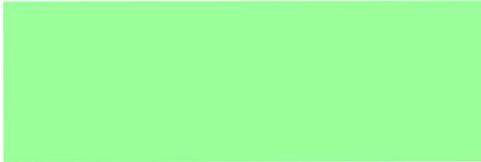
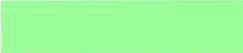


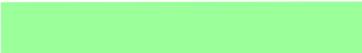


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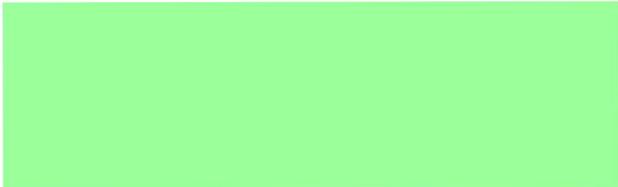


DATE: FEB 19 2015 Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

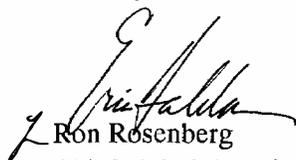


INSTRUCTIONS:

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

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

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to 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, quality assurance testing and support. It is an affiliate of the beneficiary's last foreign employer, [REDACTED] located in Ukraine. The petitioner employs the beneficiary as a senior software engineer and seeks authorization to extend his employment for two years. The petitioner indicates that the beneficiary will work at the petitioner's worksite in Pennsylvania and at its client worksite in [REDACTED] California.

The director denied the petition, concluding that the petitioner: (1) failed to establish that the beneficiary possesses specialized knowledge or that he has been and will be employed in a specialized knowledge capacity; and (2) failed to establish that the beneficiary's employment at the unaffiliated employer's facilities would be permissible under section 214(c)(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 our office for review. On appeal, the petitioner asserts that the director failed to give due weight and probative value to the petitioner's statements. The petitioner contends that the record demonstrates that the beneficiary's past and proposed positions involve specialized knowledge. The petitioner further asserts that it established that it will control and supervise the beneficiary's off-site employment.

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

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

A. Facts

In a letter, dated January 22, 2013, submitted in support of the Form I-129, the petitioner, known as the [REDACTED] stated that it is a leading provider of IT software services and solutions in the United States, Central and Eastern Europe. The petitioner asserted that it currently maintains its North American

headquarters in Newtown, Pennsylvania but noted that it also has software development centers in Belarus, Russia, Hungary, Poland and the Ukraine. The petitioner stated that "the U.S. facility supports Executive, Account and Project Management functions as well as System Architecture, specialized consulting and deployment services." The petitioner further stated that it employs more than 11,000 software developers, testing and maintenance engineers, and administrative personnel. The petitioner indicated that "[h]aving such a large team of qualified specialists enables the [redacted] to deliver advanced technology solutions at a great value for our customers worldwide, to create internal process-oriented enterprise-level software tools, and to contribute to the [redacted] competitiveness and overall success on a global scale including performance within the United States market."

Regarding its proprietary tools and methodologies, the petitioner claimed the following:

The cornerstone of [the petitioner's] proven methodology is the use of [the petitioner's] proprietary tools and methodologies in delivering world-class software products for our clients worldwide. [The petitioner's] approach harbors a well-tailored combination of internally-developed project management, engineering automation and data analysis tools, such as [redacted] an ahead-of-the-market in-house built engineering, automation testing and QA solutions, and a well-informed application of engineering knowledge enhanced by an on-site presence of key employees to develop[,] design, manage, and deliver top-notch, customized solutions to customer.

The petitioner stated that its applications are developed for customers by combining both custom and "off-the-shelf" software and that it uses its own proprietary ISO-certified software development methodology. The petitioner explained that its methodology "incorporates [the company's] 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 claimed that it is known as one of the world's leaders in outsourcing engineering, and further stated that it combines "deep business analysis experience with thorough technical expertise distributed throughout [its] various onsite locations, nearshore and offshore software development units." It stated that this expertise is "carefully accumulated, thoughtfully managed, and internally fostered" in its [redacted] and claims that these "centers" allow the petitioner to "provide unique, customer-adjusted solutions that can cater to the most fundamental and the most delicate customer's business needs." The petitioner further stated that its proprietary software systems are what allowed it to gain its current competitive edge.

The petitioner now seeks authorization to continue employing the beneficiary as a senior software engineer. According to the petitioner, it requires the beneficiary's continued services in this capacity to sustain its expansion. It claims that the proffered position requires specialized knowledge of proprietary systems and practices related to its business, such as [redacted] and [redacted] tools that are proprietary to the [redacted]. The petitioner claims that such knowledge is different and advanced from that held generally in the industry. The

petitioner concluded that the beneficiary's knowledge "is critical to our company's proprietary interests" and is "clearly a benefit to our organization."

