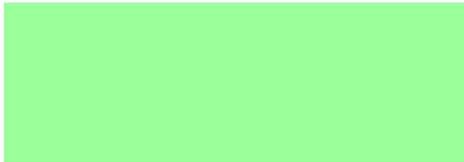


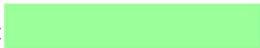
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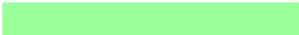


U.S. Citizenship
and Immigration
Services



DATE: **OCT 14 2014** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 nonimmigrant petition to extend the beneficiary's status 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 states that it is the parent company to the beneficiary's foreign employer, [REDACTED], located in Mumbai, India. The petitioner is a software development and design company that seeks to employ the beneficiary in a specialized knowledge capacity as a senior technical consultant for two years.

The director denied the petition, concluding that the petitioner failed to demonstrate that the beneficiary possesses specialized knowledge or that he would be employed in a capacity 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, counsel for the petitioner asserts that the director erred as the evidence of record establishes that the beneficiary possesses specialized and advanced knowledge in comparison to other similarly employed workers within the petitioning company and within the industry at large. In addition, counsel emphasizes that the beneficiary was previously granted an L-1 visa under the petitioner's Blanket L petition at the U.S. Consulate in Chennai, India and asserts that deference should have been given to that prior approval.

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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

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

II. Issue on Appeal

The issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and whether he will be employed in the United States in a specialized knowledge capacity.

A. Facts

In support of its Form I-129, Petition for a Nonimmigrant Worker, the petitioner provided a supporting statement dated October 10, 2013. The petitioner stated that it is a global provider of enterprise software applications that developed an enterprise resource planning suite called [REDACTED], a suite which supports the core business processes of its global manufacturing customers and includes many functional areas. The petitioner stated that it sells

and implements its software solution to various businesses worldwide and it is primarily used by these organizations to manage their day-to-day business processes. The petitioner asserted that it has approximately 1500 employees worldwide and that over 2,000 global manufacturing companies use its [REDACTED] software.

The petitioner's Form I-129 indicated that the beneficiary was employed as a senior technical consultant with its subsidiary in Mumbai, India from December 27, 2005 through January 14, 2011. On January 14, 2011, the beneficiary transferred to the United States to work for the petitioner in the same position in L-1B status after obtaining a visa under the company's Blanket L petition. The petitioner explained that as a senior technical consultant, the beneficiary performed a range of activities to enable the petitioner's customers to successfully implement and use the petitioner's [REDACTED] software.

According to the petitioner, the beneficiary's position abroad is similar to the proposed position in the United States. The petitioner stated that the senior technical consultant position "requires a combination of significant industry experience across multiple verticals in manufacturing and distribution, extensive [REDACTED] application and technical implementation experience, excellent communication skills, written and verbal, and the ability to lead customers through design and implementation." In addition, the petitioner asserted that an "advanced understanding of [REDACTED] specific technical architecture and software tools, application services, databases, execution platforms and communications protocols" is also required so that the senior technical consultant can advise on any technical infrastructure and development implementation, processes and procedures. According to the petitioner, this knowledge and skill set requires "at least 5-6 years of specialized experience." Further, the petitioner explained that these duties can only be performed by one who has "an advanced level of knowledge of our processes and procedures gained through experience."

In regards to the petitioner's [REDACTED] application suite, the petitioner acknowledged that there are other products on the market delivering solutions similar to their own but it asserted that its procedures and technologies are proprietary and unique in the industry; a fact that it claims, makes the company more competitive. The petitioner further asserted that "[s]ervicing the product requires knowledge and experience on these exclusive products, procedures and technologies." Therefore, the petitioner asserted that even an employee hired from within the same industry would require several years of experience to exceed entry-level competence.

