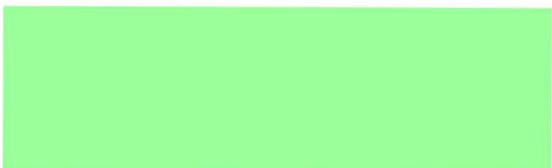




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 20 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 California Service Center Director denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in 2012, is the primary distributor for [REDACTED], and [REDACTED] cleaning machines and equipment. The petitioner states that it is a subsidiary of the foreign entity, [REDACTED] located in the Philippines. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a Lead Technical Sales and Application Manager for three years.

The director denied the petition, concluding that the petitioner had failed to demonstrate that the beneficiary possesses specialized knowledge or that he has been or will be employed in a position requiring specialized knowledge.

The petitioner 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 incorrectly concluded that the beneficiary's position abroad did not involve specialized knowledge. Counsel states that the beneficiary has advanced knowledge of the foreign entity's processes and procedures and that the beneficiary's position in the United States requires advanced knowledge of the petitioner's products and processes.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

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

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

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

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

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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. THE ISSUE ON APPEAL

The sole issue addressed by the director was whether the petitioner established that the beneficiary possesses specialized knowledge and whether he was employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 22, 2013. The petitioner claims that the foreign entity "is a trading and marketing firm supplying various production equipment, quality instruments, raw materials and indirect materials to Semiconductor Industry, PCB Industry, Disk Drive Industry and Electroplating Industry in the Philippines." According to the petitioner, the foreign entity was established in 2001 and its officers and employees have extensive working experience in the electronics field. The company's vision is to "be the vendor of choice for electronic-based quality and productivity solutions, goods and services in the [redacted] region." The petitioner asserts that the foreign entity has distributed products for other companies worldwide and that the company is well known in Asia "as a leader for trade and marketing of semiconductor products." The petitioner states that it was established as a company in the United States in order for the foreign entity to expand its market reach.

The petitioner claims that the beneficiary has been employed with the foreign entity since January 1, 2011 as "Lead Technical Sales and Application Manager." On the Form I-129, the petitioner provided a single description for the beneficiary reflecting his duties abroad and his proposed duties in the United States, as follows:

Conduct ultrasonic cleaning feasibility testing for customer. Do technical analysis of customer application in terms of contaminants to be removed, appropriate ultrasonic frequency to be used, define cleaning process parameters. Assist in ultrasonic machines installation and conduct operational training to customers. Troubleshoot ultrasonic machine errors/failures and do repair services.

The petitioner's letter submitted in support of the petition discussed the beneficiary's position abroad and reiterated the description cited above.

The petitioner provided the beneficiary's resume listing his professional experience as a Technical Sales and Application Manager with the foreign entity from January 2011 through April 2013. The resume indicated no additional professional experience.

The resume indicated that the beneficiary graduated on February 16, 2012, from [REDACTED], Philippines, with a Bachelor of Science in Engineering Management. According to the beneficiary's educational degree transcripts, the beneficiary was enrolled for five years; including all four quarters of the academic year 2010-2011 and the first two quarters of the 2011-2012 academic year. The beneficiary earned between five and ten credits during each quarter of his enrollment throughout 2011 and 2012. The record did not specifically state whether the beneficiary was enrolled full time or part time.

The beneficiary's resume included a single entry for training, specifically "[REDACTED] Philippines" by [REDACTED] from June 11 to June 15, 2012. A training certificate was included in the record but neither the certificate nor the petitioner provided any detail regarding the training such as the training description, actual length of training, or the significance of the training. Instead, the petitioner merely asserted that the beneficiary had "received extensive technical training" by [REDACTED] and that the beneficiary's "knowledge and experience in [REDACTED] machines is specialized because it is the main product that [the petitioner] distributes."

The petitioner stated that it has been in business "for a little over one year and is rapidly growing to becoming a reputable sales distributor of ultrasonic cleaning machines in the United States." The petitioner further stated that the ultrasonic cleaning machines and equipment it distributed included [REDACTED] and [REDACTED] machines and equipment. According to the petitioner, the beneficiary "was specialized in [REDACTED] machines" and since [REDACTED] is our primary product in the USA" it is very important for the beneficiary to be in the United States. The petitioner's letter included the following proposed description of the beneficiary's duties:

DUTY	PERCENTAGE OF TIME
Attend to customers technical inquiries	20%

Evaluate customer product, contaminants to be removed, volume, timing, chemistries	30%
Proposed an appropriate [REDACTED] machine model, ultrasonic frequency and define establish cleaning parameters for the customer	20%
Assist in ultrasonic machine installation and conducts operational training to customers	20%
Troubleshoot [REDACTED] machine errors/failures and do repair service	10%

The petitioner’s Form I-129 indicated that the beneficiary would earn US \$1,500.00 per month and that the company has two employees. However the petitioner’s organizational chart listed only its president/CEO, and two vacant positions: one for “sales/marketing” and the other for “financial/administration.” The beneficiary’s position was not included in the organizational chart.

