

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



APR 27 2015

DATE:

PETITION RECEIPT #:



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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 extend the beneficiary's status 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 beneficiary's former foreign employer, [REDACTED] located in Belarus. The petitioner employs the beneficiary as a project manager and seeks authorization to extend her employment for two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she is employed in the United States, or has been employed abroad, in a specialized knowledge capacity. Further, the director found that the petitioner failed to establish that the beneficiary's placement at an unaffiliated employer's worksite 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 us for review. On appeal, the petitioner contends that the director erred in concluding that the beneficiary did not act in a specialized knowledge capacity abroad, and that she does not act in this capacity in the United States. In addition, the petitioner asserts that the beneficiary should not be considered ineligible under the L-1 Visa Reform Act because she will remain under the supervision and control of the petitioner while working at the client's location.

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

A. Facts

The petitioner filed the Form I-129 on March 13, 2014. The petitioner stated in a support letter submitted along with the petition that it "is a leading provider of IT software services and solutions in the United States, Central and Eastern Europe." The petitioner indicated that it "focuses on delivering software engineering services to top platform vendors including SAP, Microsoft, and Oracle, and end-to end

business solutions to enterprise clients." The record indicated that the company employs approximately 11,000 individuals worldwide and the petitioner earned \$219 million during the 2013 fiscal year.

The petitioner stated that "the cornerstone of [the company's] proven methodology is the use of [its] proprietary tools and methodologies," including "internally developed project management, engineering automation and data analysis tools." The petitioner indicated that its solutions "combine the best of both custom and "off-the-shelf" software" and that it "uses its own, proprietary, ISO-certified software development methodology." The petitioner explained that this includes its proprietary [REDACTED], "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 noted that its proprietary tools for project management allow it to have a competitive advantage that leads "Fortune 500 companies" to hire them for software development.

The petitioner indicated that the beneficiary has been acting as a project manager in the United States and that she will "provide ongoing superb leadership for using [the company's] proprietary [REDACTED] to deliver seamless integration." The petitioner further explained the nature of the beneficiary's role as follows:

The position occupied by [the beneficiary] clearly qualifies as a specialized knowledge position, since it requires not only the knowledge of common software engineering/business analysis frameworks, languages, and tools but also requires that the incumbent possess extensive knowledge of our company's proprietary systems and practices, in this case [REDACTED].

This specialized knowledge is clearly different from that generally held within the industry. [REDACTED] tool is proprietary to [the company]. This tool is *not* available in the market and is utilized exclusively by [the company's] engineers to deliver projects for [the company's] customers.

The petitioner stated that, as project manager, the beneficiary "will be a member of Technology Solutions Department tasked with supplying a complex software engineering product developed using [the petitioner's] proprietary solutions to [the petitioner's] Client [REDACTED]." Specifically, the petitioner stated that she "will be responsible for analyzing customer requirements and coordination of integration of enterprise-level [company] software" and that she will perform "the critically important task of assessing the client needs, the existing software system configurations and business processes."

The petitioner explained that the beneficiary "naturally had to familiarize with [the company's] proprietary software components" and that she "is expected to follow [the company's] processes and use these [company] proprietary practices and guidelines on a daily basis and to a greater extent than an ordinary member of the team." The petitioner further stated that the beneficiary's duties would include leveraging the company's methodology in the development of project processes, leading all phases of the project lifecycle, providing additional quality assurance, assisting the client team in planning, establishing

project management processes, and utilizing proprietary software development methodologies, processes, techniques and quality planning in all phases of work. The petitioner indicated that it would be impossible to find a candidate outside of the company to perform the required services.

The petitioner stated that the beneficiary began her employment with the company abroad in March 2008 as a junior testing engineer after completing a degree in linguistics from a Belarusian university, and provided evidence that her academic and work credentials have been evaluated as equivalent to a bachelor of science in computer information systems. The petitioner indicated that she was later promoted to a lead software testing engineer in August 2010. The petitioner stated that in both positions she was responsible for "quality assurance and functional testing of the applications for major clients of [the company]." The petitioner indicated that the beneficiary worked on the following technologies pursuant to her position abroad: [REDACTED] utilization and project staffing analyzer; the development and implementation of IMS (Item Management System) software; algorithms opvantage, a web based application used by a number of financial institutions; [REDACTED] Documentum Webtop, a browser-based interface providing access to a folder based repository; [REDACTED] monitoring solution; amongst others. The petitioner stated that the beneficiary underwent additional trainings in "Product Management, Scrum, Software Testing, Requirements Management, and others," including "extensive internal trainings in [REDACTED] proprietary products and tools."