The petitioner asserted that the beneficiary has an "impressive educational background" and provided evidence to show that the beneficiary had earned the United States equivalent of a Bachelor of Commerce Degree with a dual major in management information systems and business administration based on his formal university education and work experience. In addition, the petitioner asserted that the beneficiary had earned [REDACTED] certificates for training and performance including a "Key Contributor's Award" for 2007 and 2008 and two "[REDACTED] Champion" awards, but it did not provide documentary evidence of the awards or any additional explanation regarding the significance of the awards. In a separate letter dated December 18, 2013, the beneficiary's supervisor abroad asserted that the beneficiary gained "advanced Project Management skills" after attending a 2007 training program titled [REDACTED] Product Management Process and attending the [REDACTED] Leadership

Academy in 2006, but again no additional details were provided. The petitioner added that the beneficiary "played a key role" in design and development of various customizations for two customer projects, but it did not provide any additional information regarding the beneficiary's duties or the projects beyond providing the customers' company names.

The petitioner explained that as a senior technical consultant working in the United States, the beneficiary will continue performing a "range of activities required to enable the client to successfully implement and utilize [REDACTED] applications." The petitioner described the current U.S. duties as follows on the Form I-129:

He operates under goals and objectives set by our client or the project manager and assists with determining the tasks and steps necessary to accomplish the objective. [The beneficiary] provides direction and guidance to clients and to [petitioner] consultants assigned to work on their particular area of expertise. He actively participates in meeting and discussions, readily offers advice, suggestions and recommendations. He proactively identifies issues, risks and mitigation strategies and establishes forums with appropriate [petitioner] and client personnel to resolve. In addition, [the beneficiary] assists with determining direction and solution design for components of the project. He will [sic] guides/performs installation, configuration, training, business process design, testing, customization, and create schedules, budgets and deliverables.

The petitioner's letter supporting the petition reiterated the beneficiary's duty description and added the following duties:

He researches and analyzes more complex problems, and determines options and recommended solutions. He is responsible for resolving complex issues related to [REDACTED] applications and technology. Finally, [the beneficiary] assists with developing internal work aids and knowledge capital for the [REDACTED] product and the Customization [REDACTED] process and development. He ensures that project documentation is stored in internal [REDACTED] project repositories. He performs other duties as reasonably required of this role or requested by management.

The petitioner provided an evaluation of the beneficiary's training, education and experience prepared by [REDACTED] dated May 29, 2012. According to the evaluation, the beneficiary had held positions in the information technology field since September 1998 before taking a position with the petitioner's Indian subsidiary as a team lead and technical consultant. This evaluation letter refers repeatedly to the beneficiary's generalized knowledge and experience relating to information systems and his basic duties in a variety of positions; however, the letter does not identify any of the beneficiary's specific technical skills. The petitioner did not provide any additional information regarding the beneficiary's employment history.

The petitioner's initial evidence also included a copy of its 2013 Annual Report. According to the report, [REDACTED] also known as [REDACTED] is an integrated suite of software

applications and is comprised of software suites including Financials, Customer Management, Manufacturing, Demand and Supply Chain Planning, Service and Support, Enterprise Asset Management, Analytics, Quality Management, Interoperability, Process and Performance, and Internationalization. The annual report indicates that most of the petitioner's customers purchase a perpetual license for the petitioner's software and deploy it on their own computer systems, with the option to separately purchase contracts for maintenance and additional services.

The annual report indicates that the company offers a broad range of consulting and professional services aimed at assisting customers in deploying solutions and maximizing their value. It states that such services are provided by approximately 400 consultants throughout the world in its Global Services group, as well as "a larger network of Services partners globally."

With respect to the products, the annual report indicates that the petitioner offers an extensive course curriculum and that "[a]ll of course material is available online through the Learning Center and includes online learning modules, self-study training guides and direct access to a training environment for hands-on practice." The report further states that the "Enterprise Applications course offerings are available to end users, IT professionals, department managers, partners and consultants."

On November 12, 2013, the director issued an RFE instructing the petitioner to provide additional evidence related to the beneficiary's position abroad, proposed position in the United States and specialized knowledge. The director requested additional evidence to establish that the beneficiary has specialized knowledge as a result of his employment abroad and that his proposed position requires specialized knowledge.

In response to the RFE, the petitioner submitted a letter dated December 30, 2013 describing the beneficiary's duties abroad. The petitioner explained that 70% of the beneficiary's time was devoted to consultant duties as follows: 1) 15% acting as a liaison between teams and stakeholders; 2) 5% engaged in customer management; 3) 10% ensuring quality deliverables; and 4) 40% "[c]ontributing towards requirement analysis, development, reviews, technical and functional design, estimates, documentation and all other technical aspects of the project." The petitioner indicated that the beneficiary spent the remaining 30% of his time as a Team Lead overseeing management and supervision of eight employees. The eight employees included four senior technical consultants, two technical consultants, and two graduate trainees. The beneficiary's four subordinate senior technical consultants had relevant experience ranging from 13 to 21 years and all were educated at the university level resulting in either engineering or finance and business-related degrees.

