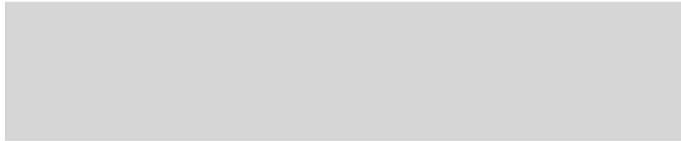




U.S. Citizenship
and Immigration
Services

(b)(6)



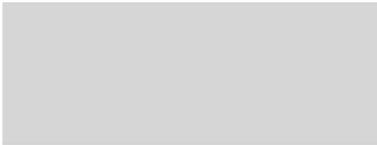
Date: **AUG 25 2015**

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 the Form I-129, 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 Texas limited liability company, provides support services for offshore and drilling activities. The petitioner claims to be an affiliate of [REDACTED] located in Brazil. The petitioner seeks to transfer the beneficiary to the United States to serve in the position of Quality Manager for a period of three years.

The director denied the petition on multiple grounds, concluding that the petitioner did not establish that: (1) it has a qualifying relationship with the beneficiary's foreign employer; (2) the beneficiary's employment abroad was in a position that was managerial, executive, or involved specialized knowledge, (3) the beneficiary possesses specialized knowledge, and (4) the beneficiary's proposed position in the United States involves specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review. On appeal, the petitioner submits a one-page statement in which it asserts that the beneficiary meets the requirements for L-1B classification. The petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence to us within 30 days. However, the petitioner did not submit supplemental evidence or a brief and the record will be considered complete.

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. THE ISSUES ON APPEAL

A. Specialized Knowledge

The first issue to be addressed pertains to specialized knowledge, and whether the petitioner established that the beneficiary possesses specialized knowledge and whether she has been employed abroad, and would be employed in the United States, in a position that involves specialized knowledge.

1. Facts

The petitioner filed the Form I-129 on July 9, 2014 and stated that it currently has three employees. The petitioner stated that the beneficiary will be working as a Quality Manager. On the Form I-129, where asked to describe the beneficiary's duties abroad, the petitioner stated: "Has been employed with the petitioner since January 2012. First as a Quality Analyst then as a Quality Manager."

On the Form I-129, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated as follows:

Provides guidance to organization and supports the QA process from pre-qualification and tender requests to project and operational QHSE plans. Develops and implements QHSE managements systems, processes, and procedures that improve business operations in accordance with ISO 9001. Manages internal audits with the objective to add value and improve the organization's operations to accomplish its objectives and brings systematic business approach to evaluate and improve the effectiveness of risk management, control and governance processes.

The petitioner submitted a letter from the foreign entity, dated January 15, 2014, describing the beneficiary's employment abroad as follows:

As Quality Analyst [the beneficiary] has responsibility for the development and maintenance of the Company Quality, Health, Safety and Environment System. This includes, providing guidance to the organization and supports the QA process from pre-qualification and tender requests to project and operational QHSE plans. Develops and implements QHSE managements systems, processes, and procedures that improve business operations in accordance with ISO 9001. [The beneficiary] manages the internal audits with the objective to add value and improve the organization's operations to accomplish its objectives and brings systematic, discipline approach to evaluate and improve the effectiveness of risk management, control, and governance processes. She applies our company methodology effectively; ensuring quality standards by preparing engagement reviews and following quality assurance procedures with a Latin American perspective so as to be in compliance with local standards with the various Oil and Gas rules of the region. In this role, [the beneficiary] is also responsible for minimizing management risk exposure and ensuring all processes, documents and records are complete, current and appropriately archived.

