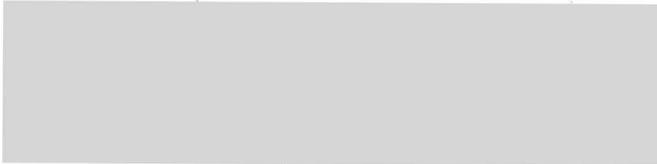




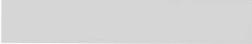
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 08 2015**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner filed this Petition for a Nonimmigrant Worker (Form I-129) 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 Delaware corporation, is a manufacturer of machine tooling technology and systems. The petitioner claims to be a subsidiary of [REDACTED] located in Japan. The petitioner seeks to employ the beneficiary as its production management specialist for a period of three years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal the petitioner asserts that the evidence of record establishes that the beneficiary was employed abroad in a position involving specialized knowledge, that the beneficiary possesses specialized knowledge, and that he will be employed in a position requiring specialized knowledge. The petitioner contends that the director applied an arbitrary standard for specialized knowledge that is not supported by statute, regulation, precedent or agency policy guidance.

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 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

The sole issue addressed by the director is whether the petitioner established that the beneficiary has specialized knowledge and whether he has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Facts

The petitioner filed the Form I-129 on June 26, 2014. The petitioner, a manufacturer of machine tooling technology and systems, indicates that it has 105 employees in the United States and has a gross annual income of \$1.5 billion.

In a letter dated June 4, 2014, the petitioner's parent company describes the company's products as follows:

Our exceptionally wide range of specialized machine tools require an advanced, in-depth and comprehensive knowledge of our products and their applications, in order to

draft effective production plans and maintain our competitiveness in the global marketplace. For example, our major products include computer numerical control (CNC) lathes, parallel-twin-spindle turning centers, multi-axis turning centers, linear motor-driven horizontal machining centers, operating systems, machining support systems, networking systems, and production support systems. Such high precision products are not commonly accomplished in the industry and manufacturing them requires particular knowledge acquired through years of experience working specifically with [the petitioner]'s machines.

The petitioner indicated that the beneficiary has been employed by the foreign entity since 2010. The petitioner stated that from 2010 to 2011, the beneficiary worked in the Manufacturing and Development departments where he was specifically trained in the assembly of the petitioner's [redacted] and proprietary knowledge of the petitioner's product by attaching parts, adjusting machine performance, measuring check items, and helping to produce a prototype for a machine within the [redacted] line. The petitioner stated that the beneficiary worked in the Production Management Department from 2011 to 2013, where he supported the planning and control of the manufacturing operations, worked directly with the managers to create and implement an education plan for assembly workers, and devised a new tool using Microsoft Excel to support employee education and performance review. The petitioner stated that the beneficiary began his current employment as Senior Engineer in the Production Management Department in 2013.

The petitioner states that the beneficiary "has achieved a high level of expertise directly related to the production management of key products and parts of machining centers, through his professional experience with our company" and that his selection for transfer to the United States "is due to his expertise with [the petitioner's] highly specialized machine tools and his experience with both production planning and manufacturing of [the petitioner's] products."

The petitioner provides the following description of the beneficiary's duties abroad:

As a Senior Engineer, [the beneficiary] makes forecast production plans for all plants and markets throughout the world. He works with the General Manager (GM) to draft [the] annual production plan based on order history, the economic situation and market conditions for each of [the] five areas around the world. [The beneficiary] and the GM meet with regional sales managers from Japan, Europe, and the United States to discuss and make recommendations on stock arrangements in an effort to achieve the highest profit while reducing excess stock. In addition, [the beneficiary] drafts 6-month forecast production plans based on monthly assessments of volumes of stock, order backlogs, production capacity etc. These duties consist of about 40% of his time. About 25% of his time is spent preparing for and presenting monthly production reports at the production planning meetings and following up with appropriate management and employees with respect to decisions made at such meetings. About 10% of the time is spent creating and managing a standardized production schedule to ensure that staff adheres to the production plan as closely as possible. [The beneficiary] then delivers the status of planned machine lists to our sales managers on a weekly basis. In addition, he spends about 15% of the time managing the transportation of products between various

plants, including schedules, volume of delivery and billing. Finally, he spends about 5% of his time maintaining the new employee education program he established to monitor the efficiency of employees in the Manufacturing department; 3% of the time maintaining and improving a load simulation system to help optimize production capacity; and 2% exporting data for each product to create the annual production plan.