The petitioner stated that the beneficiary was a senior technical consultant while employed with its subsidiary abroad, though the petitioner did not state if the beneficiary was directly hired into that position or whether he was promoted at some point after being hired in December 2005. The petitioner further described the beneficiary's claimed specialized knowledge as follows:

[The beneficiary's] expertise in and advanced level of Progress 4GL, Webspeed, Progress Graphic User Interface (GUI) and Smart Object knowledge and combination of technical and application knowledge allows him to analyze, develop, review, design, estimate, and document all technical aspects of projects assigned to him. The QAD products foundation is based upon Progress software. Individuals with knowledge of Progress software are difficult to find in the global marketplace. This specialized knowledge applies to all of [the beneficiary's] duties listed above.

According to the petitioner, the successful technical services consultant must have the right combination of skills, and in this case those skills include years of specialized training, years of university coursework, and "hands on experience with complex [redacted] assignments." In addition, the petitioner stated that the technical services consultant must be "technically adept" with Progress database software and [redacted] product suite along with other typical consultant requirements such as managing customer expectations, developing and maintaining a cordial and productive customer relationship.

The petitioner acknowledged that it has 15 senior technical consultants at the location where the beneficiary worked and four in the United States. However, the petitioner asserted that while the four employees in the United States have a "somewhat similar knowledge base" only the beneficiary has the "required subject matter knowledge for these complex assignments." The petitioner further distinguished the senior technical consultant position intended for the beneficiary by explaining that the beneficiary's duties would exceed the "standard job" for a senior technical consultant because the beneficiary would be managing a team of other senior technical consultants, among other employees. The petitioner explained that not all technical consultants have all of the knowledge required to understand certain business requirements. The petitioner asserted that the beneficiary "is able to understand customer's business processes as well as their requirements and while considering technical feasibility."

Therefore, the petitioner claimed that the beneficiary's "combination of software, business and accounting knowledge is considered 'special' knowledge as this combination is most difficult to find." In support of the claim the petitioner relied upon its assertion that the beneficiary has an advanced level of technical skill in Progress 4GL, and [redacted] proprietary technologies which includes Q-extend, Enterprise Financial Customization, Integrated Customization Toolkit, and Reporting Framework. The petitioner asserted that [redacted] certification is an internal program to evaluate employee skills and that employees who hold the certification are considered to have "an advanced level of knowledge." The petitioner asserted that the beneficiary is certified with Enterprise Financial Customization and Integration Customization Toolkit. However, the petitioner did not provide evidence of the certification, explain how many other employees had the certification, how long it took to obtain the certification, or how this particular certification qualifies the beneficiary's knowledge of the company's [redacted] solution as a whole as "advanced." The petitioner also indicated that the beneficiary has "an advanced level of knowledge in [redacted] ERP modules like Warehouse Management, Costing, Accounting, Manufacturing, Etc. Other Senior Technical Consultants do not possess [sic] such high level of knowledge in these modules." The petitioner asserted that the senior technical consultant plans and designs systems to meet customer requirements and strategic goals and

that those "duties can only be performed by an employee who has an advanced level of knowledge of our processes and procedures gained through experience."

The petitioner asserted that the beneficiary has been "working on [REDACTED] suite for over 14 years" and that it "would require at least 5-6 years of product training for anyone to attain that level of knowledge which he possesses and hence it is rare to find such a skill set with a combination of educational background, that is most suited for ERP solutions." The petitioner acknowledged that its customers sometimes have "various pieces" of [REDACTED] knowledge in their IT departments but the petitioner asserted that such IT staff would not have expertise in customizing [REDACTED] solutions to meet different business requirements. In this regard, the petitioner asserted that the beneficiary's "commerce and software educational background provides him with knowledge not possessed by the other senior technical consultants."