The petitioner submitted a second letter from the foreign entity, also dated January 15, 2014, describing the beneficiary's specialized knowledge and employment abroad as follows:

[The beneficiary] has worked as a Quality Analyst at [the foreign entity] since 2012. [The beneficiary] has an impressive skill set which she brings to bear effectively in her role at [the foreign entity]. She has very strong language & communication skills

and a determined & focused attitude. She has also developed a deep knowledge and understanding of the International Standardization Organizations coupled with a broad vision of how to achieve any goal she is set, or that she sets for herself. [The beneficiary] has proved trustworthy, dependable and honest both in her role in the company and in her personal life. Within [the foreign entity] she has consistently met the demands made of her and I consider her a vital part of the future of the business. She is responsible for implementation and maintenance of the Quality Management System, with a Latin American focus, ensuring compliance with Oil and Gas standards and regulations both globally and for the local region. She also promotes global best practice within the company to meet the business objectives of the organization, support the staff and improve customer satisfaction.

The petitioner also provided the beneficiary's resume listing her employment and responsibilities as follows:

Company: [The foreign entity] (Brazil – South American Division)

Position: Quality Manager

Period: from Apr.13 up to now.

Responsibilities:

- Devising and establishing a company's quality procedures, standards and specifications;
- Reviewing customer requirements and ensuring that they are met;
- Working with purchasing staff to establish quality requirements from external suppliers;
- Setting standards for quality as well as health and safety;
- Making sure that manufacturing or production processes meet international and national standards;
- Defining quality procedures in conjunction with operating staff;
- Setting up and maintaining controls and documentation procedures;
- Monitoring performance by gathering relevant data and producing statistical reports;

Company: [The foreign entity] (Brazil – South American Division)

Position: Quality Analyst

Period: from Jan.12 to Apr.12

Responsibilities:

- Development and maintenance of the Company Quality, Health, Safety and Environment System;
- Provide guidance and supports the QA process from pre-qualification and tender requests to project and operational QHSE plans;
- Develops and implements QHSE managements systems, processes, and procedures that improve business operations in accordance with ISO 9001;
- Local Compliance within LA local content guidelines and regulations.



The petitioner also submitted copies of the beneficiary's Bachelor of Business Administration and Master of Business Administration degrees, along with a Report of Educational Equivalency.

The director issued a request for evidence ("RFE"), advising the petitioner that the evidence presented was insufficient to demonstrate that the beneficiary (1) has been employed abroad in a position involving specialized knowledge, (2) possesses specialized knowledge, and (3) will be employed in a position involving specialized knowledge in the United States. The director instructed the petitioner to submit evidence to satisfy each requirement.

In response to the RFE, the petitioner submitted a letter from the foreign entity, dated October 7, 2014, describing the beneficiary's specialized knowledge as follows:

Under the job profile of Quality analyst she:

- Has an extensive knowledge and skills needed to examine quality management systems along with the ability to generate appropriate audit findings and reach valid conclusions.
- Has an Advanced level of knowledge obtained from being the creator of proprietary processes and procedures for [the foreign entity], which requires a specialized knowledge of a wide range of technical services;
- Responsible for the development, implementation and maintenance of the Company Quality, Health, Safety and Environment System in Brazil and North America with a Latin American perspective.
- She oversees other company certifications such as Classification society approvals for [redacted] which requires a specialized knowledge of a wide range of technical services.

* * *

To be clear, [the beneficiary] has worked in a specialized knowledge capacity continuously quite some time. By working directly with all third parties, internal and external clients, she has absolutely gained specialized knowledge during her time with [the foreign entity] in Brazil. Beyond just understanding, she has used and built upon this knowledge during the following certifications and tender/project processes for the company:

* * *

[The beneficiary] is often the only person on our team that has the specialized knowledge of [the foreign entity's] Quality, Health, Safety and Environment Management System, its procedures and local contacts to make the certifications happen, not to mention language skills, interpersonal skills, local market knowledge and management expertise to ensure that quality is successfully implemented and achieved.

She has extensive experience in external audits such as for qualifying services for BV, DNV and API and an in-depth knowledge about the standards related to the unique product / services mix provided by [the foreign entity]. She maintains professional relationships with third parties companies what facilitates the development and implementation of our global QHSE system. This will be continued and enhanced in her work in the USA. She will also be able to capture and understand valuable standardization information relevant to Brazilian work opportunities and contacts defined and planned from [redacted] Texas.