The petitioner stated that "[the beneficiary]'s experience has in fact given him invaluable insight on the entire [petitioner] production process, from manufacturing to shipping, by which the company benefits through his application of such specialized knowledge in supporting our production department."

The petition indicates that the beneficiary will be employed in the United States as a Production Management Specialist, and that he will be responsible for the technical management and supervision of the production process of the petitioner's machining centers. The petitioner describes the duties of the beneficiary's proposed position as: "utilizing deep and specialized knowledge of the company's product lines and manufacturing processes for planning and organizing production schedules, including evaluating ex-factory date and first process date with proper lead time for new orders, and evaluating accurate machine delivery date with proper lead time based on machine specification and request from sales department"; "liaison with internal and external customers, as well as a number of departments such as sales, design, procurement, assembly, and marketing in order to coordinate production, processing, distribution, and marketing of highly specialized machine centers"; "communicate with sales team to obtain machine lead time, with design team for design lead time, with procurement and trading at [the foreign entity] in Japan to obtain parts lead time, with assembly and machining teams for production lead time, and with the EG for the run-off schedule"; "manag[ing] multiple projects simultaneously in a fast paced environment and numerous deadlines"; and "support the purchasing department by using [his] specialized knowledge of the company's client base and global market to analyze data and draft purchasing items."

The petitioner states that the knowledge required to perform these duties may not be conveyed to the general labor pool in a reasonable time frame and may only be obtained through specific product training and hands-on working experience at its Japanese manufacturing facilities.

The petitioner submitted a copy of its organizational chart. An arrow on the chart indicates that the beneficiary's proposed position is one of four in the production/shipping arrangement department. The chart indicates that the beneficiary's position is subordinate to the Production/Shipping Arrangement "LD" (identified only as [redacted], who reports to the Production Tech Manager ("S5"), who is subordinate to the Production General Manager ("S3"). The organization chart indicates that the additional production/shipping arrangement department positions parallel to the beneficiary's proposed position are classified as "S8" employees.

Finally, the petitioner provided a letter from the Dean at [redacted] certifying that the beneficiary completed his studies and satisfied the requirement for a Master of Engineering in the field of Electrical Engineering.

The director issued a Request for Evidence ("RFE"), requesting that the petitioner provide additional evidence that the beneficiary possesses specialized knowledge, was employed abroad in a position

involving specialized knowledge, and that the U.S. position involves specialized knowledge. The director requested, among other evidence, the following: (1) an explanation of the product, service tool, research equipment, process, or procedure that involves specialized knowledge and a comparison with others in the industry; (2) an explanation of how the beneficiary's knowledge differs from that of other employees working in the organization and within the petitioner's field; (3) evidence showing the minimum amount of time required to obtain the required knowledge including training and experience; (4) documentation of the beneficiary's specific training courses showing the course content, duration, completion date, and number of employees enrolled in each course; and (5) the total number of employees abroad and in the U.S. with the same knowledge of the petitioner's equipment, system, product, technique, research, service, and/or process or procedures as the beneficiary.

In response to the RFE, the petitioner explained that the beneficiary is the only Senior Engineer within the Production Management Department possessing an "S6" level classification and that only the General Manager of the department has a higher level of seniority as an "S3" level employee. The petitioner stated that the beneficiary has trained other employees of the foreign entity as an instructor of the Manufacturing Control Course and that he was twice selected from 700 employees as Most Valued Person.

