



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-S- INC.

DATE: APR. 6, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a manufacturing shredding and recycling machinery business, seeks to extend the Beneficiary's employment as a Production Manager/CEO under the L-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish a qualifying relationship with the foreign employer.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Petitioner and foreign employer are affiliates.

Upon *de novo* review, we will dismiss the appeal.

I. THE LAW

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the Beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to render his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states in pertinent part 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. QUALIFYING RELATIONSHIP

The Director denied the petition based on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship," 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
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- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has

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equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. . .

A. Evidence of Record and Procedural History

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 24, 2015, claiming five employees and an annual income of \$275,967.¹ The Petitioner stated that the Beneficiary will continue to be employed in the position of Production Manager/CEO. On the L Classification Supplement to Form I-129, in response to Section 1, question 3, the Petitioner stated that the Beneficiary's employer abroad was [REDACTED] located in [REDACTED] Thailand. In response to question 6, the Petitioner stated that the Beneficiary was employed abroad by [REDACTED] in New Zealand from "2008 to 2011." A copy of the Beneficiary's resume was also included with the petition, listing [REDACTED] New Zealand, as his employer from 2008 to 2011.

When describing its qualifying relationship with the Beneficiary's foreign employer, the Petitioner stated in response to question 9 on the Form I-129 L Classification Supplement that it is a subsidiary of [REDACTED] in Thailand and in response to question 10, the Petitioner stated that "[the Petitioner] is 100% owned by [REDACTED] in New Zealand.

The Director issued a Request for Evidence (RFE) on September 4, 2015, requesting that the Petitioner provide evidence demonstrating ownership and control of the Petitioner. The Director stated that the evidence may include, but is not limited to: most recent Securities and Exchange Commission Form 10-K; most recent annual report; meeting minutes listing the stock shareholders and the number and percentage of shares owned, Articles of Incorporation; stock purchase agreements; stock certificates issued to the present date; stock ledgers; proof of stock purchase including capital contribution in exchange for ownership; federal income tax returns; articles of organization or bylaws; and partnership agreement or registration documents, among others.

¹ The Petitioner previously filed three L-1B petitions on the Beneficiary's behalf. The prior petitions were granted and the Beneficiary was authorized L-1B status from October 1, 2010 to September 30, 2015. The Petitioner now seeks to extend the Beneficiary's employment and recapture time the Beneficiary has spent outside the United States since his initial entry in L-1 status on or about March 24, 2011.

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In response to the RFE, the Petitioner provided evidence, including: a copy of its articles of incorporation; a printout from the Pennsylvania business entity search results dated September 16, 2015 showing business status and officers; a copy of the Petitioner's IRS Form SS-4, Application for Employer Identification Number; and a corporate organizational chart showing ownership of the organizations located in Thailand, the United States, and the United Kingdom. On the organizational chart, ownership of the Petitioner is listed as "100% [REDACTED]" and ownership of the Thai entity, [REDACTED], is listed as "100% [REDACTED]"

The Director denied the petition on October 2, 2015, concluding that the Petitioner did not establish ownership and control of both the foreign entity and the U.S. entity. In denying the petition, the Director found that the evidence submitted in the initial petition and in response to the RFE was insufficient to establish a qualifying relationship, because the evidence provided did not establish the ownership of either entity.

On appeal, the Petitioner asserts that the evidence of record establishes the qualifying relationship. Specifically, the Petitioner claims that its IRS Form SS-4 and state incorporation documents are sufficient to establish [REDACTED] as its owner. In its appeal brief, the Petitioner states (emphasis in original):

We further documented [REDACTED] ownership and control over [REDACTED] with evidence from the PA Dept. of State labeling him as the company's "president." Furthermore the IRS Form SS-4 is a document that can only be filed by a person who is "**principle officer**, general partner, grantor, **owner**, or trustor."

The Petitioner further states that "the additional evidence attached to this submission demonstrates that [REDACTED] controls all [REDACTED] activities worldwide and that he owns all (or majority shares of) all [REDACTED] Entities worldwide." In support of its assertion, the Petitioner submits a copy of its stock ledger showing seven issued stock certificates, copies of five of the seven stock certificates, a copy of its IRS Form 1120 for 2013, and a copy of its IRS Form 1125-E.

The stock ledger indicates that at the time of its incorporation in 2009, the Petitioner was jointly owned by [REDACTED] each owning 50 percent of the shares. The ledger further shows that as of June 24, 2013 [REDACTED] became the majority shareholder through the creation of additional shares and that on October 1, 2013, [REDACTED] shares were returned to treasury stock. The Petitioner submits undated stock certificates one through five, but did not include certificates six and seven. The IRS Form 1120 for 2013 indicated that the Petitioner is 100 percent owned by an individual from New Zealand and IRS Form 1125-E for 2013 indicated that [REDACTED] owns 100 percent of the Petitioner's issued stock.