On November 4, 2013, the director issued an RFE (request for additional evidence), instructing the petitioner to provide additional evidence related to the beneficiary’s position abroad, proposed position in the United States and his 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 provided a “certificate of employment” from the foreign entity indicating that the beneficiary had been employed since January 2011. The petitioner also included copies of the beneficiary’s pay stubs from January 2013 through April 2013 corroborating the petitioner’s assertion that the beneficiary earned ₱50,000 Philippine Pesos (PHP) per month, an amount equivalent to approximately US \$1,117. The petitioner did not provide proof to corroborate the claim that the beneficiary was employed full time from January 2011 to December 2012.

In the petitioner’s response letter, dated January 22, 2014, the petitioner addressed the specialized knowledge required for the beneficiary’s position as follows:

[The beneficiary’s position] requires specialized, technical knowledge of ultrasonic machines that [the foreign entity] sells and the services that [the foreign entity] offers for the machines. The ultrasonic machines require specific calibrations and knowledge of engineering mechanics, chemistry, thermodynamics, and simulation that is acquired through years of study and experience with technical application. As Lead Technical Sales and Application Manager, [the beneficiary] needs to calibrate the machines for each customer’s specific needs in addition to installing and providing operational training. Additionally, [the beneficiary] trains the sales team to be able to provide personal attention to customers.

[The beneficiary’s] position requires the specialized knowledge of all of the machines that [the foreign entity] sells as opposed to each salesperson that is only required to know about

their particular brand of machine they are selling. Therefore, [the beneficiary] is the most logical person to be transferred to the developing U.S. company.

The petitioner provided the foreign entity’s organizational chart depicting the beneficiary overseeing three salespeople and one service manager as supervisor of the sales department. The petitioner claimed that four of the beneficiary’s subordinates abroad held engineering degrees however the petitioner did not provide evidence to demonstrate the educational credentials or evidence to establish that those educational credentials were required for the positions. The petitioner did not include employee duty descriptions, training requirements or experience level.

The petitioner expanded the previously provided description of the beneficiary’s duties abroad by including a duty chart prepared by the foreign entity’s administrative manager as follows:

Duty	Percentage of Time	Supervision
Conduct ultrasonic cleaning feasibility testing for customer	30%	Supervised by President/CEO [REDACTED]
Do technical analysis of customer application	30%	Supervised sales team; [REDACTED]
Assist in ultrasonic machines installation and conduct operational training to customers	20%	Supervised sales team: [REDACTED] Worked in conjunction with Service Manager: [REDACTED]
Troubleshoot ultrasonic machine errors/failures and do repair services	20%	Worked in conjunction with Service Manager: [REDACTED]

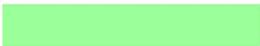
The foreign entity’s administrative manager stated that the beneficiary “completed comprehensive technical and operational training in [REDACTED] machines, the most popular product that [the foreign entity] distributes.” According to the letter, the beneficiary attended a five day training course in Penang, Malaysia from June 11 to June 15, 2012. The letter reiterated that the foreign entity’s “main products [are] the [REDACTED] machines” and that “[the beneficiary is without a doubt the most knowledgeable in the technical and operations of [REDACTED] machines.” Further, the letter continued, the beneficiary “has been educated and trained to oversee installations and to train other customer service and sales representatives to be able to educate their buyers on the operations of such machine.” The petitioner provided no evidence regarding the beneficiary's knowledge, experience, or training related to any other ultrasonic cleaning machine brands, such as [REDACTED] or [REDACTED] chemistries.

