

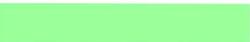
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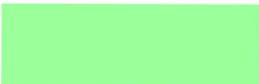
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: MAR 18 2015 Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware corporation, produces, markets, and sells automated textile and garment manufacturing systems and machinery. The petitioner claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as its technical services 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 or will be employed 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 us for review. On appeal the petitioner asserts that the evidence of record establishes that the beneficiary was employed abroad in a position involving specialized knowledge, that the beneficiary possesses specialized knowledge, and that he will be employed in a position requiring specialized knowledge.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in

international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. Specialized Knowledge

The sole issue addressed by the director is whether the petitioner established that the beneficiary has specialized knowledge and whether he has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 30, 2014. The petitioner produces, markets, and sells automated manufacturing machines including automatic CNC cutting machines, intelligent automatic spreading machines, CAD discharging software, leather cutting machines, rapid garment systems, and [REDACTED] systems. The petitioner indicates that it has two employees in the United States and a gross annual income of \$68,771.

The petitioner indicates that the beneficiary has been employed by the foreign entity since April 2011 in the role of "North America Regional Manager," in which he was primarily responsible for providing technical and engineering support by working with distributors located in North America.

The petitioner states that during his employment with the foreign entity the beneficiary gained "special crucial knowledge" of the company's proprietary engineering methodologies, technical services, research, and management techniques. The petitioner stated that in the beneficiary's position with the foreign entity he provided engineering, technical, and troubleshooting support to distributors and customers; improved and revised engineering drawings, design files, prints, and specifications; presented the company's technology and

proprietary methodologies and products to potential distributors and customers; organized overseas exhibitions and meetings; provided important technical training to distributors and customers; provided sales support; helped develop new distributors; and helped manage existing distributors.

The petitioner stated that its automated cutting products are "unique and different from competitors" and require several years to master. The petitioner claims to hold "44 owned and applying patents with intellectual property rights" and five software copyrights. The petitioner indicated that it has worked with 15 U.S. manufacturers since its establishment in 2012 and will be independently responsible for sales of its parent company's products beginning in 2014. The petitioner explained that because the products are very expensive, potential customers need to understand the technical differences between its products and other competing products on the market, which is why it requires the services of an experienced specialist to support top-tier U.S. sales.

The petitioner provided the beneficiary's resume and undergraduate degree in "Integration of Mechanics and Electrics." The resume indicates that the beneficiary has eight years of experience in an engineering-related field including three years of experience in engineering, technical and after-sale support with CAD, CNC, cutting and automatic spreading technologies. The resume also indicates that the beneficiary has installed more than twenty CNC cutting machines and ten automatic spreading machines. The resume describes the beneficiary's professional experience, as follows:

- Install and test CNC cutting and spreading machines at distributor and customer site.
- Provide CAD, CNC cutting and spreading technology training to distributors and customers.
- Provide engineering, technical, and troubleshooting support to distributors and customers.
- Technically present company and its products to potential distributors and customers. Help develop the new distributors in North America.
- Manage the existing distributor and customers.
- Monthly report to Chairman and adjust the technical service strategy.
- Organize oversea exhibition and meetings.
- Improve and revise the engineering drawings, design files, prints and specifications.
- Assist the oversea shipment.

The petitioner indicates that the position in the United States will be responsible for "the technical support, engineering improvement, coordination, development and management of all aspects of technology related matters for the petitioner's customers."

The petitioner describes the beneficiary's proposed duties in the United States as:

- 40-hour work-week reporting to [the petitioner]'s Vice President;
- Responsibility for technologically representing [the petitioner]'s products and company in meetings, exhibitions, and business development within North American region;
- Responsibility for analysis and technical requirements compliance of [the petitioner]'s products for North American market;
- Responsibility for management of product design projects for existing products and insuring proper technical documentation meets quality standards;

- Responsibility for creation and organization of product structures, including prints, design files, drawings, ECO's, deviations, prints, etc.;
- Responsibility for management of customer communications on technical issues for existing products;
- Responsibility for the integrity of the engineering database, and verification of work-in-progress affected by changes;
- Responsibility for development of new product CAD drawings, product specifications and building engineering design files to expand existing product lines;
- Responsibility for utilization of engineering knowledge to develop project timelines, identify risks, estimate costs, and requests resources for successful delivery;
- Responsibility for coordination of [petitioner]'s sale distribution in Canada, USA, and Mexico with technical support;
- Responsibility for managing showroom in [redacted] and agent in Los Angeles;
- Responsibility for specific tasks assigned by the senior management as required.