The petitioner asserted that the beneficiary's knowledge could not be easily taught or transferred and stated that "knowledge of [the petitioner's] software programs, processes and procedures are not taught in any university, the only way to gain knowledge about [the petitioner's] products is to work directly for [the petitioner] or [the petitioner's] customers." Further, the petitioner stated that "[k]nowledge gained by working as an employee of [the petitioner's] customers only provides entry level knowledge." Again, the petitioner referred to the beneficiary's 14 years of experience with its products. According to the petitioner, the beneficiary attended "numerous [REDACTED] training courses and "[h]is level of knowledge is at a higher level than other [REDACTED] employees." The petitioner included a list with a variety of courses and exams taken by the beneficiary since 2006. The petitioner did not provide information regarding the length or requirements for the various courses.

The petitioner asserted that the beneficiary's work has enhanced the company's "productivity, competitiveness, image and financial position" and that the beneficiary received a monetary bonus in recognition of his work. The petitioner also stated that the beneficiary developed a [REDACTED] interface with [REDACTED] and he is the only member of the petitioner's North America technical services team trained with technical knowledge of the [REDACTED] product. The petitioner's course spreadsheet appears to show a course for [REDACTED] customer support completed in 2012. The petitioner asserted that the beneficiary completed over 17 complex [REDACTED] training courses and has Product Knowledge Specialization (PKS) certification in Enterprise Edition, non-intrusive customization and Integrated Customization Toolkit. The petitioner also asserted that this particular certification demonstrates the beneficiary's advanced knowledge because the certification itself, according to the petitioner, indicates one has an advanced knowledge level in a particular product or technology.

The petitioner provided the following duty description to establish that the beneficiary's position as a senior technical consultant in the United States requires specialized knowledge:

Duty 1: Provide direction and guidance to clients and to [REDACTED] consultants assigned to work on their particular area of expertise. Participate in meetings and discussions, readily offer advice, suggestions and recommendations. Depending on the project, generally 20% of time on average is spent performing duty 1.

Duty 2: He proactively identifies issues, risks and mitigation strategies and establishes forums with appropriate [REDACTED] and client personnel to resolve. Depending on the project, generally 10% of time on average is spent performing duty 2.

Duty 3: Assist with determining direction and solution design for components of the project. Guides/performs installation, configuration, training, business process design, testing, customization, and create schedules, budgets and deliverables. Depending on the project, generally 60% of time on average is spent on performing duty 3.

Duty 4: Assist with developing internal work aids and knowledge capital for at least one area. Ensures that project documentation is stored in internal [REDACTED] project repositories. Submit time and expenses weekly as scheduled. Performs other duties as reasonably required of this role or requested by management. Depending on the project, generally 10% of time on average is spent performing duty 4.

The petitioner indicates that by working in the United States, the beneficiary "is better able to understand and gather information directly from [the petitioner's] global customers/US customers directly and then be able to translate the requirements to the solution design and the development that would then be done in India." The petitioner indicated that it is necessary to have a liaison readily available and within the same time zone to accommodate its customers.

The petitioner asserted that the beneficiary would use his specialized knowledge of the petitioner's products, processes and procedures to assist the petitioner's customers "with determining direction and solution design for components of the project. He will perform installation, configuration, training, business process design, testing, customization, and create schedules, budgets and deliverables." The petitioner stated that the beneficiary would be providing training in Enterprise Edition Customization and Integration Customization Toolkit in 2014, and that he has provided training in these and other areas, including [REDACTED] in the past.

On January 16, 2014, the director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized or advanced knowledge or that he would be employed in a capacity that requires specialized knowledge. In denying the petition, the director could not conclude that the beneficiary's knowledge was significantly different from that possessed by similarly employed workers in the same business activity. Further the petitioner did not demonstrate that knowledge of its organization's tools, technologies, processes, methodologies, and projects is specialized knowledge.

On appeal, the petitioner asserts that in 2011 the beneficiary was approved for an L-1B visa under the petitioner's Blanket L petition based on a U.S. consular officer's determination that his employment as a senior technical consultant satisfied the specialized knowledge requirements. Counsel relies on an April 23, 2004 USCIS interoffice memorandum in support of his assertion that the director was required to give deference to the prior approved petition. See Memorandum of William R. Yates, Associate Director for Operations, USCIS, *The Significance of a Prior CIS Approval on a*

Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity, HQOPRD 72/11.3 (April 23, 2004)("Yates Memo").

