



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 19 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, California Service Center ("the director"), denied the nonimmigrant visa petition and 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), to classify the beneficiary as an intracompany transferee in a specialized knowledge capacity 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 Michigan corporation, was established in [REDACTED]. The beneficiary's foreign employer, [REDACTED] and the petitioner are both subsidiaries of [REDACTED] a Canadian company. The petitioner states that it provides "[i]ndustrial automation solutions." It seeks to employ the beneficiary in the position of Controls Engineer for a period of three years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director failed to fairly evaluate the facts and evidence submitted.

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.

Finally, 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. FACTS AND PROCEDURAL HISTORY

In a letter submitted in support of the petition, dated April 7, 2014, the petitioner noted that its ultimate parent company is "one of North America's leading designers and producers of automated manufacturing systems" and that "[s]uch systems are used primarily by multinational corporations operating in a variety of industries, including automotive, computer, consumer products, electronics and health care." The petitioner noted that as a "Controls Engineer," the beneficiary will produce complete controls solutions and electrical design packages based on customer specifications and standardized design practices used by the petitioner's group. The petitioner stated that the beneficiary, specifically, will apply his specialized knowledge to:

- Working with mechanical designers during the mechanical design process to design a control system that will enable the machine to perform its intended function safely and reliably;
- Formulating and producing complete electrical design packages, which includes detailed schematics, cable routing diagrams, panel layouts, bills of material and material requisition forms, based on [the petitioner's] standard specifications and the customers' requirements;

- Working with other members of the Controls Engineering Department and other groups to continuously improve methods of integrating controls technology, with the goals being enhanced safety, enhanced functionality and reduced cost;
- Working with other members of the Controls Engineering Department and other groups to ensure that labor budgets and material budgets are adhered to or improved upon;
- Specifying all electrical and controls-related hardware and software and producing requisition forms for material purchases;
- Integrating third party equipment and electronic component entry into electrical design package. Examples include serial communications, hardware handshaking, opto-isolation, electrical and ultrasonic welding applications, vision systems, motion control products, transducers and signal conditioners;
- Verifying that the electrical design package is complete, accurate and safe based on sound design practices and accepted standards, and that the I/O lists meet program requirements prior to issue to shop floor;
- Working with customers, project managers, designers, toolmakers and electricians to solve problems in order to provide the customer with a complete, functional system;
- Working with other members of the Controls Engineering Department and other groups to continuously improve methods of integrating controls technology;
- Providing customers with training specific to their current project (i.e. electrical hardware, machine operation, programming principles, program functionality and program structure);
- Ensuring that all business activities are performed with the highest ethical standards and in compliance with the [petitioner's] Code of Business Conduct; and
- Adhering to all health and safety rules and procedures.

The petitioner stated that the beneficiary "possesses specialized knowledge in industrial automation of Programmable Logic Controller ('PLC') programming, which is widely used for production machines, and has rich work exposure to automobile segment such as main line assembly, head sub assembly, piston sub assembly, in line process verification, roll overs and engine performance test." The petitioner noted that the beneficiary is experienced in its company's engine assembly and industrial automation technology and that the beneficiary has received training on specific technologies over the last four years. The petitioner asserted that the beneficiary "possesses advanced knowledge on various technologies involved such as High end PLC platform (Siemens, B&R, OMRON, SCHEINDER); SCADA system & ROBOTICS and VISION; In-Line process verification; Hot and Cold test to perform the engine efficiency; and interfacing the line with Next Generation Manufacturing Executing System."¹ The petitioner also noted that the beneficiary had completed

¹ In a later paragraph, the petitioner stated that the beneficiary had "obtained specific training and skills in the following which are essential to the proposed U.S. position: Siemens safety PLC, HMI, Servos, high end Siemens safety platform PLC, interfacing with third party devices, In-Line process verification, hot and cold test to perform the engine efficiency, and interfacing the line with Next Generation Manufacturing Executing System." Other than referencing the beneficiary's certificate for a three-month course in programmable logic controllers, SCADA software, distributed control system, variable speed drives, industrial process management, panel designing, and electrical system, the

a course in programmable logic controllers, SCADA software, distributed control system, variable speed drives, industrial process management, panel designing, and electrical system. The petitioner included a copy of the beneficiary's certificate showing he had completed a three month training held from June 15, 2006 to September 22, 2006 on these topics.

