



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

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

MATTER OF N-C-O-A-

DATE: FEB. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129 PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an information technology solutions provider, seeks to temporarily employ the Beneficiary as an application engineer under the L-1B nonimmigrant intracompany transferee classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUES

The issues before us are whether the Petitioner has established: (1) that the Beneficiary has been and will be employed in a specialized knowledge capacity in accordance with the applicable statutory and regulatory provisions; and (2) that the Beneficiary's primary placement at a client worksite is in compliance with the requirements of the L-1 Visa Reform Act, as specified in section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2).

II. THE LAW

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

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. Section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L).

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

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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.

III. SPECIALIZED KNOWLEDGE

The primary issue addressed by the Director is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad, and will be employed in the United States, in a position that requires specialized knowledge.

A. Facts

The Petitioner filed the Form I-129 on January 30, 2015. The Petitioner indicated that its foreign parent company [REDACTED] “is a leading international supplier of electronic products such as telecommunications systems and equipment, computers, and industrial electronic systems,” with

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over 100,000 employees worldwide and earnings of approximately \$30 billion in 2014. The Petitioner explained that it was originally established in [REDACTED] that it employs approximately 1,250 individuals, and that it accrued over \$519 million in revenue during 2014.

The Petitioner stated that “it is a leading technology provider of network, IT, IT platform solutions, and visual display solutions,” and that it “offers its clients direct access to market-leading technologies and resources, ranging from server and storage solutions, digital presentation and visual display systems, to IP voice and data solutions, biometric identification, optical network, and microwave radio communications solutions.”

In a letter dated January 28, 2015, the Petitioner stated that the Beneficiary would be assigned as an applications engineer in the United States and will be responsible for gathering and analyzing “business requirements for the customization of [the company’s] Corporate Action Framework,” creating test plans, strategies and designs, developing “automation libraries,” testing the “execution of various Corporate Action modules,” and participating in “project planning activities.” The Petitioner explained that the company’s Corporate Action framework “makes business operation efficient with less manual effort through automated solutions and can be compatible and customized to any client who does similar corporate actions business.” The Petitioner stated that the framework “is unique because it is the most efficient framework developed to meet the industrial standard” and that “it is also the only framework which has business processing, functional, stress and performance automation.”

The Petitioner stated that “there are currently no associates employed by [the Petitioner] who perform the same of similar duties as [the Beneficiary],” noting that “only [the Beneficiary] has an understanding of the Corporate Action requirements based on the market, understanding of feasibility studies on automation, ability to enhance the framework and customize to client needs, and develop the main script.” The Petitioner explained that the Beneficiary “is a subject matter expert for Corporate Action, and has designed the framework for all automation execution.” Based on this asserted unique knowledge, the Petitioner indicated that the Beneficiary’s “transfer is crucial to [the Petitioner] being able to provide the proposed services to the company’s client,” [REDACTED]

The Petitioner stated that the Beneficiary holds a bachelor of engineering degree in electronics and communication engineering from an Indian university. The Petitioner indicated that the Beneficiary “has over 8 years progressive IT experience, including over one year of experience with [the foreign employer].” The Petitioner explained the Beneficiary’s past experience as follows:

From 2006 to June 2013, [the Beneficiary] worked for a number of different employers in software testing positions. Through his experience, he gained a strong knowledge of the Software Development Life Cycle and Software Testing Life Cycle. He gained extensive experience in different types of functional testing, writing and executing test cases, preparing test reports, and in the Bug Life Cycle, Big Tracking Process, and analyzing results. He was responsible for performing smoke, functional,

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re-testing, and regression testing. He analyzed business specification documents and developed test plans. He gained experience in Selenium 2 – Web Driver and Java programming for Selenium 2. He prepared quality metrics reports and worked in a team and independently to resolve technical issues.

In June 2013, [the Beneficiary] joined the foreign employer as a Senior Test Engineer. In this position, he has been responsible for gathering and analyzing business requirements for the customization of [the company's] Corporate Action framework.

