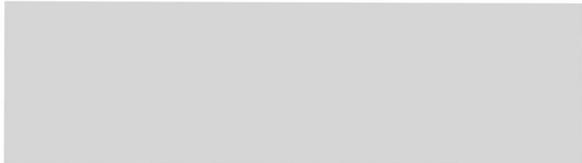




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 04 2015**

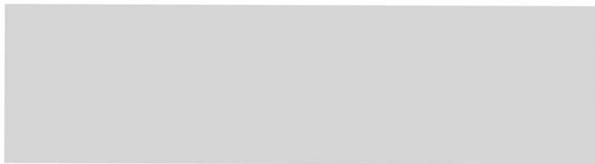
PETITION RECEIPT #: 

IN RE:           Petitioner:  
                  Beneficiary:



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

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to qualify 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 Maryland limited liability company established in [REDACTED], provides performance based digital marketing services. The petitioner states that it is an affiliate of the beneficiary's foreign employer, [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as a conversion optimization manager 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 our office for review. On appeal, the petitioner contends that the beneficiary holds specialized knowledge of conversion rate optimization and its application in the international market and provides additional evidence on appeal meant to demonstrate the beneficiary's asserted special and advanced 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.*

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. THE ISSUE ON APPEAL

### A. Specialized Knowledge

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge as a result of his foreign employment and whether he will be employed in the United States in a specialized knowledge capacity.

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.

### A. Facts and Procedural History

The petitioner filed the Form I-129 on February 18, 2014. The petitioner indicated in the Form I-129 that it employs thirty-three individuals in the United States and that it earned over \$12 million in revenue internationally during the previous fiscal year. The petitioner stated that it was established by the foreign entity in April [REDACTED]

The petitioner explained the beneficiary's proposed role in the United States as follows:

[The beneficiary] is coming to the United States to help establish this new office. His position will be Conversion Optimization Manager. He brings with him extensive knowledge of the [company's] technology and methodology. As a Conversion Optimization Manager, [the beneficiary] will bring his expertise in digital analytics to work with [petitioner] clients to optimize their websites and improve their conversion rates. Analytics and website optimization are important and valuable services which [the company] offers to its clients. They are integral components in building the perfect online campaign. This position requires someone with very specialized knowledge and experience in digital analytics and conversion optimization.

The petitioner submitted a resume for the beneficiary listing his "key skills," including "conversion rate optimization [using tools such as Google Analytics Content Experiments, Optimizely, Visual Website Optimizer and more to facilitate testing.]" The resume indicates that the beneficiary has been employed by the foreign entity since November 2012 and stated that he has been "responsible for delivering optimization products, services and strategy to [foreign entity] clients." The resume indicates that the beneficiary performed some of the following duties in his capacity abroad: usability testing to improve user experiences, A/B/n & multivariate testing across multiple platforms to improve conversion rates, training and consulting representatives from numerous global brands in conversion rate principles, UI/UX design to enhance user interactions and experiences across client websites, and data analysis and mining enabling informed execution of conversion rate optimization strategies. The resume reflected that the beneficiary had previously worked for three other companies performing similar duties dating back to October 2010.

The petitioner provided a letter from the Chief Financial Officer (CFO) of the foreign entity stating that the company required that the beneficiary be transferred to the United States to impart his knowledge of conversion optimization. The CFO stated that the beneficiary performed the following duties with the foreign entity: providing "valuable and specialized knowledge to [the company's] US clients regarding Conversion Optimization," "training new and existing team members in [the company's] Online Marketing best practice regarding Conversion Optimization," and "ensuring all existing tools and workflow are properly executed in the US market." Further, the petitioner submitted a description of the beneficiary's proposed role in the United States. The description reflected that the position requires "extensive knowledge and experience in Conversion Optimization & Usability." The description also indicated that the conversion optimization manager would be responsible for planning, executing, and managing high quality landing page optimization projects; troubleshooting and spotting existing issues with client optimization tests/projects; producing client facing reports; and training clients on conversion optimization.