To demonstrate the beneficiary’s specialized knowledge, the petitioner submitted an undated memorandum that described two products the petitioner distributes: one was referred to in the initial petition and the second was mentioned for the first time in response to the RFE. First, the petitioner described the [REDACTED] Cleaning Machines and asserted that “[s]ince the effectiveness of ultrasonic cleaning depends on many factors. . . special knowledge in Engineering Mechanic, Chemistry, Thermodynamics and Simulations are necessary.” The petitioner explained that the beneficiary obtained advanced learning in several of these areas while enrolled at the [REDACTED]. The petitioner further explained that the beneficiary’s training in Malaysia “bridges the gap between theoretical learning and its application to technology.” Second, the petitioner described another of its products, called the [REDACTED] PCB (Printed Circuit Board) and mentioned that the beneficiary’s thesis focused on that product. The petitioner provided no evidence to demonstrate the beneficiary’s training or professional experience with the [REDACTED] PCB, aside from his thesis work. However, the petitioner referred to the beneficiary’s university study and coursework and stated that as a result the beneficiary has special knowledge to sell both products for the petitioner and that “[u]sually, it will take about 3 years to obtain this advanced knowledge.”

The petitioner resubmitted the beneficiary’s degree certificate, educational transcripts and thesis. The petitioner provided a training certificate signed by technical service manager for [REDACTED], [REDACTED] as evidence of the beneficiary’s completion of the course, spanning June 11 through June 15, 2012, as noted above.

Regarding the beneficiary’s proposed duties in the United States, the petitioner’s January 20, 2014 letter stated that the position required “technical knowledge and experience with the petitioner’s products, specifically [REDACTED] cleaning machines and Amitron printed circuit boards. The petitioner asserted that the beneficiary’s duties are highly technical and that the company “would not be able to hire just anyone to fulfill this role.” The petitioner asserted that the beneficiary would train the sales representatives and help establish the company “with the same technical capability” as the foreign entity. The letter included a more detailed duty chart than the one previously provided with the initial petition, as follows:

Duty	Percentage of Time	Supervision	How is this duty technical
Attend to customers’ technical inquiries	20%	Sales Department Hire sales people with technical background	Engineering Mechanics is used in examining response of fluid to solids
Evaluate customer products, contaminants to be removed, volume, timing, and chemistries <ul style="list-style-type: none"> Contaminants maybe RMA (Rosin Mild Activated) flux, water soluble flux, light grease, heavy oil Cycle time of ultrasonic cleaning 	30%	Sales department	Engineering Mechanics/Kinetics, evaluates how forces affects moving bodies under different temperature and chemistries



<p>Propose an appropriate [redacted] machine model, ultrasonic frequency, and define establishing cleaning parameters for customer</p> <ul style="list-style-type: none"> Assess preference on aqueous/water base or solvent type cleaning, the size and material of components to be cleaned, surface tension of contaminants to components, electrical parameter such as three phase and single phase electrics as well as footprint coverage of machine Perform cleaning trials on bigger batch and analyze results <p>Propose appropriate [redacted] PCB</p> <ul style="list-style-type: none"> Analyze customer schematic diagram, knowing customer application of PCB Reviewing customer's CAD data Confirm technical parameters such as line and space of copper width, required thickness of PCB, thickness of copper trace, diameter of smallest drill hole, and plating requirement 	20%	Sales Department	<p>Simulation blends planning, data collection, and analysis, model building, model verification and validation, as well as output analysis</p> <p>Knowledge in Protel/altium PCB CAD/CAM Software is necessary</p>
<p>Assist in ultrasonic machine installation and conducts operational training to customers</p> <ul style="list-style-type: none"> Place machine on customer's production floor, linking machine to electrical utilities, setting machine programs and automation conforming to process cycle time and then running production cleaning trials Provide customer support for 3 weeks in production mode <p>Upon delivery of PCB</p> <ul style="list-style-type: none"> Coordinate with customer for incoming quality control check and functional test 	20%	Services Department	<p>Installation and operational training conducted by [redacted]</p> <p>Knowledge in different physical structures of PCBs</p>
<p>Troubleshoot [redacted] machine error/failures and perform repair service</p>	10%	Services Department	<p>Maintenance training conducted by [redacted]</p>

Assess PCB problems such as warpage, delamination, oxidation and make adjustment			
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In denying the petition, the director stated that the evidence indicates the beneficiary is competent in the use and application of the foreign entity’s products, processes and procedures. However, the evidence does not establish that the knowledge required of the beneficiary amounted to “specialized knowledge” as contemplated by the regulations or that the beneficiary duties were any different or more advanced than any other worker in a similar position in the field. Regarding the beneficiary’s proposed duties, the director similarly concluded that the petitioner did not provide sufficient evidence to establish that the beneficiary’s duties would involve “special” or “advanced” knowledge. The director recognized that the beneficiary has a wide range of skills, education and some training. However, the director concluded that the petitioner provided insufficient evidence to establish that the beneficiary’s general knowledge and familiarization of the company products, processes and procedures qualified as specialized knowledge or advanced knowledge.

