [REDACTED] reiterated that the beneficiary possesses specialized knowledge in four areas including game engines and systems, localization tools, audio and cinematic modules and graphics shader programming. He

further stated that the beneficiary has gained advanced knowledge of the company's video game software and underlying systems, code and architecture which includes "design and development standards, customization variants, standard options development as well as troubleshooting and production" and also "confidential technical knowledge regarding our major software products including research and development plans and protocols, programming procedures and customization protocols."

Mr. [REDACTED] indicated that there is one other Lead Developer who possesses the same level of advanced and uncommon knowledge as the beneficiary, but emphasized that the beneficiary is the most knowledgeable developer for the company's exclusive [REDACTED] game lines. In addition, he stated that the beneficiary's knowledge is uncommon within the industry because he was the primary developer behind these two exclusive lines. In this regard, he explained that "several key gameplay and technical components are directly attributable to [the beneficiary]," including upgraded Career Modes and new multiplayer modes. Mr. [REDACTED] described the beneficiary as the lead developer for [REDACTED]

The petitioner's letter in response to the RFE included much of the same information provided by Mr. [REDACTED]. The petitioner clarified that the beneficiary did not gain any specialized knowledge through formal corporate training but rather gained his knowledge "through completion of significant assignments at [the foreign entity] in the key positions of Technical Developer and Lead Developer overseeing exclusive video game software titles such as [REDACTED]. The petitioner emphasized that the three [REDACTED] titles have sold over 8 million copies worldwide and that the beneficiary "was the primary individual responsible" for their success.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. The director determined that the petitioner had not established that familiarity with its products, tools, processes and techniques constitutes specialized knowledge or established how such knowledge is typically gained within the organization. The director acknowledged the petitioner's claim that the beneficiary's knowledge includes proprietary knowledge, but observed that the record did not establish that other game developers could not readily obtain such knowledge with minimal disruption to the company's operations. The director emphasized that merely indicating that the beneficiary possesses proprietary knowledge is insufficient to establish that the knowledge is special or advanced.

On appeal, the petitioner asserts that there was sufficient evidence in the record to establish the beneficiary's eligibility for L-1B classification and contends that the director did not fairly evaluate and assess the facts presented. Specifically, the petitioner maintains that the director overlooked the fact that the beneficiary is one of only two lead developers, who are the company's key experts in developing game software, and that he possesses knowledge that is both special and advanced within the company and in the gaming industry.

In support of the appeal, the petitioner submits an "Evaluation of Specialized Knowledge" written by Dr. [REDACTED] of the [REDACTED], Department of Computer Science. Dr. [REDACTED] indicates that he has reviewed "extensive materials on [the petitioner's] operation" as well as the beneficiary's "professional experience and complimenting academic studies, which collectively indicate that [the beneficiary] is a

specialist in the field of video game development." He stated that the beneficiary possesses expertise in various software platforms including [REDACTED] as well as programming languages (C/C++, Perl, Python, and Lua), and related technologies used in the gaming field such as DirectX9, HLSL Shaders (developed by [REDACTED]) and Cg, which is used to develop 3D graphics.

Dr. [REDACTED] stated that, in his opinion, the beneficiary's proficiency in the languages and tools used in graphics programming and game development by itself does not constitute specialized knowledge, as these technologies are often taught to undergraduate computer science students and are commonly used among video game developers at all levels. However, he stated that "when [the beneficiary's] proficiency in software languages and tools are applied using the proprietary game development techniques developed by [the foreign entity], [the beneficiary's] skills and knowledge becomes specialized."

In this regard, Dr. [REDACTED] states that the beneficiary's responsibilities related to the petitioning company's game engines, localization tools, audio and cinematic modules, and development of software specifications for game development all require specialized knowledge. He notes that the development of a major video game requires the full-time efforts of 50 to 200 individuals with different technological, artistic or business-related skills over a period of one to two years. Dr. [REDACTED] explains that a "game developer must be an expert in the technical customization possessed by the game engine he or she is working with" and the game development team then develops the software and art on top of the game engine. He further explains:

In order for the interface between the engine and game to be able to perform at the highest level of fluidity in conformance with philosophy and standards set by [the foreign entity], the lead game developer must be thoroughly proficient with the engine that serves as the game's "infrastructure." With the extensive knowledge and experience stated above, [the beneficiary] possesses the Specialized Knowledge specific to maintain [the petitioner's] successful game development philosophy and standards.

