



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **OCT 14 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("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 is a registered California branch office of an information technology infrastructure management services company located in Bangalore, India. The petitioner seeks to transfer the beneficiary from the Indian entity to serve in the position of Consultant – Messaging for an initial period of three years. The petitioner indicates that the beneficiary will be assigned to the worksite of its client, [REDACTED], in [REDACTED] Georgia.

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 director, citing section 214(c)(2)(F) of the Act, further observed that the beneficiary's placement at the unaffiliated employer's worksite would not be a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

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 a matter of fact in failing to find that the beneficiary holds "advanced specialized knowledge" of the petitioner's proprietary product, [REDACTED] and that such knowledge is required to perform his current and proposed duties for the client. The petitioner submits a brief from counsel and additional documentary 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.

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.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

Finally, 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. FACTS AND PROCEDURAL HISTORY

The petitioner is a branch office of an IT infrastructure management services provider with headquarters in India. The petitioner indicates that the company has 2,263 employees worldwide with approximately 50 employees located at its branch offices in the United States. The petitioner reported \$38 million in revenue in the most recent fiscal year.

The petitioner stated that the beneficiary will be working as Consultant-Messaging assigned to work on projects in the Mobility domain at [REDACTED] facility located in [REDACTED] Georgia. The petitioner specified that the beneficiary would be assigned to work on a project which will require "his specialized knowledge of [REDACTED]" With respect to [REDACTED], an "in-house tool developed by [the foreign entity]," the petitioner stated:

It is a unique service delivery platform and a key differentiator which extensively leverages Analytics, Automation and Assurance to deliver end-to-end integrated service management services for Products & Applications in the Mobility domain such as [REDACTED]

[REDACTED] [The beneficiary] will leverage his extensive knowledge and application of [the petitioner's] [REDACTED] to complete this project. [The beneficiary] was part of the team that designed the [REDACTED]

The petitioner indicated that the beneficiary joined the foreign entity as a Technical Support Engineer in 2006, and has since held the positions of Senior Technical Support Engineer – Messaging, Technical Specialist – Messaging, and SME – Messaging. The petitioner stated that the beneficiary has held his current position of "Consultant – Messaging" since July 2011, and described his duties as follows:

[The beneficiary] worked on designing new turn ups and device gateways after understanding the needs of the business. He designed and implemented Mobile Device Management for the complex client sites; he was actively spearheading the [REDACTED] designing and integration of our knowledge base and MDM servers into the [REDACTED] tool. Apart from this he has managed [REDACTED] [REDACTED] for mobile device management. He planned for upgrades of

Mobility Servers and participated in daily change advisory board calls to discuss impact and other analysis before the changes are approved for implementation.

[The beneficiary] worked on integrating tools to existing messaging environments, worked with customers and technical teams to pre-stage the environment for software integration. He discussed and finalized different feasible options and integration plans for [REDACTED] with the respective technical teams. He interfaced with different technical teams and documented the installation and configuration of the [REDACTED] tool. In addition, he finalized integration plans and timelines with the client and customized [the petitioner's] [REDACTED] tools to meet the requirements of different products and applications. He conducted periodic meetings with different technical teams to discuss progress issues and roadblocks.

The petitioner stated that the beneficiary has been assigned to the [REDACTED] Operations Management Center program during his entire tenure with the foreign entity and that he has "gained unique and specialized knowledge of [REDACTED] proprietary processes and procedures, which can only be acquired while working with [REDACTED]". The petitioner explained that the beneficiary was chosen for the U.S. position based on his niche skillset on the latest Mobility products, his knowledge of the [REDACTED] tool, and his extensive experience with the [REDACTED] program. The petitioner also documented the beneficiary's completion of a bachelor's degree in computer science in 2002.

The petitioner stated that the beneficiary's primary responsibility in the United States would be the integration of [REDACTED] existing legacy applications. The petitioner provided a list of 29 duties and indicated that they would be divided between two distinct areas of responsibility – [REDACTED] and Mobility Technology.