The petitioner stated that the proposed position requires experience in creating, optimizing and managing landing pages, using A/B and multi-variant testing technologies, and an in-depth understanding of the company's marketplace and initiatives. In addition, the petitioner stated that the optimization conversion manager must understand how to use web analytics, how to apply user-centered interaction design and mainstream usability principles when forming optimization recommendations, how to use prototyping and

wire-framing tools to communicate with the creative team, and the ability to train clients on conversion optimization.

The petitioner provided the foreign entity's organizational chart, which indicates that the beneficiary works in the conversion rate optimization department along with a senior conversion optimization manager, a PHP developer, a digital producer A&O, and two conversion optimization managers. The chart reflects that these employees, along with an analytics team, report to the head of analytics and optimization.

The director later issued a request for evidence (RFE) advising the petitioner that it had submitted insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge capacity. As such, the director requested that the petitioner submit the beneficiary's personnel records and an organizational chart listing the beneficiary's department, including the names, titles, job duties, education levels and salaries for each of the beneficiary's colleagues. In addition, the director asked that the petitioner provide a letter from the foreign entity explaining how the beneficiary's knowledge was different from that required for other similar positions in the industry; the products and services the beneficiary uses; how the foreign entity's products or services are "special"; a statement explaining the minimum time required to obtain the beneficiary's level of knowledge; and information regarding significant assignments completed by the beneficiary. Likewise, the director requested that the petitioner provide a similar letter elaborating on the same issues above with respect to the beneficiary's proposed U.S. employment.

In each case, the director further asked that the petitioner and foreign entity, respectively, to indicate the percentage of time the beneficiary spends, and would spend, on each of his tasks. In addition, the director requested that the foreign entity describe the beneficiary's training and experience abroad, including a layman's explanation of the beneficiary's claimed specialized knowledge. The director also asked the petitioner to provide evidence supporting that the beneficiary's knowledge is not generally found in the industry and can only be taught through prior experience with the company.

In response to the RFE, the petitioner explained that the beneficiary "has very specialized knowledge of the specific [petitioner] approach and methodology to conversion optimization" and emphasized that these skills are needed in the United States, where the beneficiary is expected "to set up the conversion optimization division of the office, implement it, and train others in the specific [petitioner] methodology."

The petitioner submitted a description of the training provided by the beneficiary explaining that the beneficiary is responsible for training "internal staff, digital agencies and marketing teams in conversion optimization – strategic & tactical deployment of conversion rate optimization methods and best practice." The petitioner indicated that the beneficiary provided a Conversion Rate Optimization (CRO) course for a number of clients, including [REDACTED] among others. The description indicated that these trainings were eight hours long, with six to nine students in each session, and that they had been conducted by the beneficiary on five occasions since June 2013. The petitioner provided the power point presentation describing the company's conversion optimization training. The petitioner further noted that the beneficiary had "presented three seminars to students from [REDACTED] international business school (Up to 50 attendants each session)." In addition, the petitioner submitted a support letter from [REDACTED]

stating that Digital Marketing students who attended the beneficiary's sessions had described him as "informative, insightful, entertaining, and engaging." The representative from [REDACTED] stated that the beneficiary "contributed significantly to the success of [their outings to the foreign entity] by making outstanding presentations and fielding numerous questions from the students."

The petitioner submitted a list of trainings completed by the beneficiary, including: HR induction training on his first day of employment; training in CRO processes, CRO tools, CRO design, completed on January 15, 2013; training in project management completed on January 29, 2013; and client training, completed on March 30, 2013. The document listed training topics included in each course. For example, the beneficiary's CRO Tools training including Google content experiments, Visual website optimizer, Maximizer, ClickTale, and EyeQuant eye tracking tool, while his CRO design training included wireframing, and basic Photoshop, HTML and CSS. Further, the petitioner provided a certificate reflecting that the beneficiary received a Google Analytics Individual Qualification (IQ) on May 20, 2014.

The petitioner provided another foreign entity organizational chart indicating that the beneficiary works on the "Analytics and Optimization Team" as a "conversion rate optimization specialist," reporting to a conversion rate optimization director along with three other team members, all identified as "conversion rate optimization managers."

