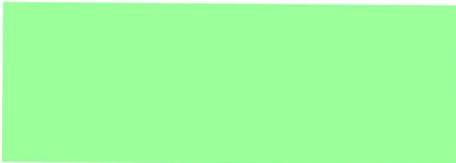


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: **JAN 08 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 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 is a Delaware corporation engaged in software development, testing and support. It is an affiliate of the beneficiary's last foreign employer, [REDACTED] located in Belarus. The petitioner employs the beneficiary as a project development analyst 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 New York.

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)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the matter to 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 submitted in support of the Form I-129, Petition for a Nonimmigrant Worker, 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 [REDACTED] Pennsylvania but the majority of its system development work occurs in Belarus, Russia, Hungary 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 8,000 professional programmers, engineers, testers and supporting personnel.

The petitioner stated that its "strong on-site presence (570+ people in the United States, 2000+ people in the European Union) enables [REDACTED] to deliver complex, mission-critical, and highly tuned specialty applications addressing the business demands of global companies."

The petitioner asserted the following regarding its proprietary tools and methodologies:

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 and data analysis tools, such as [REDACTED] an ahead-of-the-market in-house built project management system, 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 this "center" allows 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 [REDACTED] software system is what allowed it to gain its current competitive edge.

The petitioner now seeks authorization to continue employing the beneficiary as a project development analyst. According to the petitioner, it requires the continued services of the beneficiary in this capacity to "strengthen and sustain" its expansion in the financial services sector. It claims that the proffered position requires specialized knowledge of proprietary systems and practices related to its business, such as [REDACTED] proprietary practices. 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 project development manager for the petitioner in the United States, the beneficiary will be a member of the Banking & Financial Services Business Unit, a unit which it claims is "tasked with supplying complex software engineering analysis and delivery of the [REDACTED] developed software product to [REDACTED] Systems clients in the financial domain." The petitioner asserted that the beneficiary's position would include the following duties and responsibilities:

- Participate in analysis, design, development, integration and monitoring of computer programs and systems, including coordinating the installation of computer programs and systems;
- Provide analysis of technical requirements to the customer utilizing [REDACTED] proprietary practices and methodologies;
- Analyze technology, resource needs and market demand, to plan and assess the feasibility of projects using [REDACTED] tool (proprietary software);
- Elaborate software development workflow and other prerequisite documents;
- Review manuals, periodicals, and technical reports to develop programs that meet staff and user requirements;
- Partner with senior PM/Business Systems Analysts on more complex projects;
- Utilize software development methodologies, processes, techniques and quality planning methods in all phases of work by using various Microsoft, IBM and cloud computing technologies including: .NET, C#, C++/CLI, WPF, HTML, JavaScript, [REDACTED] Server;
- Utilize [REDACTED] proprietary software development methodologies, processes, techniques and quality planning methods in all phases of work;
- Install, implement, support and improve [REDACTED] proprietary engineering tools, processes, methodologies, and [REDACTED] practices at the Client's location.

The petitioner claimed that the position also required the following skills and experience:

- 4+ years of IT experience;
- Knowledge of [REDACTED] Software development methodology and proprietary [REDACTED];
- Expertise in [REDACTED] center standards and guidelines;
- Good practical knowledge of [REDACTED] Center solutions, practices, and [REDACTED] in-house developed methodologies;
- Knowledge of [REDACTED] internal systems [REDACTED];
- Knowledge of [REDACTED] frameworks [REDACTED] proprietary systems);
- Strong knowledge of such languages, environment, frameworks, and platforms .NET, C#, C++/CLI, WPF, HTML, JavaScript, [REDACTED] Server, MSMQ, [REDACTED] XML/XSLT;

- Good understanding of the financial markets, Financial Services business domain and data and being able to discuss requirements with the client using financial terminology;
- Proven experience in development and analysis of complex systems in production;
- Excellent analytical, organizational, interpersonal, and communication skills;
- Programming experience with specific frameworks such as TR Foundation API (RFA), Distributed Access Control Systems (DACS);
- Master's Degree in Business Administration.

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 knowledge and experience that would incorporate outstanding understanding of software engineering for financial clients using [REDACTED] combined with advanced knowledge of .NET, C#, C++/CLI, WPF, HTML, JavaScript, [REDACTED] Server. This knowledge is virtually non-existent in a common U.S. corporate information technology environment.

The petitioner concluded by asserting that "[i]t is very unlikely that we may be able to find the right candidate outside of the company to perform the required services for our Banking and Financial Services Business Unit with the needed mix of skills and experience." The petitioner did not further clarify the exact nature of the advanced knowledge claimed above.

The petitioner stated that the time needed to find a skilled replacement for the beneficiary in the United States might not be possible or would be "beyond justifiable limits" and impact the company's overall 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] New York 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." The petitioner asserted that the beneficiary would report to the "resource manager" as well as to the "project manager" for project-related activities.

