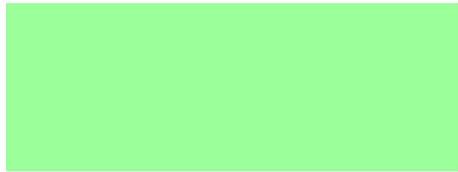
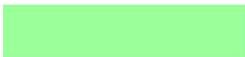


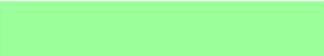


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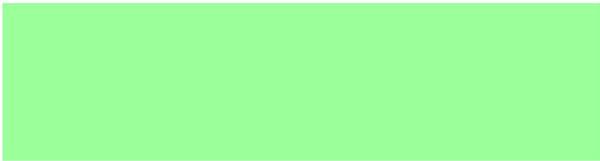
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Beneficiary: 

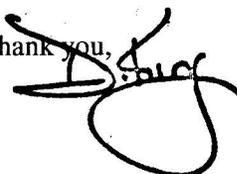
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 Vermont Service Center Director denied the nonimmigrant visa petition. 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 is a Delaware corporation engaged in software development, testing and support. It claims to be an affiliate of the foreign entity, [REDACTED]. The petitioner employs the beneficiary as a lead software engineer and seeks authorization to extend his employment for an additional two years. The petitioner indicates that the beneficiary will work at the petitioner's worksite in Pennsylvania and at its client worksite in California.

The director denied the petition, concluding that the petitioner: (1) failed to establish that the beneficiary possesses specialized knowledge or that he has been and will be employed in a specialized knowledge capacity; and (2) failed to establish that the beneficiary's employment at the unaffiliated employer's facilities would be permissible under section 214(c)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the matter to the AAO for review. On appeal, counsel asserts that the director failed to give due weight and probative value to statements provided by the petitioner. Counsel asserts that the record demonstrates that the beneficiary's past and proposed positions involve specialized knowledge. Counsel further asserts that the petitioner will control and supervise the beneficiary's off-site employment. Counsel submits a brief and a letter from the petitioner 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.

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. Specialized Knowledge Requirements

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

### A. Facts

In a letter submitted in support of the Form I-129, Petition for a Nonimmigrant Worker, the petitioner, known as the [REDACTED] stated that it is a leading provider of IT software services and solutions in the United States, Central and Eastern Europe. The petitioner asserted that it currently maintains its North American headquarters in [REDACTED] Pennsylvania but the majority of its system development work occurs in [REDACTED]. The petitioner stated that "the U.S. facility supports Executive, Account and Project Management functions as well as System Architecture, specialized consulting and deployment services." The petitioner further stated that it employs more than 8000 professional programmers, engineers, testers and supporting personnel.

The petitioner stated that its "strong on-site presence (260+ people in the United States, 900+ people in the European Union) enables [REDACTED] to deliver complex, mission-critical, and highly tuned specialty applications addressing the business demands of global companies."

The petitioner asserted the following regarding its proprietary tools and methodologies:

The cornerstone of [REDACTED] proven methodology is the use of [REDACTED] proprietary tools and methodologies, such as [REDACTED] developed PMC system combined with the strategic application of world-class software development teams and a local, onsite presence of key employees to develop the requirements, design and to manage the project plan combined with the strategic application of world-class software development teams.

The petitioner claimed that its applications are developed for customers by combining both custom and “off-the-shelf” software and that [REDACTED] uses its own proprietary ISO certified software development methodology. The petitioner explained that its methodology “incorporates [REDACTED] proprietary Project Management Center (PMC), a best-in-class web-based project management and collaboration environment that streamlines project planning, requirement and risk management, software construction, product quality assurance and overall organizational process performance.” The petitioner further stated that PMC covers all stages of the software development lifecycle.

The petitioner stated that its business strategy is centered around its proprietary tool/methodology “Project Management Center, which is a project management solution for managing software development projects in distributed environment and for supporting complex software development processes for larger institutional clients, such as leading technology companies and global corporations . . .”