On appeal, counsel asserts that the beneficiary’s position abroad required advanced knowledge of the foreign entity’s processes and procedures and that this knowledge is “extremely valuable and critical to its success in the Philippines.” Counsel cited to the Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Specialized Knowledge," March 4, 1994 (Puleo Memorandum) and inserted quotes that defined the nature of specialized knowledge such as one who:

possesses knowledge that is valuable to the employer’s competitiveness in the market place . . . [and]has been utilized abroad in a capacity involving significant assignments which have enhanced the employer’s productivity, competitiveness, image, or financial position; possesses knowledge which, normally, can be gained only through prior experience with that employer; possesses knowledge of a product or process, which cannot be easily transferred or taught to another individual.”

Counsel asserts that the foreign entity’s clients indicated that “[the beneficiary] is truly and extraordinary engineer” and “[h]is experience and professionalism truly stands out” and also “his highly developed skills have benefitted our company.” Counsel highlights the beneficiary’s role in calibrating and installing machines, and providing operational training to customers. Counsel further asserts that the beneficiary trains the sales team to provide personal attention to customers. Counsel asserts “[t]his type of technical sales capability is what sets our company apart from other companies whose main goal is to be a distributor of these machines.” Counsel asserts “salespeople are not only responsible for selling the machines but they need to be able to calibrate the machines to each customer’s needs and be able to provide technical support if the machines are not operating properly.” Counsel further asserts that the beneficiary is the only person in the company that has the advanced knowledge of all the products and the necessities for each client. Counsel asserts that the beneficiary was recognized for his “specialized knowledge” by the [redacted] in [redacted] when he was selected as an officer and representative for the foreign entity. Nevertheless, the petitioner provided no evidence demonstrating the significance of the recognition or the requirements for the achievement.

Counsel asserts on appeal that the beneficiary's university coursework serves as the "groundwork" for the beneficiary's technical training with the foreign entity. Counsel includes the beneficiary's training certificate dated April 18, 2012 for "[REDACTED] Training," provided by [REDACTED]. The certificate included a training outline, dated 2004, but did not describe the length or nature of the training. For the first time and on appeal, counsel asserts that the beneficiary will also be responsible for a "Ceramic Coating Project," which requires specialized knowledge of PCBs and cleaning of contaminants. Counsel asserts that the beneficiary possesses specialized knowledge in [REDACTED] machines, printed circuit boards, and semiconductors and he is the only foreign entity employee with the necessary experience and training in all products across all products lines. Thus, counsel asserts that the beneficiary has specialized and advanced knowledge that satisfies the requirements of the statute warranting approval of this petition.

2. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was and 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 was employed abroad and 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 and his foreign and proffered positions 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, the petitioner needs to establish that the beneficiary possesses specialized knowledge. 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.

The petitioner's claims are based on both prongs of the statutory definition of "specialized knowledge." Specifically, the petitioner states the beneficiary has special knowledge of ultrasonic machines and advanced knowledge of the foreign entity's processes and procedures.

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(1)(3). The petitioner must submit a detailed job description of the services performed 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's description of the duties performed abroad and to be performed in the United States by the beneficiary as a Lead Technical Sales and Application Manager were vague and failed to provide an understanding of the beneficiary's actual role. For example, the beneficiary's duty descriptions allocated 100% of the beneficiary's time to tasks more consistent with actual sales and distribution of machinery than to management and training, such as providing customer assistance with machine selection, installation, operational training, troubleshooting, and repairs relating to the distribution and service of ultrasonic cleaning machines. Although the beneficiary's duty chart includes the term "supervision" of employees within each general task, the first chart does not include any particular tasks consistent with management or supervision of subordinates. Rather, the petitioner attached a percentage of time to the beneficiary's general duties and 100% of the beneficiary's time appeared to be dedicated to sales tasks and no supervisory tasks. The petitioner's new duty description for the beneficiary in response to the RFE included references to [REDACTED] PCB and the beneficiary's training role, but the petitioner did not explain the changes and the beneficiary's stated supervisory tasks are limited. Despite the beneficiary's duty description, the record suggests that the beneficiary is primarily a sales person with some expertise in one product line, [REDACTED] cleaning machines. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner failed to clearly establish the nature of the beneficiary's claimed specialized knowledge or advanced knowledge. Initially the petitioner claimed that the beneficiary received "extensive technical training" in [REDACTED] machines and that his knowledge is specialized because it is the main product the petitioner distributes and he is the "only employee who knows how to operate the [REDACTED] machines" and is the "only person who can provide specialized customer support." However, the record shows that the beneficiary completed only a five day training course on [REDACTED] training course and the petitioner failed to establish how the course could be considered extensive. Further, it is unclear why the beneficiary would be the only person employed by the foreign entity who is trained in [REDACTED] products; a company engaged in sales and distribution of that popular brand of products. Despite one of the beneficiary's