The petitioner explained that the beneficiary was promoted to the position of project manager in the United States in October 2011 "in recognition of her expertise, profound knowledge, experience, unique skills and considerable contribution to [the company's] market competitiveness." The petitioner indicated that the beneficiary had been, and would continue to be, assigned to its client [REDACTED] TX upgrading its Documentum web-based records management solution. In addition, the petitioner described the beneficiary's knowledge as follows:

The Beneficiary's "specialized knowledge". . . is quite distinguishable from that commonly possessed by similarly situated workers in the field. For example, in order to be capable to provide full integration of [the company's] proprietary [REDACTED] tool, it is not enough to possess the general knowledge of software engineering methods. In order to be able to perform these duties, one must also enjoy deep knowledge of [the company's] internal tools, methodologies and approaches to software engineering, which took the years of investment for the company to bring them up to the level of incredible uniqueness and competitiveness in the field. In carrying out her duties and responsibilities as a Project Manager, the Beneficiary currently utilizes such distinct and narrowly tailored products, tools, programs, applications, etc. as [REDACTED] [REDACTED] which incorporates our company's unique and proprietary methodologies and processes.

The petitioner also provided a number of power points setting forth the company's business achievements, clients, employees, business models, technologies, and specializations. For instance, a company overview indicated that 75% of the company's IT professionals hold masters level degrees in computer science, mathematics and engineering. Another power point explained the company's project

management methodology and indicated that the company has over 800 "project managers and scrum masters." The petitioner provided further information on its project management center application, [REDACTED] stating that it is used by its project managers to "effectively manage multiple projects with sophisticated tools for status monitoring, scheduling, and tasks/activity tracking," supports all stages of the software development project lifecycle, provides a "robust workbench for every project team member," and defines project tasks, milestones and scheduling. The petitioner indicated that there were other counterparts used in the marketplace, such as eProject and Planview, but did not describe how widely and by whom they are used, or their difference from its [REDACTED] application. The petitioner explained that [REDACTED] "helps each member of the distributed team throughout the project lifecycle" and is used by executives, team members, and customers, as well as project managers.

The beneficiary's resume listed nineteen trainings and certifications completed by the beneficiary during her employment with the company since 2008, including several in 2008 in the company's core proprietary systems previously referenced herein, many in testing in 2009 and 2010, and finally a number in project management during 2010 and 2011, such as "project estimation," "introduction to project management," "requirements management," and "scrum for leadership."

The petitioner submitted an organizational chart specific to the beneficiary's department reflecting that she reports to a software engineering manager in San Francisco and that she would work with two lead business analysts, a senior solution architect, and two lead software engineers based in [REDACTED]. The petitioner provided a description of the Documentum Upgrade project for [REDACTED] noting that the project team is tasked with upgrading the client's Documentum platform to provide business users and IT with improved performance, reliability, usability and functionality. The project summary indicates that the technologies involved include Documentum 6.7, Oracle 11g, WebLogic AS and MS SharePoint 2010.

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. The director indicated that the petitioner did not provide evidence of specifying the type of training or work experience required to qualify for the beneficiary's position or how many others in the organization were similarly situated. As such, the director asked that the petitioner provide copies of the beneficiary's training records or other personnel records. The director requested an organizational chart showing the structure of the beneficiary's department when employed abroad including the names, titles, duties, education levels and salaries of each member of her division. Further, the director asked that the petitioner indicate the percentage of time the beneficiary devoted to her tasks abroad, explain how her knowledge was different from that held by those working in similar positions in the industry, and why another in the field could not perform her duties. The director also requested that the petitioner articulate the minimum time required to obtain her knowledge. In addition, the director requested that the petitioner document the beneficiary's training history, including the duration of her courses, the hours spent completing them, the completion dates, and copies of any available completion certificates. The director asked that the petitioner explain how this training differs from that provided to other employees within the organization.