The petitioner further stated that it is expanding its operations to include SAP BW (Business Warehouse) and SAP BO (Business Planning and Consolidation). The petitioner stated that both of these components are a part of the larger SAP NetWeaver platform and the petitioner intends to increase the company’s competitiveness and financial status in United States and international markets by focusing on this platform. The petitioner referred to this operation as a “niche-based expansion” and asserted that it created the lead software engineer in [REDACTED] Engineering Team position to coordinate and lead SAP NetWeaver based projects and integration initiatives which followed [REDACTED] standards and best practices using [REDACTED] proprietary tools such as [REDACTED] PMC. The petitioner also stated that [REDACTED] had been a client since 1997 and that it “currently provides over 500 developers and consultants to [REDACTED] for different projects including NetWeaver, xApps Composite Applications and [REDACTED] CRM.”

On February 16, 2012, the petitioner obtained an L1-B blanket petition approval for the beneficiary's transfer to the United States to perform duties as a lead software engineer at its client location in [REDACTED] California. The petitioner now seeks authorization to continue employing the beneficiary as a lead software engineer. According to the petitioner, the position requires specialized knowledge of proprietary systems and practices related to [REDACTED] business, such as PMC software systems and [REDACTED] proprietary software development methodologies; a knowledge that the petitioner asserts is different and advanced from that held generally in the industry. The petitioner concluded that the beneficiary's knowledge “is critical to our company’s proprietary interests” and is “clearly a benefit to our organization.” Therefore, the petitioner claimed the beneficiary “must possess proprietary and specialized knowledge of [REDACTED] Project management Center software system and other proprietary software products.”

The petitioner indicated that as a lead software engineer for the petitioner in the United States, the beneficiary will become a member of [REDACTED] Engineering Team and would need to take overall responsibility for delivering SAP BI solutions in a number of areas. The petitioner asserted that the beneficiary's position would include the following duties and responsibilities:

- Analyzing user requirements, procedures, and problems to improve existing BI solutions and review computer products compatibilities, workflow and scheduling limitations using the [REDACTED]

PMC project management solution and methodologies based on [REDACTED] application development processes according to CMMI and Agile requirements;

- Developing general system design including internal and external information flows, current and future system requirements, interfaces and integration points;
- Utilizing [REDACTED]'s proprietary tools and methodologies, designing and developing high performance, real-time, 24x7, scalable systems which are applicable to the business intelligence sectors;
- Creating new programs and customize existing programs utilizing the following programming languages, frameworks and development environments: SAP BI (BW), SAP BW-IP, SAP-BO BPC, ABAP/4, MS SQL Server, T-SQL, Web Services;
- Identifying risk areas, providing estimates, while tracking and reporting progress/issues to all parties;
- Contributing innovative ideas to the [REDACTED] product development process to allow the company to continually improve and attain market leadership;
- Facilitating effective communication between customers and offshore technical team.

The petitioner claimed that in order for the lead software engineer to perform the above duties in the United States, he “must have extensive and thorough knowledge of our proprietary software, products, services and our client base” and he must “be completely conversant with the processes and procedures of the company.” The petitioner asserted that the position also required the following skills and experience:

- 3+ years of experience in SAP BW and SAP BO and SAP BO BPC applications, including integration with multiple SAP and non-SAP systems;
- 5+ years of IT experience;
- Working experience of bug-tracking and trouble ticket systems;
- Experience with Web Services, MS SQL server, T-SQL, UML;
- Experience with InterSystems Cache, InterSystems Ensemble Platform;
- Good knowledge of Patterns and Development Best Practices;
- Excellent interpersonal, organizational and written/verbal communications skills;
- Experience in software development lifecycle processes such as Rational Unified Process or CMMI; Knowledge of [REDACTED] Software development methodology and proprietary Project Management Center (PMC);
- Ability to translate business needs into functional and technical architecture; manage multiple tasks and respond to deadlines in a fast-paced environment; coordinate work of development/test team;
- Strong analytical skills, including gathering, compiling, and documenting system and technical requirements and writing specifications;
- Good interpersonal, organizational, and written/verbal communication skills; experience interfacing with customer;
- Master's Degree in Computer Information Systems, Information Technology, Computer Science, Applied Mathematics, or closely related field.