The Petitioner also submits a partial translation of the shareholder registry for [REDACTED] (Thailand) dated February 23, 2014, which reflects that of 10,000 shares issued, [REDACTED] owns 4,900 shares and [REDACTED] each own 1,700 shares. The Petitioner further provides a partial translation of a marriage certificate showing that [REDACTED] are married. The Petitioner asserts that because [REDACTED] are married, they

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constitute the majority shareholder of the Thai entity. Finally, the Petitioner provides a copy of the UK (AR01) Annual Return showing that [REDACTED] is the 100 percent owner of the entity [REDACTED]

B. Analysis

As a threshold matter, we note that the record reflects that the Petitioner initially claimed a parent-subsidiary relationship with entities in New Zealand and Thailand, but in response to the RFE and on appeal, appears to claim an affiliate relationship with these same entities. For the reasons discussed below, we do not find that the Petitioner submitted sufficient evidence to establish that it has a qualifying relationship as defined at 8 C.F.R. § 214.2(l)(1)(ii) with either entity.

The regulations 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. *See* 8 C.F.R. § 214.2(l)(1)(ii); *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).

First, we find that the evidence of record is insufficient to establish the Petitioner's ownership. The Petitioner initially stated on the Form I-129 L Classification Supplement both that it is 100 percent owned by [REDACTED] and that it is a subsidiary of [REDACTED] but it did not submit evidence to substantiate these disparate claims of ownership. In response to the Director's RFE, the Petitioner asserted that the articles of incorporation show that [REDACTED] owned 100 percent of the Petitioner at the time of incorporation in July 2009. However, the documents submitted are insufficient to support this claim, as neither the articles of incorporation nor the IRS Form SS-4 mention ownership. Rather, the documents only indicate that at the time of incorporation, [REDACTED] was a principal officer.

On appeal, the Petitioner maintains that [REDACTED] is the sole owner of the Petitioner and submits documents to indicate that [REDACTED] has been the sole owner since October 2013. While the documents submitted on appeal would support the assertion that [REDACTED] is now the majority owner of the Petitioner, the evidence provided does not overcome the inconsistencies presented earlier in this proceeding. Specifically, the Petitioner did not explain the inconsistencies regarding its claims of ownership between the initial filing on August 24, 2015 (i.e., that the Petitioner was 100 percent owned by the foreign employer) and the RFE response on September 23, 2015 (i.e., the Petitioner has been owned solely by [REDACTED] since July 2009).

The Petitioner has also not explained the inconsistencies presented between the RFE response and the appeal documents, which show that [REDACTED] only became the sole owner of the Petitioner

² The Petitioner has not asserted or provided evidence that the Beneficiary was employed abroad by the [REDACTED] nor has the Petitioner claimed that the U.K. entity has ownership interest in the Petitioner or the Beneficiary's claimed foreign employer. As such, the ownership of the U.K. entity is not material to our analysis of whether a qualifying relationship exists between the Petitioner and the Beneficiary's claimed employer abroad.

in October 2013, and was not the sole owner in July 2009, as earlier claimed. We also note that (1) the submitted stock certificates are undated, (2) the record is missing the final two issued certificates, and (3) the certificate that was recorded as “return to treasury stock” is not cancelled or voided in any way. 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). Here the Petitioner has not explained the discrepancies present in the record or submitted sufficient objective evidence to establish the true facts of its ownership. Accordingly, we cannot find based on the evidence presented that [REDACTED] is the majority owner of the Petitioner.

Second, the Petitioner has also not established the true facts of ownership of the Beneficiary’s foreign employer or that a qualifying relationship exists. As a preliminary issue, the record is unclear as to what entity actually employed the Beneficiary abroad. Again, the Petitioner stated on the L Classification Supplement to Form I-129 that the Beneficiary’s employer abroad was [REDACTED] located in [REDACTED] Thailand. On the same form, the Petitioner then stated that the Beneficiary was employed abroad by [REDACTED] in New Zealand.³ The only other document submitted to establish the Beneficiary’s employment abroad is the Beneficiary’s resume, noting that he worked for [REDACTED] located in New Zealand. The Petitioner has not submitted pay stubs, payroll records, a letter signed by the Beneficiary’s foreign employer, or any additional evidence to establish the identity of the Beneficiary’s foreign employer and reconcile the inconsistencies presented. It remains the Petitioner’s burden to resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Notwithstanding the inconsistencies presented, we have reviewed the documents in the record pertaining to the foreign entities’ ownership. Even if the Petitioner had submitted evidence to establish the Beneficiary’s foreign employer as [REDACTED], located in New Zealand, the Petitioner has not submitted any evidence to establish the relationship between this entity and the Petitioner. As stated above, the regulations allow for the Petitioner to establish that it has a qualifying relationship with a foreign entity in a number of ways. The Petitioner can show that it is a branch office of the foreign entity, or that it has a parent-subsidiary or affiliate relationship with the foreign entity.