The petitioner submitted the beneficiary's personnel record indicating that the beneficiary was promoted to an "S6" level position in the Production Planning Group on October 1, 2013. The personnel record indicates that prior to his promotion; the beneficiary was an "S7" staff in the Production Designing Group, Improvement Support Team, [REDACTED] Assembly Team, and Logistics Control Team. The beneficiary was promoted to an "S7" from level "S8" on April 4, 2011, after working for one year on the [REDACTED] Assembly Team. The record also indicates that the beneficiary was in the "Education Section" for his first 19 days as an employee of the foreign entity. The beneficiary's personnel record has one entry under "Awards and Disciplinary Actions" but the entry was not translated from Japanese to English.

The foreign entity submitted a letter discussing the beneficiary's employment history and emphasized that, in each prior position, he acquired specialized knowledge of company products and processes that he would use in his proposed U.S. position. The foreign entity stated that the beneficiary received extensive internal training that included machining training for the NC lathe, safety training, ISO prescript/checkup training, trading business training, and training in the reading of drawing sheets.

In a letter dated July 25, 2014, petitioner stated that the beneficiary will allocate his time as follows:

- Evaluate accurate machine delivery date with proper lead time on machine specification and request from sales department- 20%
- Evaluate ex-factory date and first process date with proper lead time for new order- 20%
- Communicate with sales and design team for machine and design lead times- 20%
- Communicate with procurement, trading [REDACTED] for parts lead time- 20%

- Communicate with assembly and machining for production lead time- 10%
- Communicate with EG for run-off schedule- 10%

The petitioner reiterated that "the company requires [the beneficiary]'s experience and specialized expertise" to oversee the entire production process of its horizontal machining center models. The petitioner stated that the beneficiary will "utilize his in-depth knowledge of sophisticated [petitioner] machines to assist all departments, including sales, design procurement, assembly and machining in order to coordinate the production and distribution process."

The petitioner further stated that the beneficiary is the best candidate for the position because he has hands on experience developing a prototype of the specialized horizontal machining center, specific experience training assembly workers on sophisticated products, and he has worked with foreign managers to devise and implement a new employee educational and monitoring plan for assembly workers which is still successfully being used. The petitioner also indicated that the beneficiary is the only senior engineer who works directly with the General Manager to draft the company's annual production plan for each of the five areas around the world.

The petitioner acknowledged that it currently employs three other Production Management Specialists within in its [redacted] California manufacturing plant. The petitioner explained that the beneficiary would be the only one with "specialized production forecasting knowledge as applied to international markets" and emphasized that this knowledge would allow him to facilitate communications between various departments within the U.S. and Japan and ensure a smooth transition of production know-how to the new manufacturing facility.

The director ultimately denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary's position abroad and the proposed position in the United States require specialized knowledge. The director found that because the position descriptions for the beneficiary's position abroad and the proposed U.S. position reflected the same or similar duties as described in the Department of Labor's Occupational Outlook Handbook for the occupation of Management Analyst/Industrial Production Manager, the beneficiary appeared to perform the same or similar duties as other workers in a similar position or field. The director noted that the beneficiary's training appeared to be common within the field and easily transferrable to employees with the same or similar experience as the beneficiary. The director found that the evidence is insufficient to show that the policies, processes, and methodologies pertaining to the petitioner's organization are different from those applied by any Production Management Specialist or similar position working in the industry.

On appeal, the petitioner asserts that the evidence establishes the beneficiary possesses specialized knowledge and that he has been and would be employed in a position requiring specialized knowledge. The petitioner states that the director erred in applying standards that are not supported by statute, regulation, case law, or agency policy guidance. The petitioner notes that there is no requirement that specialized knowledge be both special and advanced and no requirement that the knowledge be special within the petitioner's organization, or with respect to other similar positions defined in the U.S. Department of Labor publications. The petitioner states that the controlling authority establishing specialized knowledge is (1) specialized knowledge of the company's product,

service, research, equipment, techniques, management, or other interests and their application in international markets; (2) that is different from that generally found in the particular industry, where (3) the employee possesses characteristics that are the same as or substantially similar to those identified in the 1994 Puleo Memorandum. *See* James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994.