The petitioner concluded that “[i]t is highly unlikely that we will be able to find a candidate outside of [REDACTED] with the needed experience developing software products that incorporate outstanding understanding of [REDACTED] proprietary software development tools and methodology in development SAP NetWeaver-based custom applications.” Based on this assertion, it is not clear whether the lead software engineer is responsible for the project at the client site or whether

he is to be working as a software developer role, which the petitioner claimed was typically performed outside the United States.

The petitioner also asserted:

it is highly unlikely that we will be able to find a specialist with the combined advanced knowledge of specialized software development process for integration of verity of SAP systems, adopting these solutions to customer's needs and practical experience in latest technologies to plan and enhance solutions if (sic) future, because deployed combination of two-three of them is virtually non-existent in a common U.S. corporate information technology environment.

The petitioner did not further clarify the exact nature of the advanced knowledge claimed above.

The petitioner stated that the time needed to find a skilled replacement for the beneficiary in the United States might not be possible or would be "beyond justifiable limits" and impact the company's overall competitiveness. The petitioner further asserted that it would not be able to "immediately" replace the beneficiary with a candidate from outside the company. The petitioner did not offer evidence as to how long it would take to train another employee from within its own organization to perform the beneficiary's duties.

The petitioner further stated that it offers employment that is "mostly project based" and that the beneficiary was currently working on a project located in [REDACTED] California but that he might work on other projects during his employment with the petitioner. Notwithstanding the beneficiary's employment on-site of the petitioner's client, the petitioner asserted that "the beneficiary will remain at all times a payroll employee of [REDACTED] under its exclusive control." The petitioner asserted that the beneficiary would report to the "resource manager" but the extract of the petitioner's organizational chart does not depict that position.

To establish the beneficiary's specialized knowledge, the petitioner provided evidence of the beneficiary's education, work experience and training. Specifically, the petitioner demonstrated that the beneficiary had earned the equivalent of a master's degree in computer information systems from a Russian university. The record established that the beneficiary worked for the foreign entity from November 2010 until August 2012.<sup>1</sup> The record also shows that the foreign entity hired the beneficiary as a consultant, promoted him to: lead consultant in March 2011 and lead QA engineer in July 2011, and ultimately offered him a position in the United States with a promotion to lead software engineer.

The petitioner stated that while employed in the United States the beneficiary "acquired extensive knowledge of best practices, standards and [REDACTED] specific proprietary tools, including [REDACTED] Project Management Center (PMC). The petitioner further stated that the beneficiary now works as SAP BW expert on a project for the [REDACTED]. The petitioner claimed that during this project the beneficiary obtained "unique experience and knowledge of such SAP BW-specific technologies as archiving (ADK and NLS-based), OpenHub Services, Real-Time Data Acquisition (RDA), Analytical Process Designer (APD), Business Warehouse Accelerator (BWA) and applied his knowledge mainly using [REDACTED] PMC tool and [REDACTED] methodologies."

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<sup>1</sup> Record indicates that the beneficiary was employed abroad until March 2012 and August 2012. The evidence suggests that the beneficiary initially travelled to the United States in March 2012, returned to Russia, and travelled back to the United States in August 2012 to work for the petitioner.

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The petitioner asserted that “it is absolutely impossible to find a specialist in these fields outside [REDACTED]” The petitioner discussed the beneficiary’s “4 years of professional experience in the SAP BW and SAP BO BPC systems” though it is not clear when or where he acquired that experience. The petitioner asserted that the beneficiary participated in training throughout his career and referred to the beneficiary’s resume.

In a request for evidence (RFE), the director instructed the petitioner to submit additional evidence to demonstrate that the beneficiary possesses specialized knowledge and that the beneficiary had been and would be employed in a position that required specialized knowledge. In addition, the director requested evidence to demonstrate that the beneficiary will not be principally under control and supervision of a non-affiliated employer and the beneficiary’s placement at the non-affiliated worksite is not essentially an arrangement to provide labor for hire. The director stated that evidence could take the form of letters from the beneficiary’s employer and that such an explanation must be written in layman’s terms.