In this case, the Petitioner is a separate legal entity and does not meet the requirements to be considered a branch office of the New Zealand entity. Moreover, while the Petitioner indicated in the initial petition that it is a [REDACTED] there is no evidence in the record to support the claim that the Petitioner is owned, in whole or in part, by the New Zealand

³ In the initial filing the Petitioner stated “Our main office is located in [REDACTED] [REDACTED]. Therefore, it appears that the New Zealand office may have been relocated to Thailand and that this could explain some of the discrepancies in the information provided. However, beyond the difference in location, the Petitioner refers to the New Zealand entity as [REDACTED] and the Thai entity as [REDACTED]. As such and absent evidence to the contrary, we will consider the New Zealand entity and the Thai entity as two distinct entities for the purposes of these proceedings.

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entity.⁴ On the contrary, the Petitioner asserts on appeal that [REDACTED] is the sole owner of the Petitioner. As such, the Petitioner has not established that it and the New Zealand entity meet the requirements to be considered parent and subsidiary under 8 C.F.R. § 214.2(l)(1)(ii)(K). Furthermore, the New Zealand entity was notably absent from the corporate organizational chart submitted in response to the RFE and on appeal. The Petitioner has not otherwise addressed the existence or ownership of the New Zealand entity, and as noted above, has not resolved the question of its own ownership. Without a clear picture of who owns the Petitioner and the New Zealand entity, we cannot examine whether an affiliate relationship exists between the two entities. Given the evidentiary deficiencies noted, the Petitioner has not established that a qualifying relationship exists between it and the New Zealand entity.

Alternatively, if the Petitioner had demonstrated that the Beneficiary's foreign employer was in fact [REDACTED] located in [REDACTED] Thailand, the evidence submitted does not establish a qualifying relationship between the Petitioner and the Thai entity. Here, the Petitioner is a separate legal entity and does not meet the requirements to be considered a branch office of the Thai entity. Moreover, while the Petitioner indicated in the initial petition that it was also a subsidiary of the Thai entity, the evidence of record does not establish that the Thai entity and the Petitioner are related as parent and subsidiary. A subsidiary is a corporation or other legal entity that is owned, wholly or in part, by a parent corporation. 8 C.F.R. § 214.2(l)(1)(ii)(K). In this case, there is no evidence in the record of proceeding to suggest that the Thai entity has ownership and control over the Petitioner, or vice versa. As such, the Petitioner and Thai entity do not meet the requirements to be considered parent and subsidiary under 8 C.F.R. § 214.2(l)(1)(ii)(K) based on the evidence presented.

On appeal, the Petitioner appears to claim that it is an affiliate of the Thai entity and that [REDACTED] owns and controls both entities. As noted above, the Petitioner has not established the true facts of its own ownership. Without this information, we cannot fully examine the nature of the claimed affiliate relationship. Notwithstanding this evidentiary deficiency, even if the Petitioner had established that [REDACTED] is its sole owner, the Petitioner does not meet the requirements to be considered an affiliate of the Thai entity as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(L).

To be considered an affiliate, the Petitioner and foreign entity must be owned and controlled by the same parent or individual or by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. *See Id.* In order to demonstrate ownership and control of the Thai entity, the Petitioner submitted a partial translation of a document showing that [REDACTED] owns 4,900 of 10,000 shares of the entity's stock, less than 50 percent. The Petitioner asserts that while [REDACTED] owns 49 percent of the stock directly, he controls the Thai entity by virtue of his marriage to [REDACTED] owner of 17 percent of the Thai entity stock. While the evidence in the record does reflect that [REDACTED] owns 49 percent of the issued stock and that his spouse owns 17 percent of the issued stock, the evidence does not

⁴ The Petitioner cannot meet its burden of proof simply by claiming a fact to be true, without supporting documentary evidence. *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'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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demonstrate that [REDACTED] is the majority owner of the entity or that he otherwise controls the Thai entity. Specifically, the record does not contain evidence to establish that [REDACTED] has in any way transferred control of her share of the company to him, such that he would have *de facto* control.⁵ In order to establish *de facto* control of the entity by an individual, the petitioner must provide agreements relating to the control of a majority of the shares' voting rights through proxy agreements. *Matter of Hughes*, 18 I&N Dec. 289, 293 (Comm'r 1982).