Likewise, the director asked that the petitioner provide similar evidence specific to the beneficiary's proposed role in the United States.

In response, the petitioner stated that "amongst its over 11,000 employees, only some analysts, software engineers and project managers are trained to expertly leverage [redacted] Systems' proprietary solutions." The petitioner indicated that the attainment of this expert knowledge resulted from "dedicated training coupled with hands-on experience" which has been garnered by the beneficiary. The petitioner asserted that those with specialized and advanced knowledge, such as the beneficiary, "undergo both a deeper theoretical training (200+ vs. 68 hours), and intensively practice their knowledge on specific project assignments." The petitioner stated that the beneficiary completed "extensive training in [the company's] proprietary software from March 2008 till January 2010 and participated in several company development conferences," and thereby gained extensive knowledge of company's practices, standards, methodologies, technologies and tools including [redacted] and project management, scrum, software testing, and requirements management.

The petitioner submitted a letter from the foreign entity's HR department indicating that the beneficiary had completed a number of trainings during her foreign employment, including "Advanced [redacted] Suite Training (154 hours)," "[redacted] for Business Analysts (144 hours)," Automated Software Testing Training-[redacted] Training (48 hours)," "Requirements Development and Management Training (42 hours)," and "[redacted] Training (40 hours)." The foreign entity further noted that the beneficiary completed training on the systems of its clients Algorithmics, Inc. (192 hours) and [redacted] (140 hours). The petitioner asserted that these "extensive trainings" in its proprietary products are "only provided to our core group of elite experts, who are carefully selected from our best and brightest, clearly outstanding employees." The petitioner stated that regular employees only receive 68 hours of training in the company's proprietary technologies, whereas the beneficiary received over 200 hours of such training.

The petitioner indicated that in order to reach the level of project manager an employee must gain a specialized level of expert knowledge which "may not be achieved in less than two years of continued work with [the company's] proprietary technologies." The petitioner stated that the beneficiary "was responsible for the quality assurance and functional testing of applications for major clients of [the company], such as Algorithmics and [redacted]. The petitioner listed the following projects in which the beneficiary was engaged: [redacted] utilization and project staffing analyzer for two months in 2010, an internally developed resource management application; project [redacted] for two months in 2010, an item management system software; project [redacted], a web based enterprise level application used by a number of financial institutions; project [redacted] throughout 2010 and 2011, a browser based interface providing access to [redacted] Documentum; and project [redacted] in 2010 and 2011, an [redacted] monitoring solution implementation. The petitioner noted that for the last month of her employment abroad in August and September of 2011 the beneficiary acted as a project manager, "leading a team of highly skilled software and quality assurance developers working on projects for [redacted]."

The petitioner indicated that the beneficiary obtained "unique experience with the combination of technologies and areas included clusters and distributed Enterprise Information systems, recent

Integration technologies and tools and variety of Content Management Systems." The petitioner asserted that the beneficiary "directly contributed to the development of our unique and proprietary system" including being an active contributor "to the functional design of proprietary tools, which are the cornerstone of [the company's] business process." The petitioner stated that the beneficiary's knowledge represents "deep knowledge of [the company's] internal tools, methodologies and approaches to software engineering, which took years of investment to bring [her] to the level of incredible uniqueness and competitiveness in the field."

The petitioner explained that the beneficiary is assigned as a project manager "upgrading [a] current enterprise content management system – Documentum" for its client. The petitioner emphasized that this position requires deep knowledge of the company's aforementioned proprietary technologies and processes, which would not be accessible to a "generalist." The petitioner described the requirements of the position as follows:

In contrast with [the beneficiary] a generalist will only have the knowledge of technologies, but not the knowledge of proprietary tools as [the beneficiary] does. The employee in this position must have this specialized knowledge that is distinct from and goes beyond the mere professional standard accepted in the industry, due to her need to match a variety of industry standards, reconcile conflicts between modules written in different languages/environments, understand and translate our customer specifications that are often phrased in terms of the customer's existing technology into requirements related to [the company's] proposed implementation in the new technological environment in the course of her duties related to overall implementation oversight, advanced knowledge of technologies and understanding of interrelation between the same is required.