The petitioner claimed "[c]ontrols engineers worldwide that have programmed the servo motor control for Valve keeper assembly in a cylinder head is less that 1% of all controls engineers." The petitioner further claimed that the Automated Assembly industry is not large in comparison to the automotive industry and that it has only four direct competitors operating in the United States. The petitioner noted that "**individuals recruited from competitors typically require three (3) years or more of training to fully possess our company specific knowledge and requirements.**" [Emphasis in original.] The petitioner further claimed that "only four (4) employees of the [redacted] group worldwide possess [the beneficiary's] specialized knowledge." The petitioner asserted that the beneficiary's knowledge of its proprietary techniques and hardware required to fully automate an assembly line is unquestioned and that "[h]is ability to transfer his knowledge of designing, installing, and debugging automated assembly lines for the automotive and heavy truck industries to US based employees is critical."

The petitioner indicated that the beneficiary had been employed by its affiliate in India since May 2010, "holding the specialized knowledge positions of Controls Engineer, Sr. Controls Engineer, and Assistant Manager – Controls Engineering, a position similar to the position he will undertake in the U.S."² The petitioner noted that in the position of Assistant Manager – Controls Engineering, the beneficiary is responsible for the following:

- Performing concept study for engine assembly line and performance test;
- Performing electrical schematic preparation;
- Overseeing the selection of robots, sensors and controls equipment;
- Developing human machine interface to customer specification;
- Debugging software to develop the machine into a "production worthy" system after powering up; and
- Interface and handshake communicating between host PLC, third party devices, and customer servers.

The petitioner also submitted a letter from the Managing Director of the beneficiary's foreign employer, dated April 22, 2014. The Managing Director indicated that the beneficiary has been employed "since Nov 2012

petitioner did not reference other specific training. The course the beneficiary completed as a "Certified Automation Engineer" course offered by [redacted]

² In a letter, dated April 22, 2014, the petitioner's Human Resources Manager noted that the beneficiary was employed by [redacted] from May 2010 through October 2012 at which time [redacted] consolidated its business units. At that time the [redacted] location was closed and the beneficiary was transferred to [redacted]. The petitioner's Human Resources Manager provided the same list of duties as that provided by the petitioner's Managing Director in his April 22, 2014 letter.

holding the positions of Sr. Controls Engineer, and Assistant Manager – Controls Engineering and that the beneficiary is "currently responsible for producing complete controls solutions and electrical design packages based on customer specifications and standardized design practices used at [REDACTED]". The Managing Director repeated the beneficiary's responsibilities as the Assistant Manager – Controls Engineering, as set out by the petitioner above, adding only that the beneficiary's duties also included: "Building and commissioning of the machine and customer support." The petitioner also submitted a letter signed by the Managing Director of the beneficiary's foreign employer, dated August 29, 2013, informing the beneficiary of his promotion to the position of Assistant Manager – Controls Engineering, effective June 1, 2013.

The petitioner provided a copy of the beneficiary's resume, which indicated that throughout his tenure with the foreign employer, he performed the following duties:

- Concept study for diesel engine assembly line.
- Electrical schematic preparation.
- Selection of controls equipment/Sensor placement.
- Developed a part of the controls algorithm for diesel engine assembly line by using Siemens 300 & 400 series PLC.
- Developed HMI using Siemens WinCC Flexible.
- Debugged software to develop the machine into a "production worthy" system, after powering up.
- Interfacing and two way communication between host PLC and third party devices as well as customer's NGMES.
- Erection and commission/customer support.

According to the resume, the beneficiary had nearly four years of experience as an application engineer and controls engineer with unrelated companies prior to joining the petitioner's affiliate in 2010. He indicated that his current project for the petitioner's affiliate is a diesel engine assembly line project for [REDACTED] which involves the main assembly line, piston and head sub-assemblies, and hot test line. The beneficiary indicates that the project requires experience with Siemens S7-300 and 400, MP 277 Touch Screen, Siemens HMI and starter software.

The initial record also included the [REDACTED] annual report, an affidavit of qualifying relationship, and a chart depicting the qualifying relationship.

The director subsequently issued a request for evidence (RFE) advising the petitioner that the initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge or that he has been and would be employed in a specialized knowledge capacity. The director requested that the petitioner explain in additional detail, and in layman's terms, the beneficiary's specialized knowledge, and also compare and contrast his knowledge to that possessed by others performing the same or similar duties in the petitioner's industry. The director further suggested that the petitioner identify the minimum amount of time required to obtain the specialized knowledge in terms of training and experience, and requested that the petitioner indicate whether others in the petitioner's group or in the industry at large possess the same knowledge. The director also requested documentation of any training the beneficiary has received with the company, further

explanation regarding any proprietary knowledge the beneficiary may hold, a more detailed description of the beneficiary's duties abroad, and corroborating evidence to support the petitioner's assertions that the beneficiary possesses knowledge that is either "special" or "advanced."