* * *

- A) Together with customers and distributors, mechanically install CNC cutting machines from split parts shipped from oversea [*sic*], Japan, China, or Germany.
- B) Wire all the electronic wiring according to the wiring diagram after installation.
- C) Debug and verify the completion of installation, such as marker light setup; grinding stone micro-adjustment; circuit check; interlock check; polish setup; control axis setup; [redacted] etc.
- D) Instruct and supervise all above processes during shows and exhibitions.
- E) Provide technical and engineering training to customer and distributor technicians.
- F) Provide cutter and spreader machine operation training after installation.
- G) Provide CAD software application training to customer and distributor technicians.
- H) Provide cutter and spreader maintenance training, such as cutting blade change, blade sharpening, grinding stone change, oil applying, debris clearing, etc.
- I) Remote or onsite troubleshooting when customers' cutters or spreaders are down. This situation requires immediate assistance and is extremely time-sensitive; every minute equipment is down has a significant negative impact on the critical production activities of the customer factory.
- J) Providing satisfactory after-sale technical support to customers, which meets customer expectations, maintains the company reputation, and increases company awareness.
- K) Perform demos of the [redacted] system with [redacted] cutting machines in the Los Angeles showroom.
- L) Work with agent in California to develop business on the west coast of the U.S.
- M) Manage after sale activities and existing customers to support business development.
- N) Provide a daily report to [the petitioner]'s Vice President.

The petitioner submitted an official position description which appears to be a job advertisement for the offered U.S. position. The position description indicates that the position requires, in part, the following: a bachelor's degree in mechanical and/or electrical engineering; the ability to speak and write Chinese and English fluently;

two years of experience with CAD, CNC cutting, and automatic spreading technology; experience in marketing technology products in the United States; and reasoning ability and analytical skills to solve mechanical, electrical, and engineering problems with a variety of variables. The job description does not mention any company-specific knowledge other than stating a preference for "understanding [the petitioner's] culture and able to adapt [the petitioner's] culture into US business environment."

The petitioner states that it needs the position of technical engineer to support the technical requirements of the CNC cutting and spreading machines including the installation, troubleshooting, and education of distributors and future U.S. employees. The petitioner claims that the beneficiary is the only available engineer with the detailed knowledge of the technology and experience in the development and troubleshooting of its products.

In addition to the beneficiary's knowledge of the petitioner's products, technology, and strategies; the petitioner indicates that the beneficiary possesses interpersonal abilities and skills such as: the ability to communicate fluently in both Chinese and English; experience in marketing technology products in the United States; and understanding of the culture and business differences in the East and West; an understanding of the petitioner's culture and the ability to adapt its culture into the U.S. business environment; the demonstrated ability and experience working with, presenting information to, and responding to U.S. customers, clients, and groups; proven strong interpersonal, organization, and mechanical skills; the ability to coordinate multiple tasks and multi-party relationships; the proven ability to use reasoning and analytical skills to solve mechanical, electrical, and engineering problems with a range of variables; a commitment to gaining company and product exposure to multiple industries; and the ability and willingness to travel extensively.

In a letter supporting the petition, the petitioner states that the parent company's CNC cutting, automatic spreading, and [REDACTED] require several years to master. The petitioner indicates that the beneficiary gained his knowledge through his prior engineering education and experience followed by three years of experience working for the foreign entity installing and troubleshooting cutters and spreaders and training other technicians. The petitioner claims that the training of future U.S. employees would require a minimum of two to three years of on-the-job training "in conjunction with technical training in China" and that training would require future employees to visit various customers with the beneficiary "to learn and experience first-hand how certain manufacturing companies produce, package, and ship their products to various sites across the globe."