In response to the RFE, the petitioner submitted a letter, dated October 28, 2013, asserting that the beneficiary’s knowledge is “quite distinct from that commonly possessed by similarly situated workers in the field.” In support of this claim, the petitioner stated that the beneficiary’s duties required more than general knowledge of software engineering, tools, programs or applications; the beneficiary needed to possess “proprietary knowledge of [REDACTED] internally developed, proprietary tools, methodologies and approaches to software engineering which took years of investment for the company to bring them up to the level of incredible uniqueness and competitiveness in the field.” The petitioner also stated that the company uses “distinct and narrowly tailored products, tools, programs, and practices as [REDACTED] PMC, [REDACTED] Business Intelligence Competency Center framework, which are our company’s unique and proprietary development methodologies and processes (“know-how”) that have been perfected over the life of the company.” In addition, the petitioner asserted that the beneficiary had advanced knowledge of products, technologies and Business Intelligence software engineering.

The record established that the foreign entity employed the beneficiary from November 2010 until August 2012. The petitioner asserted that the beneficiary has specialized knowledge of [REDACTED] best in-house tools, technologies, methodologies, and practices. The petitioner stated that “regular” employees only receive 68 hours of training in [REDACTED] proprietary technologies whereas the beneficiary received advanced training totaling 272 hours. The petitioner stated that the beneficiary had more training because he is required to “coordinate a team of regular engineers and business analysts in a way that could best leverage [REDACTED] corporate practices at the client’s location.” The petitioner stated that the beneficiary’s “expertise in [REDACTED] proprietary solutions and processes has been developing over time.” The petitioner listed five training programs that the beneficiary completed while abroad in 2010 and 2011. The petitioner did not indicate precisely when the beneficiary completed the 50 hour PMC for engineering training – [REDACTED] proprietary PMC system covers all stages of software development lifecycle . . . .” The petitioner asserted that this training is provided to a “core group of elite experts” who are carefully selected from its “best and brightest employees.”

The petitioner provided an “expert” assessment of the beneficiary’s academic credentials, training and experience from an associate professor of computer applications and information systems at the [REDACTED] Connecticut. The professor discussed a number of training courses that the beneficiary had completed while employed abroad and concluded that the beneficiary’s “cumulative training” set the groundwork for his path with the company, and his three years of experience “make his knowledge of [REDACTED] proprietary products extremely specialized.” The professor’s letter concluded by stating that the beneficiary “possesses specialized knowledge of the products, processes and procedures of [REDACTED] and that he is well-versed in [REDACTED] PMC, [REDACTED] Business Intelligence Competency Center framework, among others.

The petitioner asserted that it has an extensive in-house training program, training facility and trainers on staff. The petitioner further stated that its proprietary tools and methodologies are not publically available and therefore constitute a “trade secret.” The petitioner explained that internal training is necessary and that the beneficiary’s knowledge was “attained via years of on-site training, certifications, and practical application of these tools and technologies.”

The petitioner further asserted that in addition to formal training, on the job training experience under close supervision and mentoring is required to reach competency to become a lead software engineer. The petitioner estimated that at least one year of work on “[redacted] proprietary technologies” is required for the position, and the lead software engineer will spend another year applying and mastering his skills. The petitioner relied upon these qualifications to assert that the beneficiary has both specialized and advanced knowledge of [redacted] systems. However, the petitioner also stated that when the beneficiary was employed with the foreign entity in November 2010, he already possessed “extensive training” and then received “crash-course training in the company’s proprietary products and techniques” before rising to his position and attaining expert level of knowledge of the company’s products. According to a letter from the foreign entity, the beneficiary was hired and initially given responsibility for “[d]evelopment of customer requirements and managing them in [redacted] Project Management Center (PMC).” The letter further stated that in December 2011, the beneficiary was assigned to [redacted] (technical upgrade of SAP BW system) project for our client.”

In March 2012, the petitioner offered the beneficiary a position in the United States with a promotion to lead software engineer due to the beneficiary’s “significant contribution to [redacted] projects development and expert knowledge of [redacted] proprietary tools and methodologies.”

Regarding the beneficiary’s current and proposed employment, the petitioner referred to the beneficiary’s “fine academic background coupled with more than 4 years of professional experience in the SAP BW and SAP BO BPC systems.” The petitioner acknowledged that most of its employment opportunities are “mostly project based” and that the beneficiary’s expertise in SAP applications was required to support the “[redacted] project.” The petitioner stated that the beneficiary is one of only nine employees with specialized knowledge and the only employee assigned to the [redacted] California location. The petitioner stated that 29 employees are currently working on the [redacted] project. The petitioner reiterated its assertions that the beneficiary will report to the petitioner’s resource manager and work at the remote client site in order to facilitate communication and not merely placed there as labor for hire.