duty descriptions that suggested that the beneficiary had specialized knowledge of ultrasonic cleaning systems in general, the record establishes that the beneficiary received only the single course of training in the [REDACTED] brand. Nothing in the record established that the beneficiary had special training or knowledge relating to other machines such as [REDACTED] or [REDACTED] products; nevertheless, the petitioner asserted that the beneficiary's specialized knowledge about all of its products.

In response to the RFE, the petitioner stated that the beneficiary has specialized knowledge that is "extremely complicated and scientific" relating to [REDACTED] and [REDACTED] PCB machines. The petitioner asserted that it is the beneficiary's "specialized knowledge" of its "products, services, and equipment" that "makes him the most qualified person to train sales representative to be able to answer and provide technical support for customers." Thus, the petitioner asserted that it was the beneficiary's "knowledge of ultrasonic cleaning machines, PCB, and semiconductors" that has made the foreign entity more competitive in the Philippines and will be crucial to the petitioner's success in the United States. Nevertheless, the record does not contain sufficient evidence to establish that the beneficiary has specialized knowledge relating to PCBs or semiconductors. On appeal, the petitioner claims that the beneficiary has "advanced knowledge" of the foreign entity's processes and procedures" and that the beneficiary has specialized knowledge of [REDACTED] machines, printed circuit boards and semiconductors and that he has advanced knowledge of the petitioner's products and processes. The record contains insufficient evidence to establish that that the beneficiary has advanced knowledge of company products or processes; especially where the company is merely a distributor of another company's product and the petitioner has provide virtually no information relating to company processes. A review of the petitioner's claims reveals an evolving description of the beneficiary's knowledge, requirements and experience. It is incumbent on the petitioner to present a clear and consistent claim regarding the nature of the beneficiary's "special" and/or "advanced" knowledge. Here, the petitioner has not presented such a claim.

Nevertheless, the petitioner indicates that the beneficiary's knowledge, training and experience relating to [REDACTED] cleaning machines is the basis the beneficiary's specialized and advanced knowledge. Nevertheless, the record does not support the claim. The petitioner's reliance on the beneficiary's university degree and thesis coursework as the foundation of his knowledge may be understandable from an employer's point of view but the degree is not sufficient to establish "specialized" knowledge under the regulations for approval of this petition. Standing alone, the degree provides the beneficiary with no distinction in comparison to any other individuals similarly employed by the petitioner or any other company within the industry. We note that all four of the beneficiary's claimed subordinates abroad have degrees in industrial, mechanical, and electrical engineering, but the petitioner failed to provide any information as to the training they received. It does not appear that the beneficiary had any distinctive specialized knowledge or advanced knowledge prior to his [REDACTED] training in June 2012 and this short training course is insufficient to establish specialized knowledge. The petitioner failed to provide a context for the beneficiary's [REDACTED] training. In other words, the petitioner failed to explain the basic training requirements for an employee in the beneficiary's position, or for his subordinates. The petitioner failed to provide a description of the training, the actual length of the training, the type of training or the nature of the training. There is no evidence to show whether this training requires any type of certification or testing or whether any of the petitioner's other employees have any other training. Further, the petitioner's claim that all of the salespeople have knowledge regarding the products that they sell, whereas the beneficiary is the only employee with knowledge of all of the products sold, suggests that at least one other employee would