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 master's degree in business administration from [REDACTED]. The record established that the beneficiary worked for the foreign entity from October 2004 until July 2011. The record also shows that the foreign entity hired the beneficiary as a software maintenance engineer, and subsequently promoted him to the positions of senior software maintenance engineer in February 2006, lead software maintenance engineer in 2007, and chief software maintenance

engineer in 2010, and ultimately offered him a position in the United States as a project development analyst in February 2011. The petitioner stated that he received his first promotion in February 2006 "after the completion of [REDACTED] extensive proprietary training program in such in-house technologies as [REDACTED] and [REDACTED]"

The petitioner stated that while employed in the United States the beneficiary "obtained additional training in [REDACTED] solutions, tools, and methodologies." The petitioner discussed the beneficiary's years of professional experience, noting that he participated in training throughout his career, and referred to the beneficiary's resume in support of this contention. The petitioner concluded that this additional training, as well as the beneficiary's additional knowledge such as "knowledge of the latest industry standards in maintenance and support and experience in [REDACTED] corporate processes and technologies, as well as Reuters-specific frameworks," could not be found outside of the petitioner's company nor taught quickly enough.

The petitioner submitted a copy of the beneficiary's resume, which outlined his project experience with the petitioner's group in the United States and abroad. The resume indicates that the beneficiary has worked on two [REDACTED] projects in the United States, one known as [REDACTED] described as a "system developed by two [REDACTED] teams and [REDACTED]." The beneficiary states that his role is "development of the UI modules, continuous integration and BDD integration testing," using Java, Scala, XML, Jersey, Maven, Cucumber for JVM, open source collections, Reuters JET, [REDACTED]. The second U.S. project listed is [REDACTED]. The beneficiary indicates that his role involves leading an eight-person development team to deliver an alerting system based on a legacy [REDACTED] product, using C++, C#, NET 3.5, XML, [REDACTED] MSMQ, Reuters Foundation API [REDACTED]. The beneficiary's resume lists [REDACTED]

The petitioner also provided project information for the [REDACTED] project to which the beneficiary will be assigned under the extended petition, which involves "development of alerting/messaging sub-system for [REDACTED] for the client, [REDACTED]. The project had a start date of October 12, 2009 with an expected end date of December 30, 2016. The submitted project organizational chart indicates that the beneficiary is the onsite Lead Software Development Analyst, with other New York-based team members including a lead software engineer, senior solution architect, lead software testing engineer, and director, business solutions. The petitioner provided a provided an itinerary indicating that the beneficiary will be assigned to the [REDACTED] Financial Services development project ([REDACTED] product)" at the client site in New York through December 31, 2015.

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 addition, the director requested evidence to demonstrate that the beneficiary will not be principally under control and supervision of a non-affiliated employer and the beneficiary's placement at the non-affiliated worksite is not essentially an arrangement to provide labor for hire. The director stated that evidence could take the form of letters from the beneficiary's employer and that such an explanation must be written in layman's terms.

In response to the RFE, the petitioner submitted a letter, dated March 12, 2014, asserting that the beneficiary's knowledge is "quite distinct from that commonly possessed by similarly situated workers in the field." In support of this claim, the petitioner stated that the beneficiary's duties required more than general knowledge of software engineering, tools, programs or applications as the beneficiary is required to possess "proprietary knowledge of [REDACTED] internally developed, proprietary tools, methodologies and approaches to software engineering which took years of investment for the company to bring them up to the level of incredible uniqueness and competitiveness in the field." The petitioner also stated that the company uses "distinct and narrowly tailored products, tools, programs, and practices as [REDACTED] best practices, all of which are our company's unique and proprietary development methodologies and processes ('know-how') that have been perfected over the life of the company."

The petitioner stated that "while the end customer does not necessarily require the use of these precise methodologies it is precisely [the petitioner's] proprietary, uniquely efficient approaches to software development which give the company its competitive edge and allow it to provide the winning level of quality to our customers."

The record established that the foreign entity employed the beneficiary from October 2004 until February 2011. The petitioner stated that "regular" employees only receive 68 hours of training in [REDACTED] proprietary technologies whereas the beneficiary received advanced training totaling 298 hours in 2006 and 2007. The petitioner listed five training programs that the beneficiary completed while abroad, and states that the extensive training provided to the beneficiary is only provided to its "core group of elite experts," who are selected from its "best and brightest, clearly outstanding employees." In this regard, the petitioner stated that it employs only a limited number of employees in the position of Project Development Analyst in its Belarus office, and that all employees with this position title complete the advanced training the beneficiary completed. In addition, the petitioner stated that after training, project development analysts "are required to apply and improve the proprietary knowledge while working on in-house projects for at least one year." The petitioner stated that no other members of the beneficiary's project were relocated from Belarus, had only "initial trainings on [REDACTED] proprietary systems," and do not require specialized knowledge.