In an August 6, 2014 letter submitted in response to the RFE, the petitioner noted that the beneficiary had four years of Controls Engineering experience. The petitioner repeated the duties outlined in the beneficiary's resume as the beneficiary's responsibilities with the foreign employer from May 2010 to May 2013. The petitioner repeated its description of duties for the position of Assistant Manager - Controls Engineering and added the percentage of time the beneficiary spent on the duties as follows:

- Performing concept study for engine assembly line and performance test – 20%
- Performing electrical schematic preparation – 20%
- Overseeing the selection of robots, sensors and controls equipment – 20%
- Developing human machine interface to customer specification – 10%
- Debugging software to develop the machine into a "production worthy" system after powering up – 10%
- Interface and handshake communicating between host PLC, third party devices, and customer servers – 10%

The petitioner reiterated its claim that it had trained the beneficiary on very specific technologies over the last four years and that these technologies are related to engine assembly and, more specifically, engine cylinder head assembly. The petitioner also paraphrased its initial claim, stating: "**Controls Engineers worldwide which possess the knowledge and ability to program the servo motor control for Valve keeper assembly in a cylinder head is less than 1% of all controls engineers worldwide. [The beneficiary] possesses this unique and not commonly held skill for which he was chosen for this position.**" [Emphasis in original.]

The petitioner explained that the beneficiary "will specifically provide process improvements and vital engine assembly techniques which are not readily available with the U.S. market as they are not widely held skills." The petitioner further stated:

In power train there is only one cylinder head, one engine block, and one transmission for which we must find an individual with highly specialized skills in engine assembly. In North America for domestic engine production, there are approximately five machine builders that an engine manufacturer will allow to build a cylinder head or assemble an engine. **Companies like [the petitioner] have about 35 to 50 Controls Engineers on staff. Of those Controls Engineers less than 5 have ever done automatic cylinder head assembly, a skill [the beneficiary] has mastered.** [Emphasis in original.]

The petitioner also provided a percentage of time the beneficiary will spend on "specialized functions" in the United States as follows:

- 1) Engine Head Assembly – 40%
 - Valve Seat

- Valve guide assembly
 - Valve Insertion
 - Cylinder Head Pressure Decay leak test
 - Valve Keeper assembly
- 2) Engine Assembly – 40%
- Piston Ring assembly
 - Piston stuffing, (placing a piston with rings inside a cylinder in an engine block.)
 - Engine Hot Test and Data Tracking
 - Engine Final Assembly (Placement of final components that interface to Electric Generator or Vehicle (Transmission & drive train to name one.)
- 3) Prepare design packages – 20%

The petitioner submitted its foreign affiliate's organizational chart which depicts the beneficiary's position in the electrical controls department. The department's other employees include the head of the department, three assistant managers – electrical controls, including the beneficiary, three senior engineers – electrical controls, two engineers – electrical controls, and two electricians. The petitioner's organizational chart depicts the proposed position in the Controls Engineering Department with a manager supervising three "Controls Project Engineers." Each "Controls Project Engineer" is shown supervising a lead hardware designer, who in turn supervises a lead programmer, who in turn supervises a programmer. The beneficiary is identified as a "Lead Programmer."

The petitioner also included a list of a number of individuals interviewed by the manager of the Controls Engineering department. The list does not identify the position for which the individuals were interviewed. The list includes the names of several candidates who failed the interview, the names of five or six individuals who appear to have been hired, and the names of numerous individuals which do not include the outcome of the interview. The petitioner also included a "Recruiting Report: Siemens Controls Engineer" published by [REDACTED] which appears to be an overview of a methodology for hiring managers seeking staff Controls Engineer positions requiring Siemens Controls experience.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. The director determined that the petitioner had not established that familiarity with its processes and methodologies constitutes specialized knowledge or established how such knowledge is typically gained within the organization. The director acknowledged the petitioner's claim that the beneficiary's knowledge includes proprietary knowledge, but observed that the record did not establish that other controls engineers could not readily obtain such knowledge with minimal disruption to the company's operations. The director emphasized that merely indicating that the beneficiary possesses proprietary knowledge is insufficient to establish that the knowledge is special or advanced.