A proxy agreement is a legal contract that allows one individual to act as a substitute and vote the shares of another shareholder. *See Black's Law Dictionary* 1241 (7th Ed. 1999). The agreement of two individuals to vote shares in concert does not rise to the level of a proxy agreement that would give one individual control over the voting rights of a majority of the issued shares. Absent a proxy voting agreement and evidence that such an agreement would be legal under Thai corporate law, the Petitioner has not established that [REDACTED] has control of [REDACTED] or that [REDACTED] individual ownership and control form the basis of an affiliate relationship between the Petitioner and the Thai entity. Therefore, the Petitioner has not established that a qualifying relationship exists between it and the Thai entity.

On appeal, the Petitioner asserts that USCIS previously granted the requested status, thereby recognizing a qualifying relationship between the Petitioner and the foreign employer. It must be emphasized that each petition filing is a separate proceeding with a separate record. 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). That said, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS is not required to treat acknowledged errors as binding precedent. *Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For the reasons discussed above, the evidence submitted does not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

⁵ 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. Control may be *de jure* by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

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III. DOING BUSINESS

Beyond the Director's decision, the Petitioner has not established that the foreign entity is or will be doing business, a condition necessary to satisfy another requirement of the definition of qualifying organization. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

As noted above, the Petitioner has not established the identity of the foreign entity which employed the Beneficiary abroad [REDACTED] Thailand or [REDACTED] located in New Zealand). Furthermore, the record does not contain evidence that either entity is engaged in the regular, systematic and continuous provision of goods or services. The lack of evidence pertaining to either entity conducting business precludes us from determining that the foreign entity is and will continue to do business as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). For this additional reason, the appeal will be dismissed.

IV. EMPLOYMENT IN A SPECIALIZED KNOWLEDGE POSITION

Also beyond the Director's decision, the Petitioner did not establish that the Beneficiary possesses specialized knowledge and that he has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

If the beneficiary will be serving the U.S. employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. *See* Form I-129, *Instructions for Petition for a Nonimmigrant Worker* (Aug. 13, 2015). 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.

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A. Evidence of Record

The Petitioner stated the Beneficiary will be working as a Production/Factory Manager. In a support letter dated August 7, 2015, the Petitioner provided a description of the Beneficiary's duties in the position of Production/Factory Manager as follows:

In this position, [the Beneficiary] will continue to oversee the proprietary production and design modifications of our shredding trucks. He will continue to manage the expansion of this operation and continue to train production and technical staff, along with continuing to secure future sales of our equipment.

The Petitioner further stated that the Beneficiary is suited for this position due to his "extensive project management experience in setting up new machinery, workstations, and business models."

On the Form I-129 L Classification Supplement, the Petitioner described the Beneficiary's employment abroad as follows:

[The Beneficiary] was employed abroad from 2008 to 2011 by [REDACTED] in New Zealand as Project Manager-Technical. In this position he was tasked with finding ways to improve [REDACTED] operation and production by improving systems, improving quality control, increasing production, reducing operating costs. He also oversaw a range of projects in Marketing, Worldwide Exhibitions, and Sales support. He became well-versed in the manufacturing process of building [REDACTED] product range and positioned to transfer these practices to operations in other markets.

The Petitioner also submitted a copy of the Beneficiary's resume and printouts from its website in the initial submission.

B. Analysis

The record does not establish that the Beneficiary possesses specialized knowledge, that he has been employed abroad in a specialized knowledge capacity, or would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).⁶

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). Once a 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

⁶ It must be emphasized again that each petition filing is a separate proceeding with a separate record. 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).

a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also 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. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. 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 case, it is not clear whether the Petitioner's claims are based on the first or second prong of the statutory definition. Merely stating that the Beneficiary will continue to be employed in the "specialty occupation position of Production/Factory Manager" is not sufficient to establish the nature of the specialized knowledge position. Additionally, stating that the Beneficiary will oversee "proprietary production and design modifications," without additional evidence does not establish that the Beneficiary's duties involve the application of specialized knowledge. Similarly, the Petitioner has only presented a job title and basic description of the Beneficiary's duties in the claimed specialized knowledge position abroad and did not adequately address his possession of specialized knowledge.

The Petitioner did not describe the specialized knowledge required to perform the duties, how and when the Beneficiary acquired the specialized knowledge, how the Beneficiary's knowledge compares to others, or provide any additional supporting documentation other than a resume and website printouts. As noted above, the Petitioner cannot meet its burden of proof simply by claiming a fact to be true, without supporting documentary evidence. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190); see also *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the Petitioner in the United States. For this additional reason, the appeal will be dismissed.

V. 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. § 136; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

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ORDER: The appeal is dismissed.

Cite as *Matter of A-S- Inc.*, ID# 16728 (AAO Apr. 6, 2016)