The petitioner further stated that the beneficiary is "second-in-command" to the director of the department, the longest-tenured team member, and senior to the conversion rate optimization managers. The petitioner also stated that his duties are unique in comparison to his colleagues and described his "accountabilities" as follows:

- Delivers high level of tailored training sessions on Conversion Optimization to delegates from global brands
- Delivers training on the [petitioner's] Conversion Rate Optimization methodology and team mentorship to other members of the conversion optimization department
- Responsible for migration of CRO know-how and growth of the [petitioner's] CRO team
- Champion & certified professional for primary testing tool (Visual Website Optimizer), sharing expertise on the software across the team and other internal departments

Meanwhile, his colleagues were stated to be responsible for strategic planning and execution of landing page optimization projects, producing client facing reports, and troubleshooting existing issues for clients in order to improve their conversion rates.

The director denied the petition, concluding that the evidence did not establish that the beneficiary had been or would be employed in a capacity requiring specialized knowledge. The director found that the evidence indicated that any proprietary knowledge held by the beneficiary was widely held throughout the company. The director further noted that the petitioner failed to provide evidence to differentiate the beneficiary from his colleagues. The director stated that the evidence indicated that the beneficiary had only completed six days of training and that his duties were reflective of the performance of lower level duties, not duties

indicative of the application of the highest level of knowledge in the industry. Finally, the director found that, although the petitioner had asserted that the beneficiary's knowledge was based in the company's proprietary concepts, but did not explain or document this assertion.

On appeal, the petitioner states that the beneficiary "performs a pivotal role at [the foreign entity] by helping them define their processes and technologies." The petitioner asserts that "[the beneficiary] is their lead trainer for Conversion Optimization and is responsible for training graduate students, clients, and other team members." The petitioner indicated that the beneficiary had created a training manual specific to conversion rate optimization which is used to train graduate students at the [redacted] campus of [redacted]...among the top French Higher Education institutions." The petitioner contends that the beneficiary's performance of the aforementioned training "is a specific example and evidence of [the beneficiary's] specialized knowledge and its application in the international market." The petitioner asserts that the beneficiary's presence in the United States will allow for the petitioner to grow further and allow it to create a team of five to ten individuals based on the beneficiary's guidance and training. Besides changing the beneficiary's foreign job title from "manager" to "specialist," the petitioner submits a job description and resume that are largely consistent with those previously provided on the record. In addition, the petitioner provides a conversion optimization training manual, an asserted work product of the beneficiary. Further, the petitioner submits two case studies reflecting the impact of its services on two prominent clients, both of which picture the beneficiary along with two other colleagues, identifying him as a "conversion optimization strategist." Finally, the petitioner submits a document titled "[redacted]" published by [redacted] in association with [redacted] "as further explanation of this specialized field."

#### B. Analysis

Following a review of the totality of the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. 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.

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. USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present matter, the petitioner has not provided a sufficient explanation of the beneficiary's specialized knowledge. The petitioner states that the petitioner provides training to his colleagues and clients on conversion optimization, but fails to specifically describe the products, techniques, or processes mastered by the beneficiary. Although the petitioner mentions these techniques and technologies, such as conversion rate optimization and Google Analytics, the petitioner does not describe them in layman's terms as necessary to understand the level of the beneficiary's knowledge in relation to the petitioner's industry. The petitioner does not explain the products, procedures or processes in detail or submit supporting evidence to substantiate that the beneficiary or the company holds noteworthy or uncommon knowledge, other than indicating many times on the record that the beneficiary trains other colleagues and clients. 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)). United States Citizenship and Immigration Service (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.

To the extent the petitioner provides specific evidence relevant to the beneficiary's knowledge and experience, this evidence suggests that the beneficiary's knowledge is widely held within the petitioner's particular industry. The beneficiary's resume indicates that he began working in the field of conversion rate optimization as far back as 2010. Based on the evidence on the record, the beneficiary performed similar duties and worked with similar technologies, methodologies and products prior to commencing employment with the foreign entity. Further, it is unclear whether he acquired any special or advanced knowledge specific to the petitioner's group of companies since joining the foreign entity, as the petitioner has failed to explain how the beneficiary obtained his knowledge while employed with the foreign entity. Other than stating that the foreign entity has developed best practices and strategies for deploying conversion rate optimization

methods, the petitioner has not described or documented any company-specific knowledge the beneficiary gained with the foreign entity, or explained how its conversion rate optimization methods are different or distinct in comparison to those deployed by other companies providing similar services using the same third-party technologies.