In support of the petition, the petitioner also submitted a copy of its "Master Services Agreement for Information Technology" with GE dated January 29, 2011, along with the "Statement of Work for Onsite Mobility Architect," for [REDACTED] Infrastructure Shared Services (ISS). The SOW defines the activities and deliverables the beneficiary will provide as the resource selected for this assignment, which include the following:

- System-level architecture and design of mobility infrastructure
- Understands emerging technologies and how to exploit them in creating innovative solutions
- Define system impacts of customer needs and required functionality
- Define the architecture, external interfaces and functionality description of new products
- Responsible for defining expected system performance, functional operation and practical implementation
- Responsible for technical evaluation of major system enhancements and major new customer requirements
- Work with existing and potential new customers to understand their problems and translate them into practical, scalable, cost effective, and easily deployable and management product/future requirements

- Be a key driver in all system architecture activities
- Ensure mobility architecture enhancements will be evolvable, scalable, management and easy to use
- Ensure that system evolution does not adversely impact key system characteristics
- Participate in review of all critical system design and test documents
- Lead the system improvement initiatives
- Provide system level technical support in customer meetings
- Experienced at communicating with and managing level stakeholders
- Experience in the offshore delivery model

The SOW specifies that the Onsite Mobility Architect's primary responsibility "will be to operate under the guidance and written instruction of the ISS designated supervisor."

The SOW at Exhibit A provides the skill set required for the position. It indicates that the Onsite Mobility Architect must have: a degree in computer science or a related field; experience working in a highly matrixed organization; proficiency in implementing solutions using ITIL framework and best practices; at least seven years of experience using Microsoft operating systems, Server, understanding of current and emerging technologies, strong collaboration and analytical skills, and a demonstrated customer focus.

The petitioner provided marketing materials regarding its service delivery automation platform which describes the tool in detail and compares it to similar solutions offered by competitors. The petitioner also provided a certificate of participation indicating the beneficiary's successful completion of training in in February 2012.

The director issued a request for evidence (RFE) advising the petitioner that the initial evidence did not establish that the beneficiary possesses specialized knowledge as a result of his familiarity with the petitioner's in-house developed tools or advanced knowledge of the petitioner's processes and procedures. The director suggested that the petitioner provide a more detailed description of the beneficiary's proposed duties, explain how the knowledge required for the position is different from that required for similar positions in the industry, describe how the position requires the application of advanced knowledge of the organization's processes and procedures or how the petitioner's product is special, and explain the minimum amount of time required to obtain the knowledge. With respect to the beneficiary's completion of training in the director suggested that the petitioner explain how many others have completed similar training, and document all training the beneficiary completed with the foreign entity, including the duration of the courses and certificates of completion.

In response to the RFE, the petitioner submitted a letter from the foreign entity's Senior Manager Talent Transformation, who confirmed that the beneficiary completed the foreign entity's training course in between November 2011 and February 2012. Mr. stated that "a significant amount of employees are trained on application for deployment at various client locations." He indicated that the program includes a combination of classroom and hands on training and provided a training session schedule identifying the specific topics covered over a four month period (83 days).

The petitioner also provided a letter from [REDACTED] Vice President of Client Engagements, who provided additional information regarding [REDACTED] and the petitioning company's relationship with [REDACTED]. Mr. [REDACTED] explained that [REDACTED] key feature is that it maintains a database of different alerts received from the customer's monitoring tool ([REDACTED]) and a database of all the tickets opened in the customer-provided ticketing tool [REDACTED]. [REDACTED] is able to use this database information to perform analysis about future failures based on the intelligence built into the tool. Mr. [REDACTED] stated that there are other products with similar intelligence (such as [REDACTED]), but the petitioner's [REDACTED] "has the advantage of customizing different/unique customer environments." He explained that before the petitioner developed [REDACTED] it evaluated these third-party products for its customers and found that they came with additional installation, license and support costs. He stated that "[REDACTED] was developed to avoid these additional costs to our customer by building these automation capabilities as a service offering to our customers."

Mr. [REDACTED] went on to discuss the petitioner's relationship with [REDACTED] which dates back to 2000. He indicated that the company has 400 total resources supporting [REDACTED] Infrastructure. He specified that the Collaboration Team, with 87 resources, supports [REDACTED] Email and Mobility Infrastructure, including support for Good for Enterprise, Blackberry Enterprise Server, Exchange Server, etc. [REDACTED]. Mr. [REDACTED] stated that it has a dedicated support center for [REDACTED] where the team works on a 24/7 basis to keep [REDACTED] infrastructure running at all times. He further explained that as part of its services to [REDACTED], the petitioner "has embedded its proprietary tools like [REDACTED] etc. into its services."