Counsel asserts that the beneficiary's educational background in commerce along with his business and accounting knowledge provide him with an advantage over other consultants that makes his knowledge significantly different from that possessed by other similarly employed workers in the same business activity. In addition, counsel asserts that "[k]nowing how to optimally customize the software, applications and processes to a particular client requires specialized knowledge of the company's products, services and techniques as well as an advanced knowledge of the company's proprietary processes and procedures." Counsel also contends that the director did not give proper weight to the beneficiary's favorable impact upon the foreign entity's productivity, competitiveness, image and financial position.

Counsel further asserts that the director did not consider that the beneficiary gained advanced knowledge of the petitioner's products by participating in their development and creation. In this regard, counsel states that the beneficiary: (1) developed the software's interface with Indian Excise Software; contributed to the design and development of the software development lifecycle for the company's Global Resource Center; and (3) worked on a "Progress implementation project" with research and development to improve the Enterprise edition of the petitioner's software.

Finally, counsel asserts that "there is not sufficient time to hire, train and provide 5-6 years of experience to produce a qualified Senior Technical Consultant," and the petitioner's inability to extend the beneficiary's status will have an unfavorable impact on the company's client projects.

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary would be employed in a specialized knowledge capacity or that he possesses specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual will be employed in the United States in a specialized knowledge capacity. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving

specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary's proffered and foreign position satisfy either prong of the definition.

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

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. We 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.

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 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 petitioner provided a general description of the beneficiary's duties which listed tasks that could be considered typical of an IT consultant, such as determining customer requirements, customizing the solution, performing installation and configuration duties, testing and training. The petitioner asserts that the beneficiary has performed and will perform a "range of activities" as a consultant that enabled its customers to "successfully implement and utilize [redacted] applications" but did not further describe the nature of beneficiary's claimed specialized knowledge. The record contains no detailed description of the beneficiary's prior assignments or current assignment in the United States, specific projects he has worked on, or other evidence that identifies whether the beneficiary has any particular area of specialization or expertise with the petitioner's software. Rather, the petitioner simply claims that the role requires application of specialized knowledge of its [redacted] software and its customization and implementation according to its customers' business requirements.

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 evidence of record indicates that the petitioner's [REDACTED] software is developed in the [REDACTED] relational database environment and programmed in the [REDACTED] programming language. The petitioner identifies its competitors as [REDACTED] and notes that the key competitive factors in its market are total cost of ownership, performance and reliability, service functionality, technology innovation, usability, customization, ease of deployment, and other factors such as marketing approach, financial resources and reputation. The petitioner has not explained what differentiates its [REDACTED] software from comparable products other than stating that it is proprietary and that it is difficult to find IT professionals who are experienced with Progress's technology. 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)).

The record does not establish whether an experienced IT professional who has worked with a competitive [REDACTED] product would require significant additional training in order to learn to customize and implement the petitioner's product. As such, we cannot determine to what extent the knowledge is uncommon or different from what is generally known in the industry. Again, the petitioner's claim that the beneficiary's 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."

In addition, the record does not support the petitioner's claim that access to its training courses and materials is limited to the petitioner's employees and its customers' employees. The information in the record indicates that all of the company's training materials are available online through its Learning Center, including learning modules, self-study training guides and direct access to a training environment. This training is available not only to the petitioner and its 2000 customers and their employees, but also to other IT professionals, partners and consultants. The petitioner's annual report indicates that the petitioner's group itself employs 400 consultants performing professional services similar to those that the beneficiary will provide. In addition, it refers to a "larger network" of service partners who perform the same duties as its consultants, and states that the company is dependent on third-party consulting and systems integration organizations that also implement and support its products. While it may be true that there are no university courses offering training in the petitioner's products, such training appears to be readily available to those outside the petitioner's organization.