The petitioner indicated that as a senior software engineer for the petitioner in the United States, the beneficiary will be a member of the Technology Solutions Department, "tasked with supplying a complex software engineering product developed using [REDACTED] proprietary solutions to an [REDACTED] [REDACTED]. The petitioner asserted that the candidate for this position will need to have "deep knowledge of [REDACTED] tools in order to be able to integrate them in developing the Client's solution – [REDACTED] **infrastructure framework for browser-less client –server integration testing (to be marketed under a different name)**, demanded by our Client." [Emphasis in original.] The petitioner stated that the beneficiary's position would include the following duties and responsibilities:

- Developing and implementing high performance, real-time, 24x7, scalable systems applications using the [REDACTED] project management solution and methodologies based on [REDACTED] application development processes according to [REDACTED] requirements;
- Utilizing [REDACTED] proprietary software development methodologies, processes, techniques and quality planning methods in all phases of work;
- Implementing agile practices of software development, basically Scrum;
- Implementing 'Continuous Integration' Agile practice involving automated building and deploying process and further regression and unit tests leveraging [REDACTED] [REDACTED];
- Creating new programs and customizing existing ones utilizing the following programming languages, frameworks and development environments: [REDACTED] [REDACTED];
- Providing dynamic and static content updating components for data driven web pages, creating rich user interfaces using [REDACTED];
- Facilitating effective communication between customers and offshore technical teams.

The petitioner stated that the position also requires the following skills and experience:

- 3+ years' experience in software development;
- Strong Knowledge of [REDACTED] development methodologies and proprietary [REDACTED];
- Experience in integration of proprietary [REDACTED] with other [REDACTED] proprietary applications such as "Applicants Workbench" and Utilization and [REDACTED];
- In-depth knowledge of JAVA/J2EE, [REDACTED] [REDACTED] Database Administration;
- Experience in software development lifecycle processes such as [REDACTED] [REDACTED];

- Experience in multi-tier distributed web application's design and architecture, object persistence methodologies and application deployment;
- Ability to develop object models from the functional requirements and architecture using UML technologies and modeling tools knowledge (Enterprise Architect, MS Visio);
- Ability to translate business needs into functional and technical architecture; application's workflow Analysis;
- Ability to manage multiple tasks and respond to tight deadlines in a fast-paced environment;
- Strong analytical skills, including gathering, compiling, and documenting system and technical requirements and writing specifications;
- Excellent interpersonal, organizational, and written/verbal communication skills;
- Bachelor's/Master's Degree in Computer Science/Information Technology, Engineering or closely related.

The petitioner further claimed:

Due to the proprietary nature of [the beneficiary's] knowledge, he may not be immediately replaced by a candidate hired from outside of the company with the needed experience that would incorporate outstanding understanding of software engineering for financial [sic] clients using [redacted] combined with advanced knowledge of [redacted] management, object persistence methodologies and distributed application deployment. This combination is virtually non-existent in a common U.S. corporate information technology environment.

The petitioner concluded by asserting that "[i]t is impossible to find the right candidate outside of the company to perform the required services for our Technology Solutions Department with the needed skillset and experience." The petitioner did not further clarify the exact nature of the advanced knowledge claimed above.

The petitioner stated that the "high expectations regarding [redacted]-specific technical experience and professional skills would prolong [the] search in the USA beyond justifiable limits, create risk of not filling the position and impacting overall business competitiveness." The petitioner did not offer evidence as to how long it would take to train another employee from within its own organization to perform the beneficiary's duties.

The petitioner further stated that it offers employment that is "mostly project based" and that the beneficiary was currently working on a project located in [redacted] California but that he might work on other projects during his employment with the petitioner. Notwithstanding the beneficiary's employment at the client's worksite, the petitioner asserted that "the beneficiary will remain at all times a payroll employee of [the petitioner] under its executive control." The petitioner asserted that the beneficiary would report to the "resource manager" as well as to the "project manager" for project-related

activities. Without identifying a specific project, the petitioner indicated that the beneficiary will be working on the project with the [REDACTED] software development team, the [REDACTED] project manager, and customer representatives assigned to current projects.