The petitioner also submitted a letter in which it further discusses [REDACTED] and the beneficiary's knowledge of this tool, noting that he "was part of the team that provided customer feedback that went towards helping enhance the design of the tool." The petitioner provided an expanded description of the beneficiary's proposed duties, noting that the beneficiary will allocate a total of 60% of his time to duties involving "the Integration of [REDACTED] tool with the existing legacy applications." The petitioner indicated that the remaining 40% of his time would be allocated to duties that fall under the "mobility technology" area of responsibility.

The petitioner stated that since the beneficiary has been working with [REDACTED] for more than seven years he has customized [REDACTED] and "is the only available individual in our company who has the specialized knowledge of the [REDACTED] tool as well as the specialized knowledge of our company's process and procedures associated with the [REDACTED] client." The petitioner indicated that the only other individuals in the United States with the same knowledge are assigned to other projects, and "there are no other individuals available with knowledge of the [REDACTED] and available to work in Cincinnati, Ohio."

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he has been employed abroad, or would be employed in the United States, in a capacity requiring specialized knowledge. The director acknowledged the petitioner's claims that the beneficiary possesses specialized knowledge based on his training and experience with [REDACTED] but found insufficient evidence to establish that the beneficiary's knowledge of this tool is different than that possessed by others within the company or significantly different from that possessed by other similarly

workers employed in the petitioner's industry. The director emphasized that the beneficiary completed training in [REDACTED] only 17 months before the petition was filed, despite the petitioner's claim that the tool has been integral to his performance of duties for [REDACTED] for years. The director also noted the petitioner's emphasis on the beneficiary's "unique and specialized knowledge of [REDACTED] proprietary processes and procedures" and emphasized that this client-specific knowledge could not be considered specialized knowledge as it is defined in the statute and regulations.

On appeal, counsel asserts that "the service erred as a matter of fact in failing to find that the Beneficiary possessed advanced specialized knowledge of the Petitioner's proprietary product, [REDACTED]" Counsel asserts that the petitioner did not give sufficient weight to Mr. [REDACTED] letter, noting that "the description of the types of training received by the Beneficiary, on its face, seems highly technical."

The petitioner re-submits Mr. [REDACTED] letter, the beneficiary's [REDACTED] training certificate, and the training schedule, along with a new letter from [REDACTED] Director - Operations for the [REDACTED] account. Mr. [REDACTED] asserts that the training the beneficiary received from November 2011 through February 2012 was highly advanced technical training that could not have been completed by a newly hired employee. In addition, he states that the four-month training requires a "technology person at a Level 4/5 in technical knowledge" while a person whose knowledge is at Level 1 or 2 would require 6 to 9 months of training on the [REDACTED] tool. Mr. [REDACTED] further describes some of the beneficiary's previous project assignments for [REDACTED] and states that, by virtue of the technical skills he displayed, he was identified for the advanced [REDACTED] training. Mr. [REDACTED] explains that [REDACTED] is a unique analytical tool that "helps target and focus the issue at hand for someone like [the beneficiary] to come in and solve the problems."

He also emphasizes the beneficiary's experience with [REDACTED] environment, noting that he has been working on [REDACTED]; mobility issues and with its legacy and current e-mail environment, which has 450,000 Email accounts and 110,000 Mobility users. Mr. [REDACTED] states that the beneficiary "has certain expertise of the process and procedures of [REDACTED] email environment that no one else has." Counsel asserts that the evidence establishes that the beneficiary possesses advanced specialized knowledge of [REDACTED] and that the client needs an individual with this advanced knowledge to achieve successful implementation of its project.

III. ANALYSIS

A. Specialized Knowledge

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 petitioner's claims are based on a claim that the beneficiary possesses specialized and advanced knowledge of the petitioner's [REDACTED] product, as well as "specialized knowledge of [REDACTED] proprietary processes and procedures which can only be acquired while working with [REDACTED]".

1. Description of Job Duties

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.