The petitioner asserted that while employed at [redacted], the beneficiary acquired extensive knowledge of best practices, standards and [redacted] specific proprietary tools, including [redacted] Project Management Center (PMC). It is not clear if the petitioner is referring to the beneficiary’s work abroad or in the United States. But it is clear that at the time the petition was filed the petitioner claimed the beneficiary was serving in a role requiring some level of SAP BW expertise. Based on the record, it appears that the beneficiary obtained much of his SAP related expertise only upon transferring to the United States. The petitioner explained that while the beneficiary was working in the United States on the [redacted] Project, the beneficiary: “obtained unique experience and knowledge of such SAP BW-specific technologies as Archiving (ADK and NLS-based), OpenHub Services, Real-Time Data Acquisition (RDA), Analytical Process Designer (APD), Business Warehouse Accelerator (BWA), and applied his knowledge mainly using [redacted] PMC tool and [redacted] methodologies.”

In support of the beneficiary’s credentials and training, the petitioner provided an undated certificate establishing the beneficiary’s certification as a SAP Certified Application Associate: Business

Intelligence with SAP Netweaver 7.0. The petitioner listed the beneficiary's 272 hours of training abroad as follows: 1) Advanced PMC Suite Training, 92 hours completed in 2010 and 2011; 2) PMC for Engineers, 50 hours completed throughout 2010; 3) Best [redacted] SAP practices for QA engineers, 66 hours completed in 2012; 4) Requirements Development and Management Training, 42 hours completed in 2011; 5) Behavior-Driven Development: [redacted] best practices, 10 hours completed in 2011; and 6) Business Objects Web Intelligence, 12 hours completed in 2011. The petitioner did not state whether the beneficiary obtained SAP training abroad or in the United States during 2012.

In addition, the petitioner asserted that its company's policy required employees in beneficiary's position to complete the Business Training Program which included an in-depth review of the petitioner's customer companies, in this matter, the beneficiary devoted 22 hours to PromSvyazBank and 60 hours to [redacted]. It is not clear how many employees that included or how the beneficiary's knowledge would then be distinguished from others in the same position.

The petitioner submitted training certificates from the [redacted] documenting various SAP related training completed by the beneficiary prior to his employment with the foreign entity abroad, as follows:

- [redacted]

The petitioner also included two of the beneficiary's training certificates from [redacted] in Russia and CIS, as follows: 1) [redacted]

Each of the above certificates includes a short description as to the nature of the training, and we observe that the [redacted] course specifically referenced [redacted]. The final certificate submitted by the petitioner did not include a description but simply stated that the beneficiary is certified as a [redacted] with a date of [redacted].

The director denied the petition, finding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he had been or would be employed in a position requiring specialized knowledge. The director determined that the petitioner did not submit sufficient evidence to demonstrate when the beneficiary obtained the specialized knowledge and the record does not support that the beneficiary was in a position that required specialized knowledge for the requisite period while abroad. The director found insufficient evidence to demonstrate that the beneficiary's knowledge differed from any other similarly employed individual. Moreover, the director found that the possession of in-depth knowledge of methodologies and procedures was not unusual for a lead software engineer and the petitioner failed to provide sufficient evidence to establish advanced knowledge. The director found that the evidence was insufficient to establish that the beneficiary's position in the United States required specialized knowledge. The director found that the beneficiary's knowledge of the petitioner's client's software, methodologies, and procedures may have been a greater value to the petitioner; nevertheless, the director determined that because the beneficiary's position did not require specialized or advanced

knowledge as claimed by the petitioner, the beneficiary's offsite placement did not meet the requirement of the L-1 Visa Reform Act of 2004.