The petitioner also provided an assessment of the beneficiary's academic credentials, training and experience from an associate professor of computer applications and information systems at the [REDACTED] Connecticut. The professor discussed a number of training courses that the beneficiary had completed while employed abroad and concluded that the beneficiary has developed "an overall expertise of the company's products and techniques which is unmatched by any [REDACTED] employee at his present location in the United States." The professor's letter concluded by stating that the beneficiary "possesses specialized knowledge of the products, processes and procedures of [REDACTED] and that he is highly skilled employee who has attained an advanced level of experience and expertise in regard to the company's Project Management Center and the inner workings of the petitioner's custom-designed applications and solutions.

The petitioner asserted that it has an extensive in-house training program, training facility and trainers on staff. The petitioner further stated that its proprietary tools and methodologies are not publically available

and therefore constitute a "trade secret." The petitioner explained that internal training is necessary and that the beneficiary's knowledge was "attained via years of on-site training, certifications, and practical application of these tools and technologies."

The petitioner further asserted that in addition to formal training, on the job training experience under close supervision and mentoring is required to reach competency to become a project development analyst. The petitioner estimated that at least three years of work on [REDACTED] proprietary technologies" is required for the position, and the project development analyst will spend another year applying and mastering his skills. The petitioner explained that this was precisely the reason why it is impossible for the company to replace the beneficiary with a "reasonably competent new hire," since they would not possess the same level of knowledge as the beneficiary.

In February 2011, the petitioner offered the beneficiary a position in the United States with a promotion to project development analyst. The petitioner acknowledged that its employment opportunities are "mostly project based" and that the beneficiary's expertise was required to support the [REDACTED] project in New York. The petitioner reiterated that the beneficiary will report to the petitioner's resource manager and project manager, and work at the remote client site in order to facilitate communication and not merely placed there as labor for hire. The petitioner submitted a copy of its Master Services Agreement for Outsourced Application Development, Support and Recruitment Services with [REDACTED] which had a commencement date of January 1, 2009, but it did not provide a copy of the Work Order for the project to which the beneficiary is assigned.

The petitioner also submitted an overview of the beneficiary's training from the foreign entity in a letter dated March 3, 2014. Specifically, the letter provided a list of the training and courses attended/completed by the beneficiary, which included, in abbreviated form, the following:

- 1)
- 2)
- 3)
- 4)
- 5)

In addition, the petitioner asserted that its company's policy required employees in beneficiary's position to complete the Business Training Program which included an in-depth review of the petitioner's customer companies, in this matter, the beneficiary devoted a total of 604 hours between five of the petitioner's clients. It is not clear how many employees that included or how the beneficiary's knowledge would then be distinguished from others in the same position.

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 petitioner did not submit sufficient evidence to demonstrate when the beneficiary obtained the specialized knowledge and the record does not support that the beneficiary was in a position that required specialized knowledge for the requisite period while abroad. The director found insufficient evidence to demonstrate that the beneficiary's knowledge differed from

any other similarly employed individual in the petitioner's industry. Moreover, the director found that the possession of in-depth knowledge of methodologies and procedures was not unusual for a project development analyst 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 requirement of the L-1 Visa Reform Act of 2004.

On appeal, the petitioner asserts that the beneficiary held multiple specialized knowledge positions abroad, and reiterates that the beneficiary's training and experience resulted in the beneficiary's specialized knowledge, which is distinct from that commonly possessed by similarly situated workers in the field. Specifically, the petitioner repeatedly refers to 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 asserts that the beneficiary received more training than "regular" employees. The petitioner states that in his role in the United States the beneficiary is to be the only employee on-site at the client location with specialized knowledge.

The petitioner concedes that the beneficiary will work at the petitioner's client worksite but that the beneficiary would be "responsible for the coordination of the extensive overseas software development team" and 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, counsel'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 "Project Development Analyst," 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 Microsoft, IBM and cloud technologies such as .NET, C#, C++, CLI, WPF, HTML, JavaScript, and [REDACTED] Server, analyzing customer technical requirements and resource needs, reviewing manuals and technical reports to develop programs meeting user requirements, and installing the petitioner's engineering tools at the client's location while working on the client's [REDACTED] product. 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.

However, the petitioner contends that the beneficiary possesses, and the position requires, both special and advanced knowledge of [REDACTED] proprietary tools, solutions and methodologies along with a deep understanding of its client's existing software systems, which differentiates his knowledge from that held by 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(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standards by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The proprietary specialized knowledge in this matter is stated to include proprietary tools and methodologies developed by the petitioner for the management of the company's software and system development projects for its clients. The petitioner's [REDACTED] tool is described as a solution for managing software development projects in a distributed environment and for supporting software development for larger clients, while [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 Agile and Rational Unified Processes methodologies and was designed to capture industry best practices.