* * *

This specialized knowledge of the issues and opportunities in Brazil is vital for her work in the USA and a US citizen could not replicate it without first spending many years working in the Brazilian market. For example she developed the companies' operational procedures over the course of many local audits, and now cover global standards and requirements, allowing the [redacted] office to achieve success in the certification for DNV 402 A and B. The certification with DNV was only possible because of [the beneficiary's] specialized knowledge in the technical procedures of the company and the requirements of DNV in the USA. Her personnel experience in our QHSE gives our client's confidence in our services.

Concerning the organizations processes and procedures, [the beneficiary] has played an integral part in the formation of [the foreign entity's] Quality, Health, Safety and Environment Management System, in both Brazil and the USA. Her daily interaction with all departments and clients gives her a valuable overview of the company, its policy's and capabilities. That this specialized knowledge is also international makes her the only logical choice for the position at our global headquarters in [redacted]

[The beneficiary] is qualified by [redacted] in ISO 9001:2008 Internal Auditor and she is qualified to provide internal training to internal employees, and qualifying in API Q1 9 edition qualification for development of the business in other areas.

The letter goes on to describe the beneficiary's employment abroad and states that she reported to both the Administrative Manager and the CEO, and managed the expansion of the company QHSE scope worldwide. The letter also lists 17 duties the beneficiary performed as Quality Manager.

The petitioner submitted copies of the following certificates awarded to the beneficiary:

- ISO 9001 Internal Auditor; 3-day course April 30 – May 2, 2013
- ISO 9001:2008 Internal Auditor; 6 hours April 23, 2013

The petitioner also submitted the foreign entity's ISO 9001:2008 Quality Management System Manual, indicating that the beneficiary authored two parts of the manual and reviewed parts authored by others in the organization between May 28, 2013 and April 30, 2014. The petitioner

submitted an Internal Audit Final Report, dated May 19, 2014, indicating that the beneficiary was one of two members on the Auditor Team performing the internal audit of the Quality Management System. According to the document, the beneficiary was the lead auditor as Quality Manager and the other auditor was a human resources employee. The beneficiary audited Commercial/Sales, Human Resources, Supply Chain, Operations, and Management, and authored the report on Quality.

The director denied the petition on October 21, 2014, concluding, in part, that the petitioner had not established that the beneficiary possesses specialized knowledge or that she has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director found that the evidence provided does not demonstrate that the beneficiary's knowledge of the petitioner's product, service, research, equipment, techniques, management, or other interests and its application in international markets is special, or that her knowledge of the petitioner's processes or procedures is advanced, in relation to others that are similarly employed by the organization. The director found that, although the petitioner states that the beneficiary applies its methodology effectively, it has not established how the beneficiary has specialized knowledge. Finally, the director found that the submitted evidence does not specify what specialized knowledge the beneficiary possesses or what the beneficiary actually does at the foreign entity and will be doing in the United States with regard to the claimed specialized knowledge.

On appeal, the petitioner asserts that “the documentation is more than relevant to confirm that the beneficiary indeed possesses and uses on a daily basis ‘specialized knowledge’ regarding the company's processes and procedures. This is not just ‘mere familiarity’, this employee is a valued and critical employee to successful operation of the company.”

2. Analysis

Upon review, we find that the petitioner has not established that the beneficiary possesses specialized knowledge or that she has been employed abroad, and will be employed in the United States in a position involving specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person “has a special knowledge of the company product and its application in international markets.” Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person “has an advanced level of knowledge of processes and procedures of the company.” *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

U.S. Citizenship and Immigration Services (USCIS) cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is

typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

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

In examining the beneficiary's specialized knowledge and whether the offered 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.*