B. Analysis

Upon review, 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). As the petitioner correctly observes, eligibility may be established by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition; it is not required that the petitioner establish both prongs.

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.*

The petitioner asserts that there is no requirement that the knowledge be special within a petitioner's organization or with respect to other similar positions. However, 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 matter, the petitioner claims are based on the first prong of the statutory definition. The petitioner claims that the beneficiary has a special knowledge of the company's production

process and its application in international markets which is used to support the Production Department.

In examining the beneficiary's specialized knowledge and whether a particular position requires specialized knowledge, we will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner provided a general description of the beneficiary's duties that consisted of tasks typical of a production manager or specialist, such as: drafting production plans; preparing and presenting production reports; creating and managing the production schedule including evaluating lead times; managing the transportation between plants; and communicating with customers and various company departments to coordinate production, processing, and distribution. The petitioner has failed to describe the company's production process or to explain how its production process differs from others within the industry. There is no evidence that the petitioner's production and distribution process requires knowledge beyond what is commonly held by similarly-employed individuals within the petitioner's industry or that the requisite knowledge could not be transferred to similarly-employed individuals in a reasonable amount of time. Instead, the petitioner indicates that the common production management duties require special knowledge because its "high precision products are not commonly accomplished in the industry and manufacturing them requires particular knowledge acquired through years of experience working specifically with the [petitioner]'s machines."

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

The petitioner has failed to provide sufficient evidence relating to its processes and technology to establish that the beneficiary's position abroad and the proposed U.S. position require specialized knowledge. The petitioner indicates that its tooling machines are "sophisticated" and "highly specialized" and that the knowledge required to perform the U.S. duties cannot be conveyed to the general labor pool in a reasonable time frame. The petitioner indicates that the beneficiary obtained specialized knowledge by helping to produce a prototype machine in the [redacted]

However, the petitioner has failed to provide information or evidence relating to its processes and technology to explain how its products or production planning procedures differ from others within the industry or to demonstrate that the products or processes are uncommon within the industry. 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)). Even if it were established that the petitioner's equipment were specialized, the petitioner has not explained or provided evidence to demonstrate that specialized knowledge of the company's

machinery is necessary to perform production planning, processing, and distribution duties. The petitioner already employs a large technology team responsible for machine design, production and assembly and has not indicated how the beneficiary's experience in those areas would be applicable to his proposed job.

The petitioner indicates that the beneficiary gained specialized knowledge through his experience working at the Japanese factory. However, as discussed above, the petitioner has not clearly articulated or documented the claimed specialized knowledge that the beneficiary gained. Without a clear description of the knowledge that the positions require and the beneficiary possesses, it cannot be determined whether the knowledge is specialized.

Furthermore, the petitioner has not sufficiently compared the beneficiary's knowledge to that possessed by his colleagues or other similarly employed workers as necessary to support its claims that the beneficiary's knowledge is specialized. The petitioner submitted an organization chart for the U.S. factory depicting three employees in the same department at the same level of hierarchy as the beneficiary, but has not indicated how the beneficiary's knowledge differs from the other locally-hired employees in his department. The petitioner claimed that the beneficiary's specialized knowledge was gained through experience with the foreign entity. However, the petitioner failed to distinguish the knowledge gained from experience with the foreign entity from the knowledge gained from experience with the U.S. entity or from experience within the general industry, and did not indicate whether or how the beneficiary's duties would differ from those of his colleagues working in the same position, other than noting his international experience. Further, it failed to describe how long it would take to transfer such knowledge to a similarly employed individual to other employees in the organization or industry.