The director issued a Request for Evidence ("RFE"), asking that the petitioner provide additional evidence that the beneficiary possesses specialized knowledge, was employed abroad in a position involving specialized knowledge, and that the U.S. position involves specialized knowledge. Specifically, the director requested, among other evidence, the following: a letter from the beneficiary's supervisor describing the beneficiary's training or experience with the organization abroad and a copy of the beneficiary's training record; the number of employees who possess the same knowledge as the beneficiary and an explanation of how the beneficiary's knowledge differs from other employees in the company or industry; evidence that the beneficiary has knowledge that can only be gained through prior experience with the petitioner's organization; evidence that the beneficiary has knowledge of a product or process that cannot be easily transferred or taught; and an explanation of how the petitioner's product differs from others on the market.

In response to the RFE, the petitioner submitted additional descriptions of the beneficiary's foreign and U.S. positions; a letter from the beneficiary's supervisor; a table summarizing the beneficiary's knowledge, the time it takes to obtain such knowledge, and whether the knowledge is exclusive to the petitioning entity; a

description of the company's three-phase training program; a description of the industry-wide and company-level technology and a chart comparing the beneficiary's knowledge with that of similarly-employed engineers; a document indicating that the organization has 14 engineers worldwide including an explanation of how the beneficiary's knowledge differs from that of the petitioner's other employees; and an explanation of how the beneficiary has contributed to the company. The petitioner indicated in one of its letters that the beneficiary completed two years of training before providing technical support to North America customers, but stated in another letter that the beneficiary "has been providing technical support to North America customers and distributors for more than two years."

The petitioner described the beneficiary's key duties with the foreign entity as follows:

- Provide technical and engineering training to 5 US, Canada, and Mexico distributors, including CAD system, pattern making, automatically spreading technology, advanced CNC cutting technology, CNC control principles, closed vacuum system principles, [REDACTED] working principles, mechanical and electrical diagrams, [REDACTED] measuring and fitting technology, and so on. All above requires [the petitioner's] specialized knowledge
- Instruct the cutting, spreading machine and [REDACTED] installation and testing which require [the petitioner's] specialized knowledge
 - Disassemble and assemble the cutting, spreading machines and [REDACTED]
 - Correctly wire and layout the machines;
 - Marker light setup;
 - Grinding stone micro-adjustment;
 - Circuit check;
 - Interlock check;
 - Polish setup;
 - Control axis setup;
 - [REDACTED] etc.
- Troubleshooting for more than 15 US, Canada, and Mexico CNC cutting machine and spreading machine users and 5 distributors, which require [the petitioner's] specialized knowledge
- Provide operational training to more than 15 end users, which require [the petitioner's] specialized knowledge.
- Technically assist the exhibition, shows, seminars, and meetings organized by [the petitioner] in US, Canada and Mexico, which require [the petitioner's] specialized knowledge.
- Provide assistance for ordered machine specifications, production, packing, shipping, and other necessary process;
- Provide sales and business support to [the petitioner].

The petitioner submits a document describing the beneficiary's "engineering improvements." The document indicates that the beneficiary replaced a machine's power supply to support voltage used in North America without a transformer, installed inverters, covered electrical wiring, and designed a safety bar to conform to U.S. workplace safety standards.

The petitioner described the beneficiary's proposed duties in the U.S. as:

1. Train 2-3 US engineers in 3 years to be qualified as a technical engineer with [the petitioner] with the following: CAD pattern making, automatic spreading technology, [the petitioner's] unique advanced CNC cutting technology, [redacted] and more ([The petitioner's] specialized knowledge required)
2. Train 4-5 US workers in 3 years to provide installation, troubleshooting, and online technical support for [the petitioner's] customers in North America ([The petitioner's] specialized knowledge required)
3. Provide technical and engineering training to new distributors developed by [the petitioner].
4. Together with distributors, direct the cutting and spreading machine installation and testing ([The petitioner's] specialized knowledge required to do the following work):
 - o Disassemble and assemble the cutting machine and spreading machines;
 - o Correctly wire and layout the machines;
 - o Marker light setup;
 - o Grinding stone micro-adjustment;
 - o Circuit check;
 - o Interlock check;
 - o Polish setup;
 - o Control axis setup;
 - o [redacted] etc.
5. Provide troubleshooting support for [the petitioner's] CNC cutting machine and spreading machines end users ([The petitioner's] specialized knowledge required)
6. Together with distributors, provide operational training to more than end users ([The petitioner's] specialized knowledge required)
7. Technically represent [the petitioner] in exhibitions, shows, seminars, and meetings organized by [the petitioner] in US, Canada and Mexico ([The petitioner's] specialized knowledge required)
8. Manage North America Engineering Center project that is going to establish in 2014 (basic engineering and [the petitioner's] specialized knowledge required)
9. Improve and revise engineering drawings, design files, prints, and specifications for the cutting and spreading machines, and [redacted] (Basic engineering knowledge and [the petitioner's] specialized knowledge required)