To establish the beneficiary's specialized knowledge, the petitioner provided evidence of the beneficiary's education, work experience and training. Specifically, the petitioner demonstrated that the beneficiary had earned the equivalent of a bachelor's degree in computer science and a master's degree in information technology from the [REDACTED] in the Ukraine. The record established that the beneficiary worked for the foreign entity from April 2007 until April 2011. The record also shows that the foreign entity hired the beneficiary as a software engineer, and subsequently promoted him to the position of senior software engineer in November 2009 and that the beneficiary was offered a position in the United States as a senior software engineer in April 2011. The petitioner stated that the beneficiary received his promotion to senior software engineer in November 2009 "as a result of his great work, intensive training with [REDACTED] in-house developed tools and infrastructure, as well as Client's recognitions."

The petitioner discussed the beneficiary's years of professional experience, concluding that with the beneficiary's "qualifications and outstanding background in the particular combination of domain and technology experience, he is the perfect candidate to fulfill the requirements for the position of a senior Software Engineer" and "[h]is experience in [REDACTED] corporate processes, methodologies and information systems could neither be found outside of [the petitioner's company] nor taught quickly enough."

The petitioner submitted a copy of the beneficiary's resume which indicates that the beneficiary, while employed at [REDACTED] implemented testing workflow based on the [REDACTED] proprietary tool, contributed to the development of core [REDACTED] and utilized [REDACTED] in delivery process, among a number of other additional duties unrelated to the petitioner's proprietary tools. The beneficiary's resume also indicates that while employed in the United States, he designed, developed, and improved numerous [REDACTED] products and services. The beneficiary refers to his use of the petitioner's [REDACTED] proprietary tool only once when indicating that he "implemented testing workflow based" on this tool, while in the United States. Other than noting that he has knowledge of [REDACTED] proprietary products and frameworks, the beneficiary does not refer to any training or experience in the petitioner's proprietary tools.

The petitioner also provided a copy of its contract entered into with [REDACTED] effective May 31, 2007. Although the contract indicated that statements of work (SOW) would identify the services to be provided, no SOWs were provided. The petitioner also submitted an undated letter on [REDACTED] letterhead, signed by an engineering director, confirming [REDACTED] business relationship with the petitioner. The letter noted that the petitioner "places its employees in specialty occupations for temporary periods to provide professional services at any US location where [REDACTED] has its premises" and that [REDACTED] has the intention to cooperate with the petitioner at least till December 2016 for the current projects. The initial record also includes a printout with the heading "Project List" and identifying [REDACTED] as an active project. The printout lists key staff, but does not include the beneficiary's name.

In a request for evidence (RFE), the director instructed the petitioner to submit additional evidence to demonstrate that the beneficiary possesses specialized knowledge and that the beneficiary had been and would be employed in a position that required specialized knowledge.

In response to the RFE, the petitioner submitted a letter, dated June 6, 2014, asserting that the beneficiary's knowledge is "quite distinguishable from that commonly possessed by similarly situated workers in the field." In support of this claim, the petitioner stated that not all of its engineers possess specialized knowledge of its proprietary tools, technologies, and solutions, but that "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." The petitioner asserted that "[s]uch knowledge is normally the result of dedicated training coupled with hands-on experience utilizing our technology on those projects where it is intensively applied." The petitioner noted that it had over 11,000 employees worldwide and that "only those professionals who engage on critical assignments requiring specialized knowledge receive such training."

The petitioner listed four training programs that the beneficiary completed while abroad, including: (1) [REDACTED] comprising approximately eight weeks of training; (2) [REDACTED] comprising a little over three weeks of training; (3) [REDACTED] for Software Engineers, comprising four weeks of training; and (4) Requirements Development and Management Training, comprising one week of training. The petitioner asserted that it has an extensive in-house training program, training facility and trainers on staff. The petitioner submitted a list of numerous courses in a variety of computer skills that it offered and printouts demonstrating its focus on training as a company.

The director denied the petition, finding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that he had been or would be employed in a position requiring specialized knowledge. The director determined that the use of the petitioner's tools and methodologies were incidental to the duties of the proposed employment. The director found that the possession of in-depth knowledge of methodologies and procedures was not unusual for a senior software engineer and the petitioner failed to provide sufficient evidence to establish advanced knowledge. The director found that the evidence was insufficient to establish that the beneficiary's position in the United States required specialized knowledge. Finally, the director found that, because the beneficiary's position did not require specialized or advanced knowledge as claimed by the petitioner, the beneficiary's offsite placement did not meet the requirements of the L-1 Visa Reform Act of 2004.