The petitioner provided a listing of various internal trainings provided by the foreign entity during the last several years. The petitioner submitted an organizational chart specific to the indicating that the beneficiary reports to a lead focused on the Documentum technology, and that she would work with three other team members as the onsite project manager. The titles, education levels, duties and salaries of her colleagues were not listed. The petitioner further provided HR documentation reflecting tiers of experience within different specialties of the company. For instance, one such position ranking, specific to the beneficiary's former role as a software testing engineer, indicated that this position ranged from "T1 to T5," and that "T1" represented entry level while "T4 and T5" denoted expert knowledge and over five years' experience. Likewise, a similar scale for project managers indicated that they ranged from "M1 to M5," and reflected that "M4" required at least three years of experience as a project manager.

The director denied the petition, noting that she could not determine from the evidence submitted how the company's products or processes differed from those utilized by others similarly placed as the beneficiary in the field. The director indicated that the petitioner did not substantiate its assertion that the beneficiary had received a special level of proprietary training. The director stated that the beneficiary's skills appeared to be those which could be taught to another similarly placed project manager in the industry

and emphasized that knowledge of proprietary concepts did not alone demonstrate specialized knowledge. The director also pointed to the fact that the beneficiary would be working substantially with client and other third-party technologies, and therefore, that her knowledge was substantially based on knowledge obtained from outside the petitioner's organization. Specifically, the director emphasized that Documentum is an enterprise content management platform owned by [REDACTED]

On appeal, the petitioner states that the beneficiary disregarded the beneficiary's completion of extensive formal training that greatly exceeds that received by typical employees in the company and which is reserved for a "core group of elite experts." The petitioner states that the beneficiary should not be disqualified because a component of her knowledge is based in client or third party software systems. The petitioner asserts that the company's software engineers can be distinguished from others in the industry due to their knowledge of the company's proprietary tools and processes. The petitioner contends that it has provided sufficient evidence to support its assertions of the beneficiary specialized and advanced training.

Further, the petitioner emphasizes that, although Documentum is owned by [REDACTED] the petitioner is an [REDACTED] Documentum Services Partner, holds an [REDACTED] Master Subcontract Agreement, and has developed add-on solutions for Documentum to increase system performance and monitoring.

B. Analysis of Specialized Knowledge

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that she 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 proprietary tools, solutions and methodologies but the record does not support this claim.

We acknowledge the petitioner's contention that the beneficiary possesses, and the position requires, both special and advanced knowledge of [REDACTED] proprietary tools, solutions and methodologies in order to integrate them in upgrading Documentum for the client. The petitioner asserts that this knowledge differentiates the beneficiary's knowledge from that of other project managers in the industry who provide similar services. Therefore, we will consider whether the petitioner established that the beneficiary's knowledge of and experience with the petitioner's proprietary tools, processes and methodologies constitutes specialized knowledge.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standards 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 proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and system development projects for its clients. The petitioner's [REDACTED] tool is described as a solution for managing software development projects in a distributed environment and for supporting software development for larger clients, while other tools are used for tracking project resources, costs and quality assurance. The record indicates that the petitioner has developed a software development methodology which is based on Agile and Rational Unified Processes methodologies and was designed to capture industry best practices.

It is reasonable to believe that any company operating in the petitioner's industry sector would develop tools for managing geographically distributed projects, and to follow industry best practices and methodologies for software development in order to remain competitive. The petitioner has offered little evidence to differentiate [REDACTED] and other internal tools, methodologies and practices from those used by

other consulting companies operating in the same industry sectors. For example, the petitioner's marketing materials for [REDACTED] indicate that its "differentiators" include "support for all lifecycle stages," "robust workbench for every team member," "company-wide collaboration," "integration with the client team" and "global resource management." The petitioner has not established how knowledge of the company's tools, methodologies and practices qualifies as different or uncommon from what is generally known by experienced software consultants in the industry, such that knowledge of company tools such as [REDACTED] alone could be considered specialized knowledge. The petitioner describes its approach to software development as "uniquely efficient" and states that its tools give the company a competitive edge, but there is simply insufficient evidence to differentiate them from those offered by other companies who provide the same services using similar tools and methodologies.