The petitioner further does not articulate how the beneficiary's knowledge is different from those employed in similar positions elsewhere in the industry. The evidence on record indicates that the beneficiary's technical knowledge includes advanced Google Analytics, user behavior analysis tools such as ClickTale and EyeQuant, digital design tools such as Adobe Photoshop and Illustrator, third-party wireframing tools, CSS and HTML, and conversion rate optimization tools as Optimizely, Visual Website Optimizer and Google Website Optimizer. The petitioner has not claimed that any of these tools are specific to its company rather to the fields of digital media marketing and conversion rate optimization generally. While the petitioner may be engaged in an emerging and rapidly changing field, it has not established that these technical skills are different or uncommon compared to those held by others in the field, or that it has developed its own technologies or tools related to conversion rate optimization. As noted, the petitioner has not articulated whether the processes and techniques used within its company to develop conversion optimization solutions are any different from those used by similarly placed companies, nor has it substantiated that knowledge of such processes is noteworthy or uncommon with supporting evidence.

Further, the director requested that the petitioner articulate the minimum time required to obtain the beneficiary's specialized knowledge. However, the petitioner did not explain how long it would take for a similarly placed professional to reach the same level of knowledge held by the beneficiary. The petitioner failed to provide sufficient evidence of how the beneficiary gained his knowledge, beyond providing a list of apparent introductory courses in conversion rate optimization and Google Analytics that were completed by the beneficiary. Although the hire dates of the beneficiary and his immediate colleagues confirm that the beneficiary has a longer tenure with the foreign entity, the petitioner does not explain how or why he is the most knowledgeable through specific examples, comparisons, or noteworthy projects with which he was involved. In fact, the evidence submitted indicates that the beneficiary was already providing client training within six months of his hire date after completing a "client training" course of unknown length on March 30, 2014, thereby suggesting that the beneficiary's proficiency in providing training is easily transferrable to others similarly placed within the organization and the field.

In addition, the petitioner failed to articulate why another professional who is experienced in conversion rate optimization and website analytics could not perform the beneficiary's duties within minimal additional training, as requested by the director. Although the petitioner suggests that the beneficiary has a high level of knowledge through his provision of training to colleagues and clients, his responsibility for training does not alone demonstrate that he holds uncommon knowledge. The submitted documentation indicates that the petitioner has many trainers providing similar courses to clients. Further, the training the beneficiary provides to groups, such as the [REDACTED] Digital Marketing students mentioned multiple times in the record, appears to be general training in the field of conversion rate optimization rather than training that requires any knowledge specific to the foreign entity. The petitioner has not described the beneficiary's knowledge in comparison to his colleagues both within and outside the organization. It is unclear from the evidence presented how the technologies, processes and training skills used by the beneficiary are any different from

those employed by companies or professionals similarly placed in the industry. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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 director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced when compared other similarly placed professionals. Specifically, the director asked the petitioner to submit an explanation of how the beneficiary's knowledge was different from others employed in similar positions in the industry. Although the petitioner submits a support letter from a client, this evidence fails to distinguish the beneficiary's knowledge from others, but merely indicates that the beneficiary was knowledgeable and effective at providing training to a group of Digital Marketing students. It would stretch the intended definition of specialized knowledge to conclude that an individual qualifies merely because they are familiar with the general subject matter of their field and that they excel at providing training in this subject matter to other colleagues and clients.

In fact, the evidence submitted indicates that the foreign entity employs four other employees specializing in conversion optimization, including at least one employee senior to the beneficiary. However, the petitioner does not articulate how the beneficiary's knowledge is uncommon or distinguished when compared to these colleagues or how he developed special or advanced knowledge in relation to his colleagues. The petitioner only vaguely states that the beneficiary is the longest tenured employee in the conversion optimization department without documenting how his work experience compares to that of his colleagues. As mentioned, the petitioner was practicing his asserted specialized knowledge, namely the provision of client training in conversion optimization, within six months of commencing employment with the foreign entity, thereby leaving question as to its advanced or uncommon level. Again, claiming that the beneficiary is the most knowledgeable, senior, or that he provides training to others is not sufficient to establish specialized knowledge. The petitioner has the burden to establish that the knowledge is either special or advanced and that it is not generally known in the petitioner's particular industry.