Dr. [REDACTED] further addressed the importance of the game engine in video game design as follows:

Video games are now designed with "game engines." A game engine is a software framework designed for the creation and development of video games. Video game developers use them to create games for video game consoles, mobile devices and personal computers. The core functionality typically provided by a game engine includes a rendering engine ("renderer") for 2D or 3D graphics, a physics engine or collision detection (and collision response), sound, scripting, animation, artificial intelligence, networking, streaming, memory management, threading, localization support, and a scene graph. The specialized knowledge of selecting the appropriate engine, calibrating the performance level of each engine and establishing the communication protocol between the engines is the foundation of [the petitioner's] world renowned game development technique that fuels their competitive edge in the highly competitive gaming industry.

Dr. [REDACTED] stated that the petitioner's group has been incorporating their proprietary game development techniques to design its own proprietary game engines for years and has received accolades for the speed and

flexibility of their engines. Specifically, he notes that since many of the company's flagship games involve wrestling and martial arts, the foreign entity has customized its game engines with complex fighting animations, accurate hit detection, a user input system that can detect complex joystick/button combinations, physics-based hair and cloth simulations, high fidelity character animations, high definition character graphics including realistic skin shades and sweat effects, artificial intelligence with expertise for static and dynamic object avoidance, and skeletal animation.

He concludes by stating that the beneficiary "has specialized knowledge of defining, developing, extending, upgrading and customizing all the various aspects of [the petitioner's] game engines to maintain the philosophy and standards of game development set by [the company] in the above-described specialized game development techniques." He further states that the company's "customization protocols for using existing game engines and utilizing the same protocols for the development of [the petitioner's] future game engines is the fundamental and proprietary knowledge [the beneficiary] acquired during his employment at [the foreign entity]." Finally, Dr. [REDACTED] states that "if a Lead Technical Developer were hired with experience obtained from another game developer, that individual would require a relatively long time to become proficient in understanding and utilizing [the petitioner's] proprietary information."

III. ANALYSIS

The primary 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 specialized knowledge capacity.

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

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

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its processes or products require this employee to have knowledge beyond what is common in the industry.

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 the present case, the claims that the beneficiary possesses both special and advanced knowledge of the petitioner's game engines and systems, localization tools, audio and cinematic modules and graphics shader programming.

In examining the specialized knowledge capacity of the beneficiary, USCIS will look to the petitioner's description of the job duties. See 8.C.F.R. § 214.2(l)(3). The petitioner must submit a detailed job description of the services performed sufficient to establish that such duties require specialized knowledge. *Id.* Merely asserting that the beneficiary possesses, or that the position requires, "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The evidence supports a conclusion that that the beneficiary's current and proposed duties are those typically performed by a lead technical developer in the video game software field. For example, Dr. [REDACTED] letter indicates that the beneficiary is a specialist in video game development who is proficient in C/C++, Perl, Python and Lua programming languages, and tools used in the gaming industry for graphics programming and game development, such as Direct X9, HLSL Shaders and Cg. He acknowledges that any video game developer would be proficient in such technologies and that these tools and languages alone do not constitute specialized knowledge. Rather, he states that the beneficiary's general knowledge of and proficiency with video game design tools and technologies becomes specialized when applied using the "proprietary game development techniques" developed by the petitioner's organization.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The petitioner claims that the beneficiary possesses specialized and proprietary knowledge in the areas of game engines and graphics engines, localization tools, audio and cinematic programming protocols and graphics shader programming. However, all video games developed for the latest gaming consoles incorporate all of these components, and, as noted by Professor [REDACTED], "the game developer must be an expert in the technical customization possessed by the game engine he or she is working with." He does not reach a

conclusion, however, that all video game developers possess specialized knowledge based on their knowledge of the specific game engines with which they work. Rather, the implication is that some aspect of the petitioner's own game engines and related components requires the beneficiary to possess knowledge that is different or uncommon compared to that possessed by other similarly educated and experience workers in his field.