On appeal, counsel submitted a legal brief and a letter from the petitioner. In the letter the petitioner asserts that the beneficiary held three specialized knowledge positions abroad. The petitioner explains that although the beneficiary held more than one position abroad and was placed into a new position in the United States, the law does not require the duty title to be the same. The petitioner states that the beneficiary was transferred to the United States to "further apply specialized knowledge he acquired at the onset of his employment at the affiliate of the US petitioner abroad." The petitioner reiterates that the beneficiary's training and experience resulted in the beneficiary's specialized knowledge, which is distinct from that commonly possessed by similarly situated workers in the field. Specifically, the petitioner repeatedly refers to the years and the investment the petitioner dedicated to create proprietary tools, programs and applications and how the beneficiary has the knowledge of the systems necessary to perform his roles abroad and in the United States. The petitioner asserts that the beneficiary received more training than "regular" employees. The petitioner reiterated that training, on the job training of at least one year together with a second year for mastery is necessary to reach the level of expertise held by the beneficiary. The petitioner asserts it is therefore impossible to replace the beneficiary with a professional new hire. The petitioner also asserts that the beneficiary has extensive knowledge relating to its client's own standards and processes which makes the beneficiary's combined knowledge more valuable to the petitioner. The petitioner states that in his role in the United States the beneficiary is to be the only employee on-site at the client location with specialized knowledge

Counsel asserts that the beneficiary's specialized and advanced knowledge through the presentation of formalized training documents and other documents in the record. Counsel concedes that the beneficiary will work at the petitioner's client worksite but that the beneficiary would be "responsible for the coordination of the extensive overseas software development team" and not providing "labor for hire."

#### B. Analysis of Specialized Knowledge

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position that requires specialized knowledge.

In order to establish eligibility, the petitioner must show that the individual has been and 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.

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. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence, which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and

credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

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

In the present case, the petitioner has not established that the beneficiary 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 beneficiary had been or will be employed in a capacity requiring specialized knowledge. The petitioner contends that the beneficiary possesses both special and advanced knowledge of [REDACTED] proprietary tools, solutions and methodologies along with a deep understanding of [the client's] existing software systems but the record does not support the claim.

The petitioner provided insufficient evidence to establish that the beneficiary has specialized or advanced knowledge of proprietary systems and practices related to [REDACTED] business such as PMC software systems and proprietary software development methodologies. Although the petitioner repeatedly asserts that the beneficiary has such knowledge, the record does not establish the precise requirements including training and experience to establish the actual nature of this knowledge, especially since the proprietary systems are referred to as the "cornerstone" of the company's business. For example, the petitioner asserted that the beneficiary has special and advanced knowledge, in part, because he completed 272 hours of training related to the petitioner's proprietary products and that training far exceeds the 68 hours provided to "regular" employees. But the petitioner did not establish who the "regular" employees are, where they work, and what they are required to do especially in relation to the beneficiary. For example, the petitioner did not establish whether any of these "regular" employees also hold a position as lead software engineer within the company.

The record shows that the beneficiary already had extensive knowledge when he was hired abroad but he further developed his knowledge through training and experience prior to transferring to the United States in 2012 as a lead software engineer. However, the petitioner also claimed that the lead software engineer position required formal training, on the job training and experience under close supervision and mentoring for a minimum of one year. It is not clear from the record when this year started for the beneficiary, especially since his training spanned the duration of his employment abroad. Aside from asserting that the beneficiary received many more hours of training, the petitioner did not list the actual coursework necessary to advance to lead software engineer, nor did the petitioner explain how the beneficiary's training differed from others or how many others had the same knowledge or received the same training as the beneficiary. Moreover, even after one year of training and experience, the petitioner claims the lead software engineer would require another year applying and mastering his skills. The petitioner did not provide sufficient evidence to demonstrate that the beneficiary met the petitioner's own requirements for promotion to lead software engineer.