Further, the record suggests that the beneficiary himself may have gained his knowledge of the petitioner's software with one or more of these partner organizations. The record reflects that the beneficiary had a total of nearly seven years of experience within the petitioner's organization at the time of filing. However, the petitioner has stated repeatedly that the beneficiary has 14 years of experience working with the petitioner's software. Prior to joining the petitioner, the beneficiary worked for several Indian companies including [REDACTED]

[REDACTED] The record contains no detailed description of his former employment; however, based on the petitioner's claims regarding his years of experience, it is reasonable to conclude that he may have worked with the petitioner's products since 2000 or earlier.

In fact, it appears that the beneficiary was hired for the senior technical consultant role based on this prior work experience. The petitioner asserted that the knowledge and skill set required for the beneficiary's position as a senior technical consultant required "at least 5-6 years of specialized experience and that the duties can only be performed by an employee with an advanced level of knowledge of our processes and procedures." However, the petitioner stated that its foreign subsidiary hired the beneficiary in December 2005 and that the beneficiary performed as a senior technical consultant until he transferred to the United States petitioner in January 2011. The record does not indicate whether the foreign entity hired the beneficiary directly as a senior technical consultant or whether the beneficiary was promoted to that position at some point during the beneficiary's five-year tenure abroad. Nevertheless, the petitioner did not explain when the beneficiary became a senior technical consultant, what qualifications the beneficiary possessed to justify the position and why the beneficiary did not require the minimum 5-6 years specialized experience as an employee that the petitioner now claims is required to replace the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Overall, while we do not doubt that the petitioner's consultants possesses more advanced knowledge than end-users within the petitioner's customers' organizations, the record does not support a finding that the completion of training and certification in the software is sufficient to establish specialized knowledge. The petitioner asserted that technical services consultants must be "technically adept" with Progress database software and [REDACTED] product suite along with other typical consultant functions such as managing customer expectations, developing and maintaining a cordial and productive customer relationship but it did not explain how the beneficiary's training and experience exceeds that basic level of competence. The petitioner states that the beneficiary completed "over 17" courses and holds Product Knowledge Specialization (PKS) certification in three areas. The petitioner did not explain the minimum training requirements for its technical consultants or its senior technical consultants, nor did it provide any information regarding the [REDACTED] training accomplishments of its other technical consultants in order to provide a comparison to the software skills and knowledge skills held by the beneficiary. As noted, the record indicates that there are 400 consultants performing similar roles and that its Global Services Division manages an even larger network of services partners capable of implementing and supporting the petitioner's products.

The record does include a list of training courses that the beneficiary completed that includes [REDACTED] in the title but the petitioner provided very little detail regarding those training courses and the petitioner did not explain the significance of the courses. For example, the petitioner did not include a course description, the type of course, or the actual duration of the course. Therefore the petitioner has not provided sufficient evidence to establish that the training required would take an excessively long time or that it was limited to the petitioner's employees.

Further, although the petitioner repeatedly claimed that the beneficiary performed duties which exceeded that of other senior technical consultants, those duties appeared limited to management or supervisory tasks. The petitioner also specifically stated that the beneficiary's "combination of

software, business and accounting knowledge is considered 'special' knowledge as this combination is difficult to find." The petitioner provided insufficient evidence in support of this claim. While the beneficiary did obtain a degree in commerce prior to commencing work in the IT industry, the record reflects that IT and functional business knowledge are both relevant to the type of work performed, and that other members of the technical consulting team have similar backgrounds. Furthermore, the petitioner did not sufficiently support its claim that the beneficiary possesses superior business skills in comparison to other senior technical consultants, or any other similarly-situated employee, in the petitioner's industry, or that he performs advanced duties as a result of these skills. The petitioner stated that the beneficiary's "commerce and software educational background provides him with knowledge not possessed by other senior technical consultants" yet the petitioner provided insufficient evidence to support the assertion. 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 at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Finally, counsel emphasizes on appeal that the director did not consider the beneficiary's role in the development of the petitioner's software, and cites three instances in which the beneficiary is claimed to have made contributions or enhancements to the company's products. The record reflects that the beneficiary's primary role is that of a senior technical consultant and that the petitioner maintains over 350 research and development personnel whose role is to develop and enhance the company's product and service offerings. The beneficiary's stated contributions to the petitioner's products are noted, but such contributions have not been described or documented in sufficient detail to establish that he possesses advanced knowledge as a result, or that such knowledge is required for the position in the United States.