On appeal, the petitioner asserts that "due to the specialized nature of [REDACTED] proprietary tools, solutions, methodologies and processes, [its] engineers are unique and distinguished from similar nature engineers in the industry." The petitioner avers that the beneficiary participated in the development of its [REDACTED] modules and thus the beneficiary obtained specialized knowledge through development of a program, as well as 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.

The petitioner emphasizes the years and the investment the petitioner dedicated to create proprietary tools, programs and applications and how the beneficiary has the knowledge of the systems necessary to perform his roles abroad and in the United States. The petitioner also notes that [REDACTED] internal infrastructure is a very complex system and that "the testing process and the standards defined by [REDACTED] directly depend on underlying infrastructure and cutting edge QA solutions, such as [REDACTED] proprietary [REDACTED]". The petitioner states that "a Senior Software Engineer is expected to follow [REDACTED] processes and use these [REDACTED] proprietary practices and guidelines on a daily basis and to the greater extent than an ordinary member of the team."

The petitioner concedes that the beneficiary will work at the petitioner's client worksite but asserts that the beneficiary would be "responsible for the coordination of the extensive overseas software development team, which is working on a large project for [REDACTED] with the internal software existing on-site of [REDACTED]" and that the petitioner is not providing "labor for hire." The petitioner also references a March 1994 memorandum from former Immigration and Naturalization Service (INS) director James A. Puleo in support of its claim that the beneficiary's knowledge of the company's proprietary tools is sufficient to establish it as special or advanced. *See* Memorandum from James A. Puleo, Assoc. Comm., INS, "Interpretation of Specialized Knowledge," March 4, 1994 (Puleo Memorandum). The petitioner maintains that its internal tools and processes cannot be easily transferred or taught to another without causing significant disruption of the business to train another employee.

B. Analysis

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

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

We cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence, which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and

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

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

Upon review, and for the reasons discussed below, the petitioner in this case has failed to establish that the beneficiary possesses specialized knowledge or that he has been employed in a specialized knowledge capacity.

While the petitioner has provided a description of the beneficiary's duties as a "Senior Software Engineer," the petitioner has not provided a description of his duties within the context of the specific project to which he is assigned in the United States nor has it provided a copy of the work order for the project. The petitioner indicates that the beneficiary will be using third-party technologies including

The beneficiary will be using these technologies to implement agile practices of software development, create new programs and customize existing ones, provide dynamic and static content updating components for data driven web pages, and to facilitate communication between customers and offshore technical teams. Based on the general description of the beneficiary's duties, he is required to perform tasks typical of a software consultant and relies on knowledge of third-party technologies to implement solutions for corporate clients.

We acknowledge the petitioner's contention that the beneficiary possesses, and the position requires, both special and advanced knowledge of proprietary tools, solutions and methodologies in order to integrate them in developing the client's solution. The petitioner asserts that this knowledge differentiates the beneficiary's knowledge from that of other software consultants 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.

Upon review, the petitioner provided insufficient evidence to establish that the beneficiary's knowledge of its proprietary and internal tools, software development methodologies and processes qualifies as specialized or advanced.

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(1)(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 [REDACTED] are used for tracking project resources and costs and quality assurance. The petitioner also states that it has developed a software development methodology which is based on [REDACTED] 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 terms of the Service Agreement with [REDACTED] do not include any reference to the use of the petitioner's tools or methodologies. There is no indication that [REDACTED] requires the petitioner to use its project management tools while working on [REDACTED] projects. The petitioner has offered little evidence to differentiate its [REDACTED] tools 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 tools such as [REDACTED] alone could be considered specialized knowledge. The petitioner describes its approach to software development as "uniquely efficient" and states these 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.

Further, the record does not establish the precise requirements including training and experience to establish the actual nature of the claimed specialized knowledge, especially since the proprietary systems are referred to as the "cornerstone" of the company's business. For example, the petitioner asserted that the beneficiary has special and advanced knowledge, in part, because "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. The petitioner, when referring to the complexity of the [REDACTED] infrastructure, states that a "a Senior Software Engineer is expected to follow [REDACTED] processes and use

these [REDACTED] proprietary practices and guidelines on a daily basis and to the greater extent than an ordinary member of the team." However, the petitioner does not identify the number of "Senior Software Engineers" employed or further expound upon the expectation, not requirement, that they will use [REDACTED] proprietary practices. 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 his role as a "senior software engineer," but the petitioner did not list the actual coursework necessary to advance to senior software engineer, nor did the petitioner explain how the beneficiary's training differed from others or how many others had the same knowledge or received the same training as the beneficiary. 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 senior software engineer, who will be using the employer's tools and methodologies to implement client projects.