The petitioner indicates that it requires completion of a three-phase training program for all new technical engineers, who are also required to have a mechanical/electrical engineering background. The petitioner explained that the program involves one year of technical training, one year of practice, and finally, a field technical service program in which the trainee is assigned to work at a customer site with a specific technical engineer. The petitioner indicated that the training program is typically completed in three years.

The petitioner stated that in the first year of training the engineers learn its CAD system, its pattern making process, automatic spreading technology, advanced CNC cutting technology, its CNC control principles, its closed vacuum system principles, its [redacted] working principles, inverter and motor control principles, wiring methods, its mechanical and electrical diagrams, its [redacted] measuring,

and fitting technology; and its [REDACTED] technologies. During the second year of training the engineers learn assembly and disassembly of the CNC cutting machines, spreading machines, cutting head, grinding stones, blades, motors, drivers, and inverters; how to operate the petitioner's cutting and spreading machines; how to operate the petitioner's [REDACTED]; how to change the petitioner's cutting parameters and adjust cutting requirements; the petitioner's cutting head schematics and configuration, how to adjust the petitioner's grinding stones; common troubleshooting for the cutter and spreader; and the regular maintenance program for cutting and spreading machines and the [REDACTED]. In the third phase of training the engineers are assigned to work with a specific technical engineer providing technical services and training at the customer site.

The petitioner submitted a two-page training record for the beneficiary. The document indicates that the beneficiary was in training for 580 days before beginning onsite training of 260 days. The petitioner explained that there were no other engineers enrolled in the training with the beneficiary because the company trains engineers "one by one." The petitioner stated that the beneficiary would be responsible for delivering the three-year training program to two to three technical service engineers, as well as training four to five general technical support employees in the United States.

The petitioner indicated that the CAD system, [REDACTED] technology; compressed air digital controlled movement micro control technology; digital pattern recognition technology, automatic cutting digital control technology, CAD pattern making technology, fabric and soft material spreading, [REDACTED] technology and CNC cutting machinery is industry specific. Additionally, the petitioner claims that within the industry most products are patented and proprietary. The petitioner indicates that it owns 88 patents and provides photos and names for some of its patented technology. The petitioner also includes a diagram indicating that the beneficiary has knowledge of the petitioner's technology, whereas other engineers have not.

The petitioner indicates that within the company fourteen (14) engineers obtained the same specialized knowledge as the beneficiary; however, the petitioner indicates that the beneficiary differs from these employees because he is the only engineer assigned to support the North American market, which has the highest technical and service standard in the world, and because of his familiarity with American culture and the petitioner's North American customers. The petitioner indicates that within two years the beneficiary has helped "realize more than \$2 million income from North America market" and helped develop more than 15 customers and 4 distributors. The petitioner indicates that none of the other employees have this experience.

The director ultimately denied the petition, finding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary's position abroad and the proposed position in the United States require specialized knowledge. The director found that the beneficiary performs the same or similar duties as other workers in a similar position or field and that the evidence fails to demonstrate the beneficiary's knowledge or experience is significantly different from the knowledge or experience of similarly employed workers in the field of architecture and engineering. The director also stated that the record contained insufficient evidence to demonstrate the training the beneficiary received or to establish that the knowledge of the stated subject matter is not easily transferrable to other employees with the same or similar experience to the beneficiary. Finally, the director stated that the petitioner failed to explain and evidence how the use of its products and technologies involves specialized knowledge.