In reference to the experience and specialized knowledge required to perform the duties of the beneficiary's position in the United States, the petitioner simply states that “a US citizen could not replicate it without first spending many years working in the Brazilian market.” Therefore, one of the critical questions before us is whether the petitioner has supported its claim that the beneficiary's experience in quality management and internal auditing, along with her knowledge of the petitioner's claimed proprietary processes and procedures constitutes specialized knowledge.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that the beneficiary's two years of experience in performing local audits and developing its internal processes and procedures for quality management, has resulted in the beneficiary's possession of specialized and advanced knowledge. However, the petitioner has not provided probative evidence establishing what its proprietary processes and procedures are and how they are different than others in the same industry which are also developed according to ISO-9001 standards. Although the petitioner states that the beneficiary has developed proprietary processes and procedures for quality management, the petitioner has not established how the beneficiary's knowledge of these proprietary processes and procedures require a level of knowledge that is different from what is generally possessed by similarly employed and credentialed quality managers in the industry. Moreover, the petitioner has not established how this knowledge, even if proprietary, is “special” or “advanced.” Accordingly, the record does not include the requisite supporting evidence establishing that the “nature” of the beneficiary's knowledge is specialized knowledge. The record is deficient in this regard. As such, we affirm the director's determination that insufficient evidence was presented to establish that the

position of Quality Manager, as described herein, involves a special or advanced level of knowledge in performing internal audits and quality management.

The petitioner also claims that it is the beneficiary's specific experience at the foreign entity which resulted in her possession of specialized knowledge. Here, the petitioner does not indicate a specific time frame to obtain the same level of knowledge possessed by the beneficiary. The petitioner simply states that "many years working in the Brazilian market" is required, and adds that the beneficiary's experience abroad provides her with an understanding of its processes and procedures used in performing internal audit and quality management. The petitioner provided a copy of the beneficiary's degrees and certificates and stated that she is fluent in Portuguese, Spanish, and English. However, the record does not include the information needed to make a comparison between the beneficiary's training and experience and that possessed by others within the organization and within the industry as a whole. Although the petitioner states that the beneficiary is "often the only person on [the] team that has the specialized knowledge" of its QHSE Management System, the petitioner has not provided any information regarding similarly employed workers in the foreign entity and how many are similarly trained in comparison to the beneficiary.

Further, the petitioner does not detail the type or amount of training that would allow other similarly-employed staff potentially hired at the foreign entity to advance to the position of Quality Manager. Rather, according to the beneficiary's resume, she was employed as a Quality Analyst at the foreign entity for only three to four months before advancing to the Quality Manager position. Therefore, while the record establishes that the beneficiary possesses the knowledge and skills required to operate its QHSE Management System and perform internal audits, the petitioner does not establish that this knowledge is significantly different from that possessed by others who work with similar processes designed for the related industry. Accordingly, the petitioner has not established that the beneficiary possesses specialized or advanced knowledge.

Although the petitioner asserts that the beneficiary's position in the United States involves specialized knowledge, the petitioner has not sufficiently articulated or documented its claims. Other than submitting a description of the beneficiary's current duties and a vague explanation of how those duties require knowledge of its proprietary processes and procedures, the petitioner has not identified any aspect of the beneficiary's position which involves knowledge that rises to a level that is special or advanced. Specifically, the petitioner has not demonstrated what aspects of performing internal audits and quality management would require knowledge that is particularly complex or different from what is commonly held by experienced quality managers with the same skills.

Moreover, the petitioner has not submitted a detailed description of the beneficiary's proposed duties. The petitioner included a brief description of the position on the Form I-129 and indicated both at the time of filing and in response to the RFE that it was enclosing additional information regarding the U.S. position. However, none of the documents submitted at the time of filing or in response to the RFE included additional information regarding the beneficiary's proposed duties within the scope of the petitioner's U.S. office. 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)).

Overall, the evidence does not reflect how the knowledge and experience required for the beneficiary's position would differentiate that position from similar positions at other employers within the industry. Again, the petitioner's claim that the knowledge is proprietary must be accompanied by evidence establishing that the beneficiary possesses knowledge that is different from what is generally possessed in the industry; any claimed proprietary knowledge must still be "special" or "advanced." 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. at 165. 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).

For the reasons discussed above, the petitioner has not established by a preponderance of the evidence that the beneficiary possesses specialized knowledge and has been employed abroad, and will be employed in the United States, in a position requiring specialized knowledge. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

B. Qualifying Relationship

The second issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

1. Facts

On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as "[REDACTED]" and stated that the foreign and U.S. companies have an affiliate relationship. Where asked to describe the stock ownership and control of each company, the petitioner stated: "[REDACTED] is majority of [sic] both Brazilian and U.S. Company."