Further, as noted above, the petitioner has not established how many other employees hold the position of senior software engineer. Nevertheless, the petitioner boasts of a robust in-house training program but asserts that only a few hand-picked individuals representing the "best and brightest" are given the extra training received by the beneficiary. 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. That is, the petitioner's training courses and trainers confirm 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 software engineers, or that only a senior software engineer 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.

The petitioner's claim that the beneficiary would be difficult to replace in a reasonable amount of time is not supported. Based on the beneficiary's history with the company, the petitioner has not established why it could not hire or train another individual with extensive knowledge and give them training needed in the petitioner's systems just as the beneficiary initially received abroad. Nevertheless, the petitioner now asserts, but does not explain, why a replacement for the beneficiary's position would require a lengthier training period and additional prerequisites than was expected from the beneficiary himself.

The petitioner has not provided evidence that compares the beneficiary's knowledge with similarly employed workers within the company as is necessary to demonstrate that his knowledge is special or advanced. The beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other senior software engineers in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Therefore, the director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced. However, the petitioner's response to the RFE included minimal evidence relevant to comparing the beneficiary against similarly employed workers, and therefore failed to establish his knowledge as special or advanced. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). Consequently, the petitioner has not provided sufficient explanation or evidence to support its claim that the beneficiary's knowledge surpasses that of his colleagues as necessary to demonstrate that it is noteworthy or uncommon. Merely stating that the beneficiary's knowledge is distinct is not sufficient. 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)).

The petitioner simply states that the beneficiary must have extensive and thorough knowledge of its proprietary software, products, and services, but it does not establish the actual minimum requirements to meet this standard. In addition to these requirements, the petitioner noted that the beneficiary's position also requires skills that include languages, environment, frameworks, and platforms, such as

As noted, these skills are common and readily obtained in other organizations.

Much of the petitioner's supporting evidence serves to demonstrate the technical complexity of the field, within which the petitioner has senior software engineers providing professional services and management involving proprietary software or data, specific customer requirements, and other regulatory requirements. However, it is unclear how the beneficiary has gained an advanced knowledge of the company's proprietary systems, tools, and methodologies during his tenure with the company, and merely claiming that he was given additional training than some unidentified others in the company is insufficient to establish that this knowledge is special or advanced. Although the petitioner also contends that the beneficiary assisted in developing the company's proprietary solutions for clients, it has provided little documentary support to substantiate this claim and failed to explain the specific nature of these claimed development activities. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

On appeal, the petitioner asserts that the beneficiary was employed in a position that required specialized knowledge. The petitioner discusses the beneficiary's knowledge of programming languages, frameworks and development environments but these skills are not unique to the petitioning company and the petitioner has not provided sufficient evidence to establish that the beneficiary had specialized or advanced knowledge of the petitioner's resource planning tools and frameworks. Moreover, the petitioner also appears to assert that the beneficiary has specialized or advanced knowledge based on his experience with its clients' own processes and systems though the petitioner provided little demonstrative evidence to

support the claim aside from the beneficiary's ongoing work with the client. As noted, the petitioner has not provided a description of the client project. The petitioner has not shown that the beneficiary was employed in a position requiring specialized knowledge in part because the petitioner did not provide a detailed description of the beneficiary's position abroad. Again, USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge.

Further, the petitioner cites the Puleo memo, stating that this establishes that the beneficiary's knowledge of the company's proprietary tools and the potential hardship in replacing the beneficiary is sufficient to establish his knowledge as special or advanced. However, the Puleo memo states the following:

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.

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. Again, basing this claim on its proprietary or customer specific nature or its technically complex nature is not alone sufficient. Indeed, although the petitioner states that denial of the petition would cause undue hardship in training another employee, it fails to articulate or document how long it would take for another to attain this level of knowledge. In sum, the petitioner has not sufficiently compared the beneficiary against his colleagues as necessary to demonstrate that his knowledge is specialized. Again, 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 petitioner has not provided probative evidence on this issue. 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.

Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

C. L-1 Visa Reform Act

Although the director referenced the L-1 Visa Reform Act in the instant decision, the director noted that this issue had not been addressed in the RFE. We observe, however, that the petitioner in this matter addresses this matter on appeal. 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 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). Here, for the reasons discussed above, 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. Rather, as discussed above, the petitioner's client does not require the petitioner to use its management and other internal tools while working on the client's project. Although the petitioner noted that it expected the beneficiary to use its tools, it does not indicate that this is a requirement. 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

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).

submitted is insufficient to establish that he 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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.