On appeal, the petitioner asserts that there was sufficient evidence in the record to establish the beneficiary's eligibility for L-1B classification by a preponderance of the evidence. The petitioner contends that the director did not fairly evaluate and assess the facts presented. Specifically, it claims that the beneficiary's position, given his duties within the electrical control group and the company's business area, is not similar to

other workers in the field. The petitioner claims that a minimum of three or more years of experience and training with the petitioner is required to rise to the level of Assistant Manager – Controls Engineer, and uses the beneficiary's specific employment circumstances abroad to support this claim.³ Finally, the petitioner reiterates that its recruitment efforts and lack of qualified candidates demonstrate that the position requires a level of specific and specialized knowledge and that such knowledge is possessed by the beneficiary.

III. ANALYSIS

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

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. All employees can be said to possess unique skill or experience to some

³ The foreign employer noted that the beneficiary was promoted to the position of Assistant Manager – Controls Engineer on June 1, 2013, almost eleven months prior to the filing of the petition on May 6, 2014. Accordingly, the beneficiary was not in the position of Assistant Manager – Controls Engineer for one full year prior to filing the petition.

degree; the petitioner must establish that qualities of its processes or products require this employee to have knowledge beyond what is common in the industry.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge. The totality of the evidence supports a conclusion that the beneficiary's current and proposed duties are those typically performed by a lead programmer or assistant manager - controls engineering in the automated assembly equipment field. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

In the present case, the petitioner initially indicates that the beneficiary "possesses specialized knowledge in industrial automation of Programmable Logic Controller ('PLC') programming ..." and is experienced in its company's engine assembly and industrial automation technology. The petitioner claims that it has trained the beneficiary on specific technologies. The petitioner, however, does not detail the specific technologies and does not identify any particular training or the length and intensity of any training that either the petitioner or the beneficiary's foreign employer provided. The petitioner then claims that "[c]ontrols engineers worldwide that have programmed the servo motor control for Valve keeper assembly in a cylinder head is less than 1% of all controls engineers." The petitioner does not identify the servo motor control as its own proprietary assembly control or further explain the significance of this component in the proposed position. The petitioner does not correlate this particular component to any segment of the position specifying the duties the beneficiary performed or will be expected to perform. The implication is that some aspect of the petitioner's own automated assembly equipment and related components requires the beneficiary to possess knowledge that is different or uncommon compared to that possessed by other similarly educated and experienced workers in his field. However, the petitioner has not adequately explained what aspects of its automated assembly equipment are different or proprietary from others in the assembly control industry.

Moreover, the petitioner has not provided evidence that compares the beneficiary with similarly employed workers within or outside the company as 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 controls engineers in the industry or advanced in comparison to other similarly-employed workers in the petitioner's organization. Merely stating that the beneficiary holds proprietary knowledge or establishing that it is technically complex is not sufficient. The petitioner must demonstrate that this knowledge is noteworthy or uncommon within the company's organization or within the industry, when compared to similarly placed colleagues. Here, the petitioner has submitted little evidence to establish that the beneficiary's knowledge is advanced or special as compared to his colleagues. Despite being requested by the director, the petitioner has not provided information necessary to compare the beneficiary against his colleagues, including their experience, education, or a summary of their duties. Failure to submit requested

evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

We acknowledge the petitioner's claim that "only four (4) employees of the [redacted] possess [the beneficiary's] specialized knowledge." However, the petitioner does not provide information regarding the duties of these four employees or the duties of its 35 to 50 controls engineers, and any specialized knowledge they may possess. The petitioner does not describe its controls engineers' experience, education and the specific jobs they perform. 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)). Thus, we cannot review and compare the beneficiary's colleagues experience, education, or otherwise ascertain their role within the petitioner's affiliated group.

Notably, the foreign entity's organizational chart depicts two other assistant manager – controls engineer positions, other than the beneficiary. In addition, there are three senior engineer positions.⁴ The petitioner has not submitted evidence or explanation of the difference in duties between the controls engineer position, the senior controls engineer position, or the assistant manager – controls engineering position. Thus, the petitioner has not distinguished the duties and the knowledge required to perform those duties from the other assistant manager – controls engineering positions or the senior controls engineer positions. Similarly, the petitioner's organizational chart identifies three controls project engineers, three lead hardware design engineers, three lead programmers, including the beneficiary, as well as three programmers. The difference in these positions has not been detailed. Nor has the petitioner proffered evidence of the knowledge and specific duties pertinent to the positions depicted on its organizational chart for review. Again, the record does not include the necessary evidence to review and contrast the duties of these positions or of the individuals' training and experience in these positions, within the petitioner's own affiliated group.