Here, the petitioner submitted two different descriptions of the beneficiary's proposed role and failed to account for the material differences in the job duties and requirements. The petitioner indicated in response to the RFE that beneficiary will allocate 60% of his time to integrating the petitioner's [REDACTED] tool with [REDACTED] legacy

systems, and 40% of his time to performing more general "mobility technology" functions such as setting architectural dimensions and direction; developing mobile application standards for development of web and/or hybrid enterprise solutions on mobile platforms; architecting/developing mobile solutions in leading mobile platforms, including [REDACTED] understanding emerging mobility technologies; defining and building mobile technology architecture; troubleshooting [REDACTED] device related issues and recommending technology improvements; installing and configuring a [REDACTED] server; and performing mobile application engineering using HTML5, JavaScript, CSS, Java, Objective C, etc. The petitioner indicates that the position requires both advanced knowledge of [REDACTED] and extensive prior experience with [REDACTED] projects.

The petitioner also submitted a statement of work describing the same position. This description includes many of the tasks that comprise the "mobility technology" portion of the description the petitioner provide in its letter, but none of the [REDACTED] tasks that the petitioner indicates will require the majority of the beneficiary's time and his application of specialized knowledge of the petitioner's tool. There is nothing in the statement of work job description that would indicate that the beneficiary's primary responsibility will be to integrate the [REDACTED] tool with [REDACTED] existing legacy applications. Further, the client's stated requirements for the position are a degree in computer science, experience with implementing solutions using ITIL framework and best practices, and seven years of experience with [REDACTED] operating systems, [REDACTED] server. The Statement of Work does not mention [REDACTED] at all, much less indicate that its integration is the primary purpose of the assignment. 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).

Notably, the "mobility technology" duties described by the petitioner and mirrored in the SOW require experience in a number of third-party technologies that could be considered general knowledge among IT professionals specializing in mobility platforms. Given this discrepancy, the petitioner has not established that the beneficiary's proposed assignment will require the application of his claimed specialized knowledge in the company's [REDACTED] tool.

2. The Claimed Specialized Knowledge

The petitioner claims that the beneficiary possesses "advanced specialized knowledge" of its proprietary service delivery automation platform, [REDACTED]. 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.

At the time of filing, the petitioner unequivocally stated that the beneficiary "was part of the team that designed the [REDACTED] tool." The petitioner did not submit any evidence to support this statement, and did not repeat this claim. Going on record without supporting documentary evidence is not sufficient for purposes

of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In response to the RFE, the petitioner stated that the beneficiary "was part of the team that provided customer feedback that went towards helping enhance the design of the [REDACTED] tool," a statement that appears to be inconsistent with its initial claim that he was a member of the team that actually designed the technology. The petitioner did not directly state when or how the beneficiary contributed to its design, nor has it clearly indicated how much experience the beneficiary has gained with [REDACTED] during his seven years of employment.

However, the petitioner indicates that the beneficiary completed a four-month training course approximately 17 months before the petition was filed and there is no indication as to whether he used [REDACTED] prior to that date, much less contributed to its design as initially claimed. The petitioner indicates that this training course is advanced and only offered to Level 4 and Level 5 employees, while Level 1 and Level 2 employees require six to nine months of [REDACTED] training. The petitioner did not explain how an employee's "level" is determined or whether this classification is based on a company designation or an industry designation.

The petitioner's statements suggest that training in [REDACTED] is common within the company. In its response to the director's request for information about the number of employees who have completed similar training, Mr. [REDACTED] simply stated that "a significant amount of employees are trained on [REDACTED] application for deployment at various client locations." Further, Mr. [REDACTED] stated that [REDACTED] and other tools developed in-house by the petitioner are embedded into the infrastructure management services that the petitioner provides to [REDACTED] services that are supported by 400 of the petitioner's employees, including 87 employees who work on [REDACTED] Mobility services. Based on these claims, it is reasonable to conclude that a substantial number of the petitioner's employees are required to work with [REDACTED] every day and have received comparable training. Given the number of employees assigned to the [REDACTED] account, and the petitioner's statement that [REDACTED] is deployed at other client locations, the petitioner has not provided adequate support for its claim that the beneficiary is one of few employees who have completed the [REDACTED] training. For the same reason, the record does not support a claim that the beneficiary's familiarity with [REDACTED] internal processes and infrastructure is knowledge that is considered special or uncommon within the company.