The Petitioner indicated that, during his employment as a Senior Test Engineer with its affiliate in India, the Beneficiary “has been working on projects for [REDACTED] . . . remotely in India” and that “he also has knowledge regarding [the client's] business where he will be providing services in the United States.” The Petitioner stated that the Beneficiary has been interacting with this client “to gather business requirements and delivery.” The Petitioner explained that the Beneficiary “has been automating the most tedious tasks for business users for their day-to-day business activities and has developed a good working relationship with the client and the business users.” The Petitioner specified that the Beneficiary “has more advanced knowledge regarding the Corporate Action framework” compared to one other associate who performs similar duties. The Petitioner stated that the success of the company's relationship with [REDACTED] is based on the Beneficiary's knowledge of the Corporate Action framework and its customization for this client.

The Petitioner submitted an organizational chart reflecting the Beneficiary's proposed place within its organization. The chart indicated that the Beneficiary would report to a manager, service delivery, and appears to show that he would oversee a team of four technical advisors, three senior technical advisors, one senior applications engineer, and three applications engineers. The Petitioner also provided an organizational chart for its Indian affiliate's “QA Practice,” reflecting that the Beneficiary reports to a Manager, QA who supervises three test leads, five senior test engineers (including the Beneficiary), and four test engineers.

The Director later issued a request for evidence (RFE) stating that the documentation provided by the Petitioner did not indicate how the Beneficiary's knowledge was special or advanced when compared to other employees in the organization. The Director indicated that the evidence was not sufficient to establish that the company's technologies are “unusually sophisticated and complex” when compared to those found in the Petitioner's industry. The Director also noted that the Petitioner did not elaborate as to how the Beneficiary's training and experience allowed him to gain special knowledge when compared to his peers.

As such, the Director requested that the Petitioner submit detailed organizational charts for both the U.S. and foreign entities listing all the employees in the Beneficiary's immediate department including their names, titles, duties, education levels, and salaries. The Director asked that the Petitioner: explain how the Beneficiary's knowledge was different from that of other similarly

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placed employees; describe the product, service or tool the Beneficiary utilizes; explain why another engineer in the field could not perform these duties; state the minimum time required to gain this level of knowledge; and describe the Beneficiary's specific assignments. The Director further requested that the Petitioner submit a detailed explanation of the Beneficiary's specialized knowledge in layman's terms and explain whether this knowledge is generally found in the industry. The Director requested that the Petitioner set forth the specifics of the Beneficiary's training, the courses, the number of hours, completion dates and provide certificates of completion.

In response, the Petitioner stated that the Beneficiary "is the highest paid Senior Test Engineer," and indicated that "his higher salary serves as evidence of his possession of specialized knowledge that similarly employed associates do not possess." The Petitioner stated that it would take "a minimum of 4 years of test management experience, and 1 year experience with integrating the testing framework" to reach the Beneficiary's level of knowledge. The Petitioner reiterated that the company's Corporate Action framework is unique "because it is the most efficient framework developed to meet the industrial standard." The Petitioner emphasized that special knowledge of the Corporate Action framework is necessary to "customize the framework to client's needs" and that the Beneficiary obtained this knowledge "through his experience as a Senior Test Engineer for [the foreign employer]." The Petitioner asserted that the Beneficiary's knowledge of this unique technology sets him apart from others in the industry.

The Petitioner again stated that the Beneficiary has expertise "regarding [REDACTED] and asserts that this knowledge can only be taught through prior experience with the company. The Petitioner further explained that the Beneficiary possesses knowledge not possessed by others in the company:

Upon joining [the foreign employer], [the Beneficiary] received training on the Corporate Action application software, Vision data adaptors, the workflow, and the data flow. However, unlike other similarly employed associates, he was uniquely trained to integrate the framework and tools including OTRS and Testopia with Vision adaptors. The other associates were trained more specifically on the workflow. **[The Beneficiary's] ability to implement and integrate testing framework using client specific custom tools is what sets him apart from other individuals employed in similar positions.**

There is only one associate at [the foreign employer] who performs similar duties to [the Beneficiary]. However, only [the Beneficiary] develops the framework, guides the team on his business knowledge, reviews the script of peer resources, is responsible for the automation effort and estimation, and performs document review. Additionally, [the Beneficiary] has more advanced knowledge regarding the Corporate Action framework compared to the other associate.