The petitioner referred to its proprietary tools as the "cornerstone" of its business, but also asserted that the beneficiary has special and advanced knowledge, in part, because "only some analysts, software engineers, testers and managers are trained to expertly leverage [the petitioner's] proprietary solutions in the course of their everyday work" and that "only those professionals who engage on critical assignments requiring specialized knowledge receive such training." The petitioner concedes that all of its engineers have some knowledge of its products, tools, processes, and methodologies, but asserts that only a select few have the depth of knowledge possessed by the beneficiary. However, the petitioner did not establish how many of its professionals engage on critical assignments or what constitutes a "critical" assignment. The petitioner, other than making the general assertion that only a select few have the depth of knowledge of the beneficiary, fails to identify or describe the "select few" or otherwise differentiate the "select few" from others within its organization. Additionally, the petitioner does not identify its "regular" employees, describe where they work, and detail their specific duties and what they are expected to do especially in relation to the beneficiary. 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 implies that the beneficiary was provided with the advanced training based on her role as a "project manager," but the petitioner did not list the actual training necessary to advance to this role, 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. The petitioner's use of intensive training on numerous computer skills, both proprietary and not, suggests that all or most of the foreign entity's engineering staff likely completes a similar introduction to the company's tools, methodologies and practices. Whether the training required is minimal or consisting of several weeks, the petitioner has not established that its training and the amount of training is uncommon for its employees, including those promoted to project manager, who will be using the employer's tools and methodologies to implement client projects.

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. Given that the petitioner indicates that it is a project-based business that relies on [REDACTED] and related tools and methodologies to manage geographically distributed client projects, its claim that most

of its employees receive only minimal or basic training in this area has not been adequately explained. The petitioner contends that the beneficiary uses the company's proprietary systems "to a greater extent than her colleagues," but fails to explain how or why this would be the case, particularly given the petitioner's claim that there are 800 project managers in the organization and the beneficiary held the position for only one month prior to being transferred to the United States. Overall, the evidence submitted regarding the petitioner's training courses and trainers confirms that the petitioner regularly trains its employees on its tools and methodologies. The petitioner has not supported its claim that the beneficiary was given advanced training reserved only for certain senior employees, or that only a project manager would possess the claimed advanced training in the company's tools and methodologies.

Based on the petitioner's representations and the evidence submitted, it is reasonable to conclude that the petitioner's proprietary processes and tools, while highly effective and valuable to the petitioner, are customized versions of standard practices used in the industry that can be readily learned by employees who otherwise possess the requisite technical knowledge and skills and appropriate functional or domain background for the project(s) to which they will be assigned. Accordingly, the petitioner provided insufficient evidence to establish that the beneficiary has specialized or advanced knowledge of [REDACTED] proprietary systems and practices such as [REDACTED] software systems and proprietary software development methodologies. Although the petitioner repeatedly asserts that the beneficiary has such knowledge, the record does not establish the actual requirements necessary to establish this knowledge including the specific training and experience required to reach this level of knowledge.

For example, the petitioner asserted that the beneficiary has special and advanced knowledge, in part, because she completed over 200 hours of advanced training related to the petitioner's proprietary technologies and processes and that this training far exceeds the 68 hours provided to typical employees. However, the petitioner submitted insufficient evidence to substantiate this assertion. Although the petitioner provides a letter from the HR department asserting that the beneficiary completed over 200 hours of training in various technologies and processes, the petitioner did not specifically compare this against other typical employees, beyond providing an arbitrary level of training hours assigned to "regular employees." The petitioner was given the opportunity to distinguish the beneficiary in relation to her colleagues when asked by the director to submit information on the duties, education levels, and salaries of her former foreign and current U.S. colleagues. However, the petitioner did not submit any specific evidence relevant to the beneficiary's foreign colleagues, and only provided the names of her U.S. colleagues. The petitioner did not describe the typical knowledge and training of her colleagues to corroborate that she had acquired a special or advanced level of training in relation to them. 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)).