Furthermore, the petitioner asserts the beneficiary holds advanced knowledge of the processes and procedures of the company, including its "best practices." However, the petitioner has not articulated the specific nature of these processes, procedures or best practices, and how they can be distinguished by others utilized by others similarly placed companies in the field. In addition, the petitioner has not explained how the beneficiary gained an advanced knowledge of these unexplained processes, procedures and best practices. 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, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

The petitioner submits marketing materials on appeal meant to demonstrate the unique nature of the beneficiary's knowledge. However, this evidence is not persuasive as it merely reflects case studies disseminated by the foreign entity for marketing purposes and does not specify how the beneficiary's knowledge is uncommon when compared to similarly placed professionals in the industry, many of whom

undoubtedly provide similar services to their clients. In fact, the petitioner has not described the beneficiary's specific involvement with these projects, if any, and how they contributed to his specialized knowledge. In the current matter, the petitioner has not provided sufficient evidence to differentiate the beneficiary's knowledge from that commonly held by similarly employed workers in the petitioner's industry. Likewise, the petitioner provides training materials it states were drafted by the beneficiary, but provides no supporting evidence to substantiate this claim. Regardless, it is questionable whether evidence that a beneficiary drafted training materials is sufficient to demonstrate specialized knowledge without further explanation as to why, or effective comparisons illustrating how this is special in the industry. 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. The training materials do not include company-specific information but rather provide an overview of the field of conversion optimization and the strategies, tools and processes generally used within that field.

In conclusion, the petitioner has failed to provide a sufficient explanation of the beneficiary's specialized knowledge. Although the petitioner states that the beneficiary's knowledge is special and advanced, the record fails to demonstrate that this knowledge is special compared to that possessed by other similarly-employed workers in the industry or advanced as compared to similarly-employed workers in the company. While the beneficiary clearly possesses the skills and professional experience required for the position, the evidence does not distinguish him as an employee with specialized knowledge.

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.

#### B. QUALIFYING RELATIONSHIP

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity. 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 stated on the Form I-129 that it is an affiliate of the foreign entity. As evidence of its ownership, the petitioner submitted a stockholder agreement dated April 11, 2012 indicating that it is owned by the following individuals, each holding the designated number of shares: [REDACTED] (70 shares); [REDACTED] (70 shares); [REDACTED] (15 shares); [REDACTED] (15 shares); [REDACTED] (5 shares); and [REDACTED] (5 shares). Further, the petitioner provided a stock option agreement, also dated in April 2012, between it and the aforementioned Mr. [REDACTED] whereby he was granted the option to purchase five additional shares in 2012 and 2013 if the company reached certain revenue thresholds.

The petitioner provided the foreign entity's financial statement from 2010 which states at Section 21 that "the company is under the control of [REDACTED] by virtue of his majority shareholding," but also noted in writing that "this changed after year end." Further, the petitioner submitted a copy of the foreign entity's Form AR01

– Annual Return, filed with the U.K. Companies House on March 31, 2013, which indicates that the company has issued 2 ordinary shares and 248 ordinary "A" shares. This document indicates at page six that the company is owned by the following individuals: [REDACTED] (1 ordinary A share and 1 ordinary share); [REDACTED] (224 ordinary A shares and 1 ordinary share), [REDACTED] (2 ordinary A shares), [REDACTED] (3 ordinary A shares), [REDACTED] (5 ordinary A shares), and [REDACTED] (13 ordinary A shares).

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

Based on the evidence presented, the petitioner has not established that it has an affiliate relationship with the foreign entity. While there is some common ownership between the two companies, they are not owned and controlled by the same parent or individual, nor are they owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. See 8 C.F.R. § 214.2(l)(1)(ii)(L). Specifically, the petitioner's stockholder agreement reflects that it is owned by six individual stockholders, with no owner holding a majority interest in the company, while the foreign entity's latest annual return indicates that the company is majority owned by [REDACTED] and has only two shareholders in common with the U.S. petitioner.

For the foregoing reasons, the petitioner did not establish that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

### III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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).

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

**ORDER:** The appeal is dismissed.