Further, the record does not establish that knowledge of [REDACTED] alone qualifies as specialized knowledge. In describing the tool, the petitioner acknowledged that there are other tools such as [REDACTED] that offer similar functionality, but noted that the petitioner developed [REDACTED] to allow its clients to avoid installation, license and support costs associated with these third-party products. It remains unclear how much training would be required for an employee who is experienced with competitive systems to learn [REDACTED]. Moreover, as discussed above, the submitted statement of work indicates that the offered position requires an experienced professional with expertise in various mobile technologies and proficiency in implementing solutions using ITIL (Information Technology Infrastructure Library) framework and best practices. The petitioner's description of [REDACTED] indicates that the tool is built on ITIL framework and is a collection of best practices for infrastructure management. The training documents indicate that the beneficiary's "advanced" course began with an introduction to ITIL. 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." The record does not contain sufficient information to differentiate [REDACTED] to the extent that if any employees trained to use technology could be deemed to have specialized knowledge.

Overall, the petitioner did not adequately support a claim that the beneficiary's combination of experience in mobility technologies, [REDACTED] projects, and [REDACTED] qualifies as "advanced specialized knowledge." In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge or that 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.

B. L-1 Visa Reform Act

A remaining issue in this matter is whether the beneficiary's placement at the worksite of an unaffiliated employer is permissible under the terms of the L-1 Visa Reform Act.

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).

Here, the petitioner consistently states will be stationed at the worksite of an unaffiliated employer, [REDACTED] located in [REDACTED] Georgia. The petitioner indicates that the beneficiary will be principally controlled and supervised by one of the petitioner's own managers located at the same worksite. However, the SOW specifies that the [REDACTED] primary responsibility "will be to operate under the guidance and written instruction of the ISS designated supervisor," with ISS referring to [REDACTED] Infrastructure Shared Services. Based on this statement, and without further explanation, it is reasonable to conclude that the beneficiary's work will be supervised in part by a [REDACTED]-appointed supervisor. Once again, 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. As the petitioner did not further explain the terms

expressed in the SOW with respect to the beneficiary's supervision, the evidence of record is insufficient to establish that the beneficiary will be controlled and supervised principally by the petitioner.

As discussed in the preceding section, the record also contains conflicting information with respect to whether the beneficiary's placement is related to the provision of a product or service for which specialized knowledge is necessary. *See* Section 214(c)(2)(F)(ii) of the Act. The petitioner must demonstrate that the beneficiary's offsite employment is primarily connected with the provision of the petitioner's product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. If the petitioner fails to prove this element, the beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.

The petitioner consistently indicates that the assignment will require the beneficiary's specialized knowledge of the petitioner's [REDACTED] tool. However, the job duties and requirements for the [REDACTED] as stated in the SOW make no reference to the petitioner's proprietary technology and fail to support the petitioner's claims that the primary purpose of the beneficiary's assignment is to integrate [REDACTED] with [REDACTED] existing legacy applications. Rather, the job duties suggest that the beneficiary will rely on experience with ITIL framework and a number of third-party mobility technologies in order to develop solutions for the client under the guidance of a supervisor appointed by the client. The client will pay the petitioner a set monthly fee for the beneficiary's services in this capacity.

While it is possible that the beneficiary here possesses knowledge that is directly related to both the petitioner and the unaffiliated employer's product or service, it is incumbent upon the petitioner to establish that the position for which the beneficiary's services are sought is one that requires specialized knowledge specific to the petitioner. Here, the petitioner has failed to provide corroborating evidence demonstrating that the beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Further, the petitioner emphasizes the fact that the beneficiary has "gained unique and specialized knowledge of [REDACTED] proprietary processes and procedures, which can only be acquired while working with [REDACTED]" and indicated that such knowledge would also be applied in the U.S. assignment. The record does not support a finding that the purpose of the beneficiary's assignment is to apply his knowledge of the petitioner's own products or services at the client worksite.

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary will be principally controlled and supervised by the petitioner and that the beneficiary's placement at the worksite of an unaffiliated employer is permissible under the L-1 Visa Reform Act. 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

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.