The petitioner has not explained what aspects of its game engines and related tools, protocols and systems distinguish it from those used by other game developers to develop similar games for the same video game consoles and platforms. The petitioner simply refers to its "proprietary game development techniques" without further description of these techniques to support a finding that knowledge of the techniques constitutes specialized knowledge. 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 fact, the only specific information provided regarding the petitioner's gaming engines was provided on appeal in Professor [REDACTED] letter, where he noted that the petitioner has customized its game engines with features specific to fighting games, such as complex fighting animations, graphics to make its characters and their movement appear lifelike, and a responsive user input system. Again, there is no further description of any of the petitioner's claimed proprietary technologies and it is unclear how the petitioner's game engines differ from those that form the basis of other martial arts or fighting games. He states that it would require a "relatively long time" for another technical developer to become proficient in understanding and utilizing the petitioner's "proprietary information," but did not further quantify the amount of training or experience needed.

Overall, the statements in the record pertaining to the petitioner's proprietary information are too vague to support a finding that knowledge of the petitioner's unspecified game development techniques alone constitutes special knowledge that is different or uncommon in comparison to the knowledge generally held by game developers working on software for the latest gaming consoles.

The petitioner also claims that the beneficiary possesses advanced knowledge of its game development processes and techniques, as he is one of only two lead developers in the company. In this regard, the petitioner states that the beneficiary is the most knowledgeable developer for the company's line of [REDACTED] games and that he was the "primary individual responsible" for the success of these games. However, the record does not support a finding that the beneficiary was the primary developer of either series of games. The initial letter from the foreign entity stated that the beneficiary worked as a programmer on [REDACTED] and as a technical developer responsible for audio and cinematic components for [REDACTED]. There was nothing in the initial evidence to establish that he was the lead developer responsible for overall coordination of any of these projects. 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).

The petitioner has not submitted the developer credits or other documentation for the games identifying the beneficiary's role.

Similarly, the record also does not support the petitioner's claim that the beneficiary has been the lead developer for the [REDACTED] game line. The petitioner submitted evidence that it released six [REDACTED] titles between 2008 and 2013 and has not indicated that the beneficiary worked on any of these games in any capacity, much less as the lead or primary developer. Rather, the petitioner stated he was assigned to work as lead developer on an upcoming release in July 2013, just four months before the petition was filed. Given that the beneficiary had a total of four months of experience as a lead developer for a console-based game in the three years preceding the filing of the petition, the record does not establish that his foreign employment has been in a capacity that involved or required the claimed advanced knowledge that is required for the U.S. position.

Further, while the foreign entity's organizational chart does not identify other "lead developers," it also does not depict the beneficiary's position as one which is senior or advanced within the company's programming division. The beneficiary's position is one step higher than the foreign entity's programmers, but his position is junior to a chief developer, technical director, and senior technical directors. Professor [REDACTED] noted that developing a major video game requires the full-time efforts of 50 to 200 people, a fact which raises further questions as to whether a technical or lead developer with three subordinate programmers possesses advanced knowledge compared to other employees within the organization.

Simply stating that his role was critical to the success of the foreign entity's game, or that he was "primarily responsible" for the games' development is not sufficient to meet the petitioner's burden to describe how and when the beneficiary gained the claimed specialized knowledge, particularly because there are conflicting statements regarding the nature and extent of the beneficiary's role in the development of the above-referenced game titles.

As such, the petitioner's vague statements that the beneficiary played a critical role in the development of its major video game titles and possesses advanced knowledge as a result are insufficient to meet its burden of proof. The Board of Immigration Appeals has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility). The petitioner has not submitted any evidence of the beneficiary's involvement in the development of and advanced knowledge of its video game products beyond submitting several narrative statements from company representatives which contain sometimes conflicting statements regarding the scope of the beneficiary's duties. Absent documentary evidence of the beneficiary's role in the development of the petitioner's products, the record does not support the petitioner's assertion that the beneficiary possesses the claimed advanced knowledge of its software development processes and techniques.

We have already acknowledged the expert opinion letter provided by Dr. [REDACTED]. We note that he does not indicate in his letter exactly what information he reviewed to reach his conclusion that beneficiary possesses specialized knowledge, nor does he reference the regulatory and statutory definitions of "specialized knowledge." USCIS may, in its discretion, use as advisory opinions statements submitted as expert

testimony. See *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The beneficiary is clearly a highly skilled and experienced video game developer, however the petitioner did not adequately support a claim that the beneficiary's combination of experience in game development programming languages and tools and familiarity with its game engines and related graphics, audio/cinematic and localization tools and components has resulted in his possession of knowledge that is different or uncommon compared to similarly employed workers in the industry or within the petitioning company.

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 or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

IV. 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.