The petitioner did not submit any evidence or further information pertaining to the ownership and control of either entity in support of the petition.

In the RFE, the director advised the petitioner that it did not submit any documentation pertaining to the ownership and control of the foreign entity. The director instructed the petitioner to submit evidence demonstrating ownership and control of the foreign entity.

In response to the RFE, the petitioner submitted its Operating Agreement, dated October 8, 2012, between [REDACTED] and [REDACTED]. The Operating Agreement states that the petitioning U.S. company is authorized to issue 1,000 units of a single class. The Operating Agreement further indicates that [REDACTED] was issued 490 units for a capital contribution of \$1,300,000 and [REDACTED] was issued 510 units for a capital contribution of "goodwill and intangible property" valued at \$1,353,061.

The petitioner did not submit any evidence pertaining to the ownership and control of the foreign entity.

The director denied the petition, concluding, in part, that the petitioner did not establish that it has a qualifying affiliate relationship with the foreign entity. In denying the petition, the director found that the petitioner did not provide evidence of ownership for both entities.

On appeal, the petitioner asserts that it provided the requested evidence regarding both entities' ownership and control, which was "blatantly overlooked" by the director.

2. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee “to the United States to be employed by a parent, branch, *affiliate*, or subsidiary of [the foreign firm, corporation, or other legal entity].” 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term “affiliate” as “one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.” 8 C.F.R. § 214.2(l)(1)(ii)(L).

In the instant matter, the record does not contain any evidence of the foreign entity's ownership and control. Although the petitioner claims, on appeal, that this evidence was submitted in response to the RFE, it was not included in the petitioner's response. The petitioner did, however, provide some evidence of ownership and control of the petitioning U.S. company. 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)).

For the reasons discussed above, the evidence submitted does not establish by a preponderance of the evidence that a qualifying relationship exists between the U.S. company and the foreign entity. Accordingly, the appeal will be dismissed.

III. ADDITIONAL ISSUES

A. One Year of Employment Abroad

Although not addressed in the director's decision, the record does not contain sufficient evidence that the beneficiary 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. *See* 8 C.F.R. § 214.2(l)(3)(iii).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines “intracompany transferee” as:

An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.*

(Emphasis added).

The petitioner states that the beneficiary has been employed by its Brazilian affiliate continuously since January 1, 2012. The beneficiary states in her resume that she worked for the foreign entity from January 2012 until April 2012 and from April 2013 to the present.

At the time the petition was filed on July 9, 2014, the beneficiary had been in the United States in B-1 nonimmigrant status since January 12, 2014. The beneficiary’s passport shows that she was previously admitted to the United States on May 5, 2012 in B-2 status. USCIS and DHS records show that the beneficiary filed a Form I-539, Application to Extend/Change Nonimmigrant Status on November 5, 2012, which was approved on January 22, 2013, and that she departed the United States on June 19, 2013. The beneficiary’s passport shows that she returned to the United States in B-1 status on June 30, 2013 and departed on December 23, 2013, before returning approximately three weeks later.

Therefore, subsequent to commencing employment with the foreign entity in January 2012, the beneficiary has spent less than six months outside the United States. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A), the time the beneficiary spent in the United States will not be counted toward her fulfillment of the requirement that she have one year of continuous full-time employment abroad within the three years preceding the filing of the petition. Accordingly, for this additional reason, the petition cannot be approved.

B. Doing Business

Beyond the decision of the director, the petitioner has not established that the foreign entity and U.S. entities have been engaged in the regular, systematic, and continuous provision of goods and/or services. Specifically, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines that term as:

Doing business means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In the instant matter, the petitioner has not submitted any evidence of the foreign entity actively doing business in Brazil or evidence that it has been doing business in the United States. Although the director requested this evidence in the RFE, the petitioner did not submit any information pertaining to this request. 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)).

For the reasons discussed above, the evidence submitted does not establish by a preponderance of the evidence that the foreign and U.S. entities have been and are currently doing business in accordance with the regulations. For these additional reasons, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

IV. CONCLUSION

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.