It is reasonable to believe that any company operating in the petitioner's industry sector would develop tools for managing geographically distributed projects, and to follow industry best practices and methodologies for software development in order to remain competitive. The petitioner acknowledges, and the terms of the Master Service Agreement confirm, that "the end customer does not necessarily require the use of [the petitioner's] precise methodologies." The MSA at section 5.7 provides that the petitioner use project management tools to ensure efficiency and productivity and to make such tools available to the client at no cost. The petitioner has offered little evidence to differentiate its [REDACTED] tool 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 he completed 298 hours of training related to the petitioner's proprietary [REDACTED] tool and that training far exceeds the 68 hours provided to "regular" employees. But the petitioner did not establish who the "regular" employees are, where they work, and what they are required 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 "project development analyst," but he did not assume that position until his transfer to the United States. In fact, the petitioner initially stated that the beneficiary completed an "extensive proprietary in-house training program" in [REDACTED] when he was initially hired as a software maintenance engineer, and that he was promoted to senior software maintenance engineer only after completion of this training. If he did complete this training as a newly-hired software engineer, the evidence suggests that all 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 68 hours or 298 hours, it has not been established that this amount of training is uncommon in the field for a newly hired software consultant who will be using the employer's tools and methodologies to implement client projects.

Further, the record shows that the beneficiary's 298 hours of training in [REDACTED] and related tools and in the petitioner's software methodology and engineering practices occurred when he held the positions of software maintenance engineer and senior software maintenance engineer. Therefore, the petitioner has not supported its claim that he was given advanced training reserved only for certain project development analysts, or that only a project development analyst would possess the claimed advanced training in the company's tools and methodologies. The beneficiary completed the training while working in the software maintenance engineering department, years prior to his eventual assignment to a project development analyst position.

Aside from asserting that the beneficiary received many more hours of training, the petitioner did not list the actual coursework necessary to advance to project development analyst, 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. Moreover, even after one year of training and experience, the petitioner claims the project development analyst would require another year applying and mastering his skills. The petitioner did not provide sufficient evidence to demonstrate that the beneficiary met the petitioner's own requirements for promotion to project development analyst.

Further, the petitioner has not established how many other employees hold the position of project development analyst. While it appears the beneficiary may be the only "lead software development analyst" assigned to the client worksite, the only members of the New York-based team include employees at the lead and management level. Nevertheless, the petitioner boasts of a robust in-house training program but asserts that only a few hand-picked individuals representing the "best and brightest" are given the extra training received by the beneficiary. Given that the petitioner indicates that it is a project-based business that relies on [REDACTED] and related tools and methodologies to manage geographically distributed client projects, its claim that most of its employees receive only minimal or basic training in this area has not been adequately explained. The beneficiary's resume indicates that he used these tools in all of his projects for the foreign entity, presumably even before he completed any of the [REDACTED] training.

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 project development analysts 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 demonstrate 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. 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, services, and client base, 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 .NET, C#, C++/CLI, WPF, HTML, JavaScript, [REDACTED] Server, MSMQ, [REDACTED] XML/XSLT. 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 project development analysts 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 this

development. 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 review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated a sufficient basis to claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of project development analyst at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Id.* Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the petitioner asserted that the beneficiary was employed in several positions that required specialized knowledge. The petitioner discussed 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 that enterprise resource planning tool. Moreover, the petitioner also appears to assert that the beneficiary has specialized or advanced knowledge relating to one of 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. 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.

The petitioner also submitted a [REDACTED] associate professor's advisory opinion attesting to the specialized nature of the beneficiary's knowledge. We may, in our discretion, use advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, we are ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). According to the advisory opinion, the beneficiary has become proficient in several of [REDACTED] exclusive tools and methodologies, including [REDACTED]. This opinion relies on the presumption that a qualified employee must be proficient in the petitioner and its client's systems, processes and procedures. Notwithstanding this opinion, the petitioner has not sufficiently established the beneficiary's knowledge of the client's processes and procedure outside of his work experience with petitioner. Therefore, despite

adding some probative value, the advisory opinion is not sufficient to overcome the evidentiary insufficiencies previously articulated in this decision.

On appeal, counsel 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. 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

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.

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.> (accessed on December 16, 2014).

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.

These two questions of fact must be established for the record by documentary evidence. Neither the unsupported assertions of counsel or 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 has specialized knowledge. Accordingly, the petitioner has failed to meet its burden of establishing that the beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioner is necessary. The petitioner concedes that "the end customer does not necessarily require the use" of the petitioner's precise methodologies.

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)).

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.

(b)(6)

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.