The Petitioner stated that the Beneficiary's knowledge allowed him "to develop the Corporate Action framework for [the company] so that it can be utilized across any client with customization."

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The Petitioner indicated that the Beneficiary “has worked on the Corporate Action business solutions” and reiterated that his experience with the specific client was integral to the success of the relationship. The Petitioner asserted that there are currently no other associates who perform duties similar to those performed by the Beneficiary.

The Petitioner provided an updated foreign employer organizational chart indicating that the Beneficiary reports to a program manager overseeing the Beneficiary as a senior test engineer along with three other senior test engineers, three test engineers and three “test leads.” The Petitioner submitted a list of these employees reflecting that the Beneficiary was the highest paid of the senior test engineers, earning 954,500 Indian rupees, while his senior fellow test engineers earn 925,000 to 724,000 Indian rupees. Meanwhile, the test leads and program manager were shown to earn more than the Beneficiary. The Petitioner did not discuss the duties of the listed employees or specifically compare them to the Beneficiary.

The Petitioner submitted an additional support letter, dated April 9, 2015, stating that the company’s Corporate Action framework “is developed and scripted by [the company] for businesses to run their daily activities” and that “it is an automation framework which involves SWIFT messages, sending announcements to account holders, and allowing the user to elect and process all of the elections.” The Petitioner stated that its Corporate Action framework “makes business operation efficient with less manual effort through automated solutions and can be compatible and customized to any client who does similar corporate action business.”

The Petitioner indicated that other similarly placed employees in the industry “are only involved in manually testing the workflow, but are not aware of the data flow within the application,” and as a result that “they cannot plan the complete set of test cases and automation the way [the Beneficiary] is able to.” The Petitioner explained that the Beneficiary “has acquired his specialized test management experience over the course of 7 years prior to joining [the foreign employer], and has the unique ability to plan a complete set of test cases and automation unlike most others in similar positions in the industry.”

The Petitioner also submitted an email from a vice president of information technology at [REDACTED] dated March 10, 2015 asking the company whether the Beneficiary would begin work on-site on April 1 and asking the Petitioner to confirm “who the second off-shore resource will be.” The email further reflected that one on-shore resource and two off-shore representatives would be assigned to the project by the company. The e-mail also refers to an attached Statement of Work (SOW) for the “Channels project,” but this document was not provided.

Finally, the Petitioner submitted a document titled [REDACTED]. The document includes an overview of the framework, which is described as “a customer-facing tool related to Corporate Action announcements and Elections, accessible by the customer via the Portal.” The framework uses the following third-party technologies: Testopia for test management, Bugzilla and Open Technology Real Services (OTRS) for defect management; Quick Test

Professional for functional automation; Bad Boy for performance testing; and shell scripting language.

In denying the petition, the Director concluded that the evidence did not sufficiently articulate and establish that the Beneficiary had been or would be employed in a specialized knowledge capacity. The Director stated that the Petitioner had not adequately explained how the Beneficiary's duties are special and advanced when compared to other employees in the organization. The Director found that the Beneficiary's duties did not appear significantly different from others similarly placed in the company or the industry and that the company's technologies and methodologies were not shown to be "unusually sophisticated or complex" relative to those developed by other companies offering similar automation solutions. The Director further observed that the Beneficiary's knowledge of client requirements did not represent specialized knowledge according to the regulations. In addition, the Director noted that it was not evident how the Beneficiary's training distinguished him from his colleagues. Finally, the Director concluded that the evidence indicated that the Beneficiary's knowledge was based more on his familiarity with client systems rather than any proprietary or company-specific knowledge.