On appeal, the petitioner asserts that the evidence demonstrates that the beneficiary possesses specialized knowledge and that he has been and will be employed in positions involving specialized knowledge. The petitioner claims that the director erred by stating that the beneficiary's field is "architecture and engineering" and by comparing the beneficiary's knowledge and experience within that field. The petitioner states that the beneficiary will be the sole engineer in the United States, reiterates that its unique and proprietary products require at least three years of training, and asserts that no other employee within the company possesses the beneficiary's combination of technological experience, training, and education. The petitioner asserts that even a trained technology engineer from its highest level competitor would require one year of training in the company's unique products. The petitioner asserts that the director improperly disregarded the petitioner's representations without noting any inconsistencies or credibility concerns.

B. Analysis

Upon review, 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.

In the present matter, the petitioner's claims are based on both prongs of the statutory definition of "specialized knowledge." The petitioner states the beneficiary has special and advanced knowledge of the petitioner's proprietary CNC cutting machines, spreading machines, and [REDACTED] technology.

In examining the specialized knowledge capacity of the beneficiary, USCIS will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3). The petitioner must submit a detailed job description of the services performed to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses, or that the position requires, "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The initial position description indicates that the beneficiary's current duties and the proposed duties include design, marketing, installation, and troubleshooting of the petitioner's products. The beneficiary's specific engineering improvements are described as: replacing the power supply to work with North American voltage, installing an inverter, replacing and covering wire, and designing a safety bar. The described duties appear to be common in the field of engineering and particularly within the field of industrial or mechanical engineering. Likewise, electro-mechanical engineers in the petitioner's industry would commonly have knowledge of CAD/CAM software, CNC software, [REDACTED] and mechanical and electrical principles; the technology described in the position description. In fact, the company's job description/job announcement for the position of technical services engineer lists only "two year of experience in CAD, CNC cutting and automatic spreading technologies" as a requirement, with no mention of the petitioner's company-specific technologies.

Furthermore, in response to the RFE, the petitioner changed the U.S. job description. The initial U.S. position description indicated that the beneficiary's proposed training duties were limited to training distributors and customers. However, in response to the RFE, the petitioner indicates that the beneficiary will also train six to eight U.S. workers and engineers in three years. The position description provided in response to the RFE also eliminates the business development and showroom management duties that were included in the petitioner's initial description of the beneficiary's proposed duties. It appears that the duties were revised to establish the length of training required and to minimize the beneficiary's performance of non-technical duties. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Additionally, considering that the petitioner's assertions, discussed further below, that non-field training takes 580 days, it is unclear how the beneficiary, as the sole U.S. engineer, would be able to perform the installation, troubleshooting, design, sales, customer service, and marketing functions and while also providing the training that the petitioner claims is necessary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner's claim that the beneficiary possesses specialized knowledge rests primarily on the unique and proprietary nature of its products. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(1)(1)(ii)(D) (1988). However, the petitioner might satisfy the current 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 instant matter, the petitioner has failed to establish that its products are significantly different or more advanced than other cutters, spreaders, or measuring equipment used in the petitioner's industry. The petitioner states that its technologies are "unique and different" from those of its competitors, but does not provide an explanation of how the technology differs from others used within the petitioner's

particular 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

An employee's familiarity with a company's product, alone, is insufficient to establish specialized knowledge. The petitioner must establish that the knowledge required to install and support its products is not easily transferrable to other similarly employed workers in the industry. The petitioner provides a general explanation of the functions and features of its products, but does not provide sufficient detail to demonstrate what knowledge is required to work with its products or to demonstrate that the underlying technology is advanced or uncommon in its particular industry. For example, the petitioner provides a table indicating that, among others, the following knowledge and/or techniques are not commonly held by other engineers: specialized cutting, knife-plate locking, overall absorption, cutting while moving, and two-wheel disrotary grinding. Without further details, it is unclear that the knowledge is advanced or special within the field, and/or that it could not be transferred to a similarly employed engineer within a reasonable amount of time. 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). In fact, as noted above, the petitioner's official position description for the technical services engineer position indicates that the position requires a bachelor's degree in electrical or mechanical engineering and two years of experience with CAD, CNC cutting, and automatic spreading technology, without specifying any company-specific knowledge requirements.