The petitioner has also submitted insufficient evidence relevant to the beneficiary's training to establish that he holds specialized knowledge. The petitioner claims that the beneficiary underwent extensive internal training in topics such as: machining for the NC Lathe, safety, ISO prescript/checkup, trading, and the reading of drawing sheets. Although it was requested by the director, the petitioner does not provide training records or any other evidence to demonstrate the length of training, when the beneficiary completed the training, or the number of employees enrolled in the training. The petitioner failed to indicate how many employees underwent the same training as the beneficiary or to explain how the beneficiary's training differed from that of other employees. 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)). Absent this evidence, the petitioner has failed to establish that the beneficiary's training differs from other employees within the organization or that a similarly employed worker in the industry could not be similarly trained in a reasonable amount of time.

The petitioner seems to suggest that the beneficiary possesses advanced knowledge of the petitioner's products or procedures by emphasizing his classification as an "S6" level employee and his receipt of "Most Valued Person" awards. With respect to the awards, the petitioner has not provided supporting evidence or explanation regarding the nature of the awards and the beneficiary's receipt of them. While we do not doubt that the beneficiary is a high-performing and valuable

employee, his receipt of awards is insufficient to establish that his knowledge qualifies as special or advanced. With respect to his "S6" position with the foreign entity, we note that the petitioner has not explained its employee classification or ranking system, which seems to range from "S1" at the highest level to "S8" for lower- or entry-level staff. Regardless, the beneficiary's job title or ranking alone is insufficient to establish his advanced knowledge. The organization chart indicates that the beneficiary will join a team of three "S8" level employees in the U.S. "Production/Shipping Arrangement" team. The petitioner has not described the duties of the other Production Management Specialists or provided any other evidence to establish that the beneficiary possesses or would be required to have a more advanced level of knowledge than these employees with an "S8" classification or that the proffered U.S. position involves advanced knowledge compared to the other production/shipping arrangement department positions. The petitioner stated that the beneficiary is the only one with "specialized production forecasting knowledge as applied to international markets;" but has not explained why this knowledge is advanced or special within the organization or that it is particularly complex and could not be readily transferred.

The petitioner also emphasizes that the beneficiary "worked with foreign managers to devise and implement a new employee educational and monitoring plan for assembly workers." However, the petitioner failed to provide an explanation or evidence to describe the educational plan or to provide a description or evidence of the beneficiary's involvement with the educational plan. Due to the lack of detail about the education plan, the evidence is insufficient to establish that the beneficiary's work on the education plan demonstrates special or advanced knowledge of the petitioner's processes or products. It is also unclear whether or how the beneficiary's work on the educational plan is relevant to his U.S. position in the production/shipping arrangement department which does not require him to train assembly staff. 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 relies heavily on policy memoranda issued by the former Immigration and Naturalization Service and USCIS. The petitioner states that there is no requirement in current legislation that the beneficiary's knowledge be unique, proprietary, or not commonly found in the United States labor market and that the seminal agency guidance is the Memorandum from James A. Puleo, Assoc. Com^{m.}, INS, "Interpretation of Special Knowledge," March 4, 1994. While the petitioner correctly states that the current statutory and regulatory definitions of specialized knowledge do not require unique or proprietary knowledge, or a test of the U.S. labor market, the regulations do still allow USCIS to compare the beneficiary's knowledge with that of similarly-employed workers in the petitioning organization and in the petitioner's particular industry. The Puleo Memorandum concluded with a note about the burden of proof and evidentiary requirements:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the

alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Id. at page 4.

As explained above, the evidence does not distinguish the beneficiary's knowledge from that of other similarly-employed workers in the petitioning organization or from workers employed within the general industry, nor does it establish that the beneficiary possesses more advanced knowledge than similarly employed individuals. 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. 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. at 165

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.

Here, the petitioner has failed to provide sufficient probative evidence to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position that requires specialized knowledge. For this reason the appeal will be dismissed.

III. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.