have knowledge of [REDACTED] products as the beneficiary is identified as a manager. Yet, the petitioner claimed the beneficiary is the only employee with [REDACTED] knowledge. We note that the beneficiary is required to train salespeople to provide sales and support services including selection, calibration, installation, and servicing of all the petitioner's products. The petitioner did not provide a timeline for the training but since the beneficiary's training was not more than five days, it seems reasonable that that petitioner would certainly be capable of training another employee to replace the beneficiary within a reasonable time and without interruption of the business. Moreover, as the petitioner asserts the [REDACTED] brand is its most popular brand, it is not reasonable to believe that a single managerial employee would be the only individual trained to sell the machines. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner claimed that the beneficiary had been employed with the foreign entity since January 2011, but only provided pay stub evidence for the period from January 2013 through April 2013. The petitioner asserted that the beneficiary was hired directly out of university as a Lead Technical Sales and Application Manager in January 2011 but did not explain whether the beneficiary was enrolled full time during 2011 and 2012 or how he managed fulltime employment while still enrolled in University until his graduation in February 2012. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner's intent to hire the beneficiary in the United States as a Lead Technical Sales and Application Manager due to his specialized or advanced knowledge tends to defy common sense. We recognize that the beneficiary has a Bachelor of Science Degree in Engineering Management which may be a demanding course of study with a thesis relating to PCBs and semiconductors, but these educational credentials are held by all graduates with similar coursework and do not extend to them specialized or advanced knowledge as required for approval of this petition. The petitioner's assertion that the beneficiary's experience and training "bridges the gap" between the theoretical and application of technology does not, without more, elevate the beneficiary's knowledge to meet the regulatory standards. Here, the beneficiary's training course and experience is short, and the petitioner fails to compare and contrast the beneficiary's knowledge, education, training, and employment with others employed in the industry performing the same or similar type of work. Moreover, it is difficult to reconcile the petitioner's assertion that the beneficiary's knowledge is advanced or special where the petitioner intends to have the beneficiary perform as a manager in the State of California for remuneration of US\$1,500 per month, which amounts to less than the California minimum wage. 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)).

Counsel's claim on appeal that the beneficiary has advanced knowledge of the petitioner's processes and procedures was not made initially nor was it raised in the RFE response; nevertheless, nothing in the record indicates that the beneficiary has advanced knowledge of any company processes or procedures.

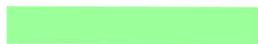
We do not dispute that the beneficiary is educated and has valuable skills and experience. The beneficiary's educational credentials, experience and training demonstrate that he possesses knowledge that is typical among others in his industry. The petitioner did not claim to be the only distributor of ultrasonic cleaning machines but rather claimed that the beneficiary's customer service was what set them apart from other companies. The petitioner did not claim that its specialized or advanced knowledge set them apart from others in the industry. Moreover, the petitioner asserted that the beneficiary was required to train others to perform these services, even though the training duties were not originally included in his duty chart. Clearly, the beneficiary's knowledge can be, and is expected to be transferred or taught to other individuals. The petitioner has not shown that such training would involve significant inconvenience to either the United States petitioner or the foreign entity and it appears unlikely that it would be given the short training course provided to the beneficiary. Despite the petitioner's assertion that it would usually take about three years to obtain the beneficiary's level of advanced knowledge, the petitioner has not established this claim.

Overall, the record does not support the petitioner's claim that the beneficiary possesses specialized knowledge of ultrasonic cleaning machines, PCBs, or semiconductors or advanced knowledge of company processes or procedures. Although the petitioner repeatedly claims that the beneficiary's knowledge is special and advanced, the petitioner failed to provide independent and objective evidence to corroborate such claims. The petitioner did not provide sufficient evidence to establish that the beneficiary was the most experienced individual employed abroad, as claimed. First, the petitioner failed to provide pay documentation requested by the director demonstrating that the beneficiary was employed from January 2011 through December 2012. The petitioner did not explain how the beneficiary was capable of fulfilling his role with the foreign entity while simultaneously completing his university degree as an enrolled student throughout 2011 and part of 2012. The petitioner's reliance on the beneficiary's university degree, a five day training course, and verified experience with the foreign entity since January 2013 is not sufficient to establish specialized knowledge with [REDACTED] machinery or advanced knowledge of the foreign entity's processes and procedures. Even if the petitioner had established the beneficiary's experience since January 2011, the evidence would have been inadequate primarily because the petitioner has not established specialized or advanced knowledge.

The beneficiary's expertise is repeatedly linked to [REDACTED] cleaning machines and while the petitioner has provided inadequate evidence in support of that claim, the petitioner has also provided insufficient evidence to establish the beneficiary's specialized or advanced knowledge related to any other product distributed by the foreign entity or the petitioner. In addition, the petitioner provided inadequate evidence to establish either specialized or advanced knowledge relating to PCBs or superconductors.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.



III. 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.