Rather, when given the chance to submit evidence relevant to the beneficiary's foreign and U.S. colleagues, the petitioner provided little in response, beyond vaguely claiming that the beneficiary had completed elite special training absent sufficient supporting evidence. The petitioner submitted personnel documentation in response to the RFE suggesting that there are likely many other software testers and project managers senior to the beneficiary. For instance, the submitted information regarding career

tracks within the company indicated that the beneficiary had only a mid-range of experience in her former position as a software tester. Further, the personnel seniority ranking relevant to project managers reflected that the beneficiary was ranked at the lowest end of the experience and expertise scale when she was originally awarded her promotion to the project manager in the United States in 2011. In fact, the evidence states that the beneficiary had only been working as a project manager for one month prior to her transfer. This evidence leaves question as to whether the beneficiary possessed a special or advanced level of knowledge as a project manager when she was transferred to the United States, particularly when the evidence suggests that the company employs over 800 project managers.

In addition, the petitioner appears to assert that the beneficiary was directly involved in the development of the company's proprietary technologies for two months in 2010. The petitioner stated that the beneficiary was involved with [REDACTED] utilization and project staffing analyzer, an internally developed resource management application, and [REDACTED], an item management system software. Although a petitioner is not required to establish that a beneficiary developed its technology, if demonstrated, it can represent compelling evidence that a beneficiary's knowledge surpasses that of those similarly qualified within and outside of the organization. However, the petitioner has again not provided supporting documentation to support the assertion that the beneficiary played a substantial role in the development of the company's proprietary technologies. The petitioner did not specifically articulate innovations introduced by the beneficiary or document this work with internal emails or other supporting evidence. Regardless, even it were shown that the beneficiary did provide such developments in the company's proprietary technology, the petitioner does not explain how this would relate to the performance of her duties as a project manager working for [REDACTED] on the upgrade of its Documentum system.

On appeal, the petitioner states that the petitioner provided "extensive" evidence of the beneficiary's receipt of elite formal training and asserts that it described the beneficiary's acquisition of this training "with specificity in a logical, reasonable and credible manner." However, we do not find these contentions persuasive. As previously noted, the petitioner merely states that the beneficiary has received advanced training in relation to her many other similarly placed colleagues, but fails to sufficiently document this with supporting evidence. The petitioner has provided little evidence to support a conclusion that the knowledge required to use its tools effectively is distinct or uncommon within the company or that its tools, while proprietary, could not readily be learned by a similarly experienced project manager working in the petitioner's industry.

Here, the petitioner has not submitted sufficient evidence to set the beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that she 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

The remaining issue to be addressed is whether the beneficiary's placement primarily at the petitioner's client worksite is in compliance with the provisions of the L-1A Visa Reform Act.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

- (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
- (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
 - (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

The petitioner asserts that the beneficiary is "placed onsite at [its] client's location for the purpose of facilitating effective communication for the project needs and in order to deliver [redacted] proprietary knowledge to best serve customer's needs and requirements." 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.

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.¹

These two questions of fact must be established for the record by documentary evidence. Neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaigbena*, 19 I&N Dec. at 534.

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).

¹ 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 February 6, 2015).

Here, the petitioner has not established that the beneficiary's placement of the beneficiary at the client site is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. The petitioner has not provided evidence that its client requires the petitioner to use its own project management and other internal tools while working on the client's project. On appeal, the petitioner acknowledges that "the end customer does not necessarily require the use of [the petitioner's] precise methodologies," but stresses that such methodologies give the company its competitive edge. Although the petitioner noted that it expected the beneficiary to use its tools, the record does not support a finding that use of specialized knowledge specific to the petitioner is a requirement for the Documentum project. As noted above, the petitioner has not established how knowledge of its company's tools, methodologies and practices qualifies as different or uncommon from those tools, methodologies and practices offered by other companies who provide the same services.

Further, the petitioner has not provided a statement of work specific to the beneficiary's project outlining how and by whom the petitioner's off-site employees will be supervised, or outlining the specific services to be provided. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the evidence submitted is insufficient to establish that she will be principally supervised by an employee of the petitioning company.

For these additional reasons, the appeal will be dismissed.

III. CONCLUSION

We acknowledge that the beneficiary was previously granted an L-1B visa under the petitioner's Blanket L petition. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that a visa petition was approved on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The beneficiary's initial blanket L-1B petition approved by the U.S. Consulate in Kyiv is not part of the current record.

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an extension of the nonimmigrant visa petition's validity based on the petitioner's failure to establish eligibility.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's

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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.