Again, the petitioner has not established how many other employees hold the position of lead software engineer. Nevertheless, the petitioner boasts of a robust in house training program but asserts that only a few hand-picked individuals representing the "best and brightest" are given the extra training received by the beneficiary. The assertion is curious since the company claims to employ over 8000 employees worldwide and over 260 in the United States, thus doubt cast on any aspect of the petitioner's proof may,

of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner's claim that the beneficiary would be difficult to replace in a reasonable amount of time is not supported. Based on the beneficiary's history with the company, the petitioner has not established why it could not hire or train another individual with extensive knowledge and give them a "crash course" in the petitioner's systems just as the beneficiary initially received abroad. Nevertheless, the petitioner now asserts, but does not explain, why a replacement for the beneficiary's position would require a lengthier training period and additional prerequisites than was expected from the beneficiary himself. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has not provided evidence that compares the beneficiary's knowledge with similarly employed workers within the company as is necessary to demonstrate that his knowledge is special or advanced. The beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other lead software engineers in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Therefore, the director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced. However, the petitioner's response to the RFE included minimal evidence relevant to comparing the beneficiary against similarly employed workers, and therefore failed to establish his knowledge as special or advanced. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). Therefore, the petitioner has not provided sufficient explanation or evidence to demonstrate that the beneficiary's knowledge surpasses that of his colleagues as necessary to demonstrate that it is noteworthy or uncommon. Merely stating that the beneficiary's knowledge is distinct is not sufficient. 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 petitioner merely states that the beneficiary must have extensive and thorough knowledge of its proprietary software, products, services, and client base and "completely conversant with the processes and procedures of the company" but it does not establish the actual minimum requirements to meet this standard. In addition to these requirements, the petitioner noted that the beneficiary's position also requires skills that include the SAP applications and other experience but we note that the skills are common and readily obtained in other organizations.

Much of the petitioner's supporting evidence serves to demonstrate the technical complexity of the field, within which, the petitioner has software developers providing professional services and management involving proprietary software or data, specific customer requirements, and other regulatory requirements. But it is unclear how the beneficiary has gained an advanced knowledge of the company's proprietary systems, tools, and methodologies during his tenure with the company, and merely claiming that he was given additional training than some unidentified others in the company is insufficient to establish that this knowledge is special or advanced. Although the petitioner also contends that the beneficiary assisted in developing the company's proprietary solutions for clients, it has provided little documentary support to substantiate this claim and failed to explain the specific nature of this development. Once again, 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)).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated a sufficient basis to claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of lead software engineer at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the petitioner asserted that the beneficiary was employed in three positions that required specialized knowledge. The petitioner discussed the beneficiary's knowledge of SAP programming languages, frameworks and development environments but these skills are not unique to the petitioning company and the petitioner has not provided sufficient evidence to establish that the beneficiary had specialized or advanced knowledge of that enterprise resource planning tool. Moreover, the petitioner also appears to assert that the beneficiary has specialized or advanced knowledge relating to one of its clients' own processes and systems though the petitioner provided little demonstrative evidence to support the claim aside from the beneficiary's ongoing work with the client. The petitioner has not shown that the beneficiary was employed in a position requiring specialized knowledge in part because the petitioner did not provide a detailed description of the beneficiary's position abroad. Again, 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.

The petitioner submitted a [REDACTED] associate professor's advisory opinion attesting to the specialized nature of the beneficiary's knowledge. We may, in our discretion, use advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, we are ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). According to the advisory opinion, the beneficiary has become proficient in several of [REDACTED] exclusive tools and methodologies, specifically: [REDACTED] PMC, [REDACTED] practices. The opinion's author asserts that the beneficiary is one of only nine petitioner employees who possess the knowledge of [REDACTED] systems, processes and methodologies necessary to handle the petitioner's [REDACTED] project. This opinion relies on the presumption that a qualified employee must be proficient in the petitioner and its client's systems, processes and procedures. Notwithstanding this opinion, the petitioner has not sufficiently established the beneficiary's knowledge of [REDACTED] processes and procedure outside of his work experience with petitioner. Therefore, despite adding some probative value, the advisory opinion is not sufficient to overcome the evidentiary insufficiencies previously articulated in this decision. Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

### C. L-1 Visa Reform Act

Assuming arguendo that the petitioner had established that the beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition.

One of the main purposes of the L-1 Visa Reform Act amendment was to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. On Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <http://www.loc.gov/law/find/hearings/pdf/00122982476.pdf>, (accessed on June 26, 2013).

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.

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If the petitioner fails to establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, 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 has not established that the beneficiary has specialized knowledge. Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioner is necessary; therefore, the petition may not be approved for this additional reason.

### 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.