In addition, the petitioner's implicit reliance on the beneficiary's progression from controls engineer to senior controls engineer and then to assistant manager – controls engineering on June 1, 2013, to demonstrate that the beneficiary's knowledge has advanced within the company is misplaced. As the petitioner does not distinguish the knowledge held by the beneficiary or other individuals in the controls engineer position from the position of the senior controls engineer, or even assistant manager – controls engineering positions, we cannot determine how, if at all, the beneficiary's knowledge is more advanced in comparison to those similarly-employed individuals. Moreover, the petitioner indicated on the Form I-129 that the beneficiary will serve in the position of controls engineer in the United States, while the organizational chart identifies the beneficiary's proposed position as "lead programmer," a position that has not been described in the record.

⁴ Even if the petitioner had established that the foreign employer's position of assistant manager - controls engineer was a position requiring specialized knowledge, which it has not, the beneficiary did not have one full year of employment in that position, when the petition was filed. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Further, we have reviewed the petitioner's claim that "**individuals recruited from competitors typically require three (3) years or more of training to fully possess our company specific knowledge and requirements.**" [Emphasis in original.] Again, this claim is not supported with evidence in the record. The petitioner does not further quantify the amount of training or experience needed to become proficient in understanding and utilizing the petitioner's "proprietary information." Furthermore, the petitioner does not identify any specific training the beneficiary has undertaken during his tenure with the foreign employer. The beneficiary's 2006 certification for completion of a three-month course on various systems with an unrelated company is insufficient to establish that the beneficiary's knowledge in 2014 is specialized or advanced. The petitioner fails to explain why this training sets the beneficiary apart or establishes his knowledge as specialized. The petitioner does not, for example, articulate how many others within the company have attended this or similar training and how this training impacts the position. As noted above, the petitioner does not otherwise delineate specific training on any particular technology within in its organization. In sum, the petitioner has not sufficiently compared the beneficiary against his colleagues as is necessary to establish that his knowledge is specialized.

Also of note, the petitioner does not indicate when the beneficiary was recognized as having obtained the claimed specialized or advanced knowledge or which position requires the special or advanced knowledge. The beneficiary is clearly a highly skilled and experienced controls engineer, however, the petitioner does not adequately support a claim that the beneficiary's combination of experience in engine assembly equipment and familiarity with the servo motor control for Valve keeper assembly in a cylinder head has resulted in his possession of knowledge that is different or uncommon compared to similarly employed workers in the industry or within the petitioning company.⁵

We have reviewed the information submitted in response to the RFE regarding the petitioner's recruitment efforts; however, the list of potential candidates for unnamed positions within the petitioner's controls engineering department is insufficient to establish that the duties to be performed in the proffered position are rare or uncommon within the industry. Not only does the information submitted fail to identify the position and specific duties for which potential candidates were interviewed, the information does not include the outcome of the majority of the interviews or the reason for said outcome. [REDACTED] article also fails to contribute to an understanding of the rarity of skills for the petitioner's position. As the petitioner does not provide a detailed description of the proposed duties and does not specifically identify the proposed position, an article on recruiting controls engineers and/or controls engineers with Siemens controls experience is insufficient to establish that the petitioner's particular position requires knowledge that is uncommon among controls engineers in the petitioner's industry.

Further, the rarity of a position is just one factor to consider when determining the specialized nature of a particular position. In this matter, the petitioner does not detail the nature of the position with specificity and

⁵ We have also reviewed the petitioner's delineation of the percentage of time the beneficiary will spend on "specialized functions," including 40 percent spent on engine head assembly, 40 percent spent on engine assembly, and 20 percent spent on preparing design packages. However, the petitioner does not clarify what tasks the beneficiary will perform as they relate to these functions and does not indicate how these percentages of time correspond to the percentage of time spent on various duties as it provided for the position of Assistant Manager - Controls Engineering.

does not support its claim that the beneficiary's knowledge is specialized or advanced. Neither does the petitioner describe how any specialized knowledge is typically gained within the organization, and how and when its employees gain such knowledge. The failure to provide such basic information precludes a determination that the beneficiary in this matter possesses specialized knowledge or that he has been employed abroad, and would be employed in the United States, in a specialized knowledge capacity.

IV. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.