Overall, the record does not support the petitioner's claim that the beneficiary possesses specialized knowledge of the petitioner's products or services, as it has not differentiated its products from other [REDACTED] systems or supported its claim that advanced training in such products not available outside the organization. Moreover, the petitioner has also not supported a finding that the beneficiary possesses advanced knowledge of the company's processes or procedures. In light of the deficiencies described above, the petitioner has failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a position that requires specialized knowledge.

We do not dispute that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. The beneficiary's duties and technical skills demonstrate that he possesses and applies knowledge that has not been not uncommon among similarly-employed IT professionals specializing in [REDACTED] systems. 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 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.

C. Prior Blanket L Approval

Counsel for the petitioner asserts that the director erroneously failed to acknowledge the prior L1B approval on behalf of the beneficiary. Referring to an April 23, 2004 Yates Memo, counsel further notes that since there was no substantial change in circumstances, the director was required to make a determination of “material error” with regard to the prior approved petition or acknowledge receipt of new material information that adversely impacts the petitioner’s or beneficiary’s eligibility. Counsel claims that the director was otherwise required by current USCIS policy to give deference to the determination of a prior adjudicator who concluded that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity.

Counsel’s assertion is not persuasive. It must be emphasized that each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act.

Here, the prior approval was granted by an overseas U.S. consular officer and not by USCIS. Therefore, this extension petition presents the first opportunity for USCIS to review the facts of this case. Due to the lack of evidence of eligibility in the present record, we find that the director was justified in departing from the previous approval by denying the present request to extend the beneficiary’s status. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

D. L-1 Visa Reform Act

Although not addressed by the director, we find that the record contains insufficient evidence to establish whether the terms of the U.S. employment are in compliance with the L-1 Visa Reform Act of 2004.

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

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

- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or

- (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. 158; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. The petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

In this case, the petitioner has provided inconsistent information that prevents us from determining whether this petition is subject to the terms of section 214(c)(2)(F) of the Act.

The petitioner indicated on the Form I-129, Supplement L that the beneficiary will be stationed primarily offsite at the worksite of an employer other than the petitioner or its affiliate, subsidiary or parent. The petitioner identified the name of the beneficiary's supervisor and stated that he would communicate with her by e-mail, instant message and telephone approximately two to three times per week. The petitioner stated that its technical consultants must temporarily work at client sites in order to understand the client's systems and later, to implement the client's customized solution and provide training and troubleshooting services. The petitioner did not identify the name of the client or the location of the beneficiary's offsite employment but rather stated that he would be a roving employee working at "various unanticipated client worksites."

In the request for evidence, the director noted the petitioner's statement on the Form I-129 that the beneficiary would be stationed primarily at the worksite(s) of an unaffiliated employer. The director requested supporting evidence to establish that the beneficiary would be supervised and controlled principally by the petitioner, as well as evidence to establish that the assignment will require the beneficiary to perform work for which specialized knowledge specific to the petitioning company is required. The director suggested that the petitioner submit purchase orders, a copy of the contract, work orders, or a statement of work relevant to the beneficiary's assignment.

In response, the petitioner stated that the beneficiary is "a regular employee" of the company and is not under the control of an "unaffiliated employer." It provided a copy of his employment agreement with the petitioner dated January 2011, and indicated that he is directly supervised by a technical services manager. The petitioner stated that the beneficiary performs the majority of his work from

his home office located in Georgia, and that he may perform work at the petitioner's offices in Georgia, in New Jersey and in California. The petitioner stated that he was not scheduled to work at any other location.

On appeal, counsel mentions that the beneficiary was to be engaged on a 6-month project with an important customer,

Based on the inconsistent claims made in the record, we cannot determine whether the beneficiary will be primarily stationed at the worksite of an unaffiliated employer. The petitioner initially stated that such placements are inherent to its technical consultants' work and that the beneficiary would work principally offsite, but then stated that the beneficiary had no scheduled off-site employment. The petitioner has not described the nature or location of the work the beneficiary will perform for the client identified for the first time on appeal. As such, it remains unclear whether the petitioner is required to comply the terms of the L-1 Visa Reform Act or whether the offered position is in compliance with those terms. 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. at 591-92. For this additional reason, the petition cannot be approved.

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, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.