Although the petitioner indicates it takes between two and three years to train a technical engineer and that even a trained technology engineer from the highest level competitor requires one year of training to understand the company's unique and proprietary machinery, these assertions are unsupported by the evidence in the record. The Board of Immigration Appeals has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; see also *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility).

The petitioner states that the beneficiary has been employed in his current position of "North American Regional Manager" since he began working for the foreign entity in 2011. There is no evidence that the beneficiary's position has changed during his tenure with the company. Furthermore, the petitioner initially indicated that the beneficiary gained his specialized knowledge through his prior engineering education and experience followed by three years of experience working for the foreign entity. At the time of filing, the petitioner did not claim that the beneficiary had completed a lengthy period of full-time one-on-one training during his first two years in the position of North America Regional Manager, but instead suggested that he had been performing the same duties during his entire tenure with the foreign entity. The payroll documents indicate that throughout his employment with the foreign entity, the beneficiary received a single pay increase that occurred seven months after his employment began. It was only after the director issued a request for additional evidence informing the petitioner of the deficiencies in the record that the petitioner indicated the beneficiary "started to provide technical support to North America customers after 2 years' [sic] training" and provided a training record indicating that the beneficiary underwent 840 days of training. At the same time,

the petitioner contradicted these statements by indicating that the beneficiary completed training in two years rather than the three years that is typically required; and that he had been providing technical support engineering services to North American customers for more than two years. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Furthermore, if the training record is accurate, it calls into question whether the beneficiary is eligible for the visa classification under the regulations at 8 C.F.R. § 214.2(l)(3)(iv). The training record indicates that the beneficiary completed 580 days of training broken down into specific training subjects lasting between five and 70 days each. The initial 580-day training is distinguished from the subsequent 260-day "field training." Based on the training record's start date of March 20, 2011, the earliest that the beneficiary could have completed the 840 training days described is September 6, 2013.¹ The regulations require the petitioner to submit evidence that the beneficiary was employed for the prior year in a managerial or executive position or a position involving specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(iv). If the beneficiary was actually in training until at least September 6, 2013, at the time he filed the instant petition on April 4, 2014, the maximum amount of time he was employed in his position is seven months. 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).

The record does not include the information necessary to make a comparison between the beneficiary's training and experience and that completed others employed by the foreign entity. In response to the RFE, the petitioner indicates that 14 engineers "obtained the same specialized knowledge as the beneficiary." The petitioner submitted an organization chart that did not include the beneficiary or the 14 similarly employed engineers. It is unclear how the beneficiary's training and experience providing technical services, troubleshooting, installing, and/or testing the petitioner's machinery differs from that of the employees identified in technical support, CAD, factory, technology, research and development, and additional regional positions identified on the organization chart. It is also unclear how the beneficiary's knowledge is special or advanced when compared to that of individuals identified as the beneficiary's trainers, who are not included on the list of individuals who possess similar knowledge to the beneficiary. Based on these deficiencies, the petitioner has not established that the beneficiary possesses specialized or advanced knowledge compared to other similarly-employed workers within the company.

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. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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. Here, the petitioner has failed to provide consistent evidence to establish that the beneficiary possesses

¹ This assumes that the beneficiary was in training seven days per week.

specialized knowledge or that he has been or would be employed in a position that requires specialized knowledge. For this reason the appeal may not be approved.

III. Qualifying Relationship

Beyond the decision of the director, the petitioner has failed to establish a qualifying relationship pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The petitioner states that the foreign entity owns 100% of [REDACTED], and that [REDACTED] owns 70% of the U.S. company. While the petitioner provided bank statements, business plans, and shareholder minutes establishing [REDACTED] 70% ownership interest in the petitioner; it has not provided sufficient documentation to establish the foreign entity's ownership interest in [REDACTED]. The record does not include documents from [REDACTED] and contains only the petitioner's internally created corporate resolution, organization chart, and investment table. Without further evidence of the foreign entity's ownership of [REDACTED] the petitioner has failed to establish a qualifying relationship. For this additional reason the petition may not be granted.

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

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.