On appeal, the Petitioner asserts that the Director erroneously concluded that the Beneficiary's knowledge is not special and advanced when compared to others in the company and industry. The Petitioner contends that the Beneficiary is the only employee in the company who performs his advanced level of duties. The Petitioner reiterates that the Beneficiary's ability to implement and integrate testing frameworks using specific client custom tools sets him apart, noting that the Beneficiary was the first to customize the company's Corporate Action framework. The Petitioner asserts that the Beneficiary's training has been differentiated as he is the only employee trained "to integrate framework and tools including OTRS and Testopia with Vision adaptors." Once again, the Petitioner states that others in the industry are only involved in manually testing the workflow, but are not aware of the dataflow within the application. In addition, the Petitioner indicates that the "knowledge is not specific to [the company's] products, but yet, it is not readily available in the market."

B. Analysis

Upon review, the Petitioner's assertions are not persuasive. The record does not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity 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.* USCIS 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 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. 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 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 a beneficiary’s specialized knowledge if the petitioner does not, at 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. A 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, a 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, the Petitioner claims that the Beneficiary possesses knowledge that is both “special” and “advanced.” Because “special knowledge” concerns knowledge of the petitioning organization’s products or services and its application in international markets, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

“Advanced knowledge” concerns knowledge of an organization’s processes and procedures; therefore, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge of or expertise in the organization’s processes and procedures that is greatly developed or further along in progress, complexity and understanding in comparison to other workers in the employer’s

operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

In the present case, the Petitioner has not established that the Beneficiary possesses knowledge that may be deemed “special” or “advanced” under the statutory definition at section 214(c)(2)(B) of the Act, or that the Beneficiary had been or will be employed in a capacity requiring specialized knowledge.

First, the Petitioner does not describe the Beneficiary’s specialized knowledge with specificity. For instance, the Petitioner indicates numerous times on the record that the Petitioner has special knowledge of the company’s “Corporate Action framework.” The Petitioner states that the Beneficiary has special knowledge of integrating the Corporate Action framework and tools such as “OTRS and Testopia with Vision adaptors.” However, at no time does the Petitioner describe the functioning of these technologies in layman’s terms as requested by the Director. Further, as noted, tools such as OTRS and Testopia are third-party technologies that would reasonably be familiar to experienced software test specialists. The Petitioner states that the Beneficiary’s knowledge is superior to his colleagues based on his in depth knowledge of the “data flow” and “work flow,” while others similarly placed are stated to only have knowledge of “manual testing.” Again, the Petitioner does not specifically describe this difference to give this assertion sufficient probative value. In addition, the Petitioner asserts that its Corporate Action framework is the “most efficient” in the industry, but does not distinguish it from comparable products designed to perform the same actions. Again, we cannot make a factual determination regarding a beneficiary’s specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge.

Likewise, the Petitioner indicates that the Petitioner received unique specialized training upon beginning his employment with the foreign employer in June 2013, namely in the Corporate Action framework and integrating this framework and tools such as “OTRS and Testopia with Vision adaptors.” In the RFE, the Director requested that the Petitioner provide details and supporting evidence relevant to this training, including the number of hours, courses, completion dates and other supporting documentation to corroborate this training. However, the Petitioner submitted little detail and no supporting documentation to substantiate that the Beneficiary received specialized training in the company’s Corporate Action framework technology or the integration of the above mentioned tools. The Petitioner has also not provided the details of the Beneficiary’s specific assignments in support of its claim that he gained superior knowledge of these technologies, information that was also requested by the Director. 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).

Furthermore, the Petitioner states that the Beneficiary was responsible for significant development of the Corporate Action framework allowing it to be customized for all clients, but it does not further explain how contributed to this development or provide evidence supporting this claim. At the same time, the record reflects that its Corporate Action framework already existed at the time the

Beneficiary was hired, and the limited information submitted regarding the product suggests that the framework was actually designed for the purpose of being customized to meet the needs of the company's corporate clients. The record does not support the Petitioner's claim that the Beneficiary contributed to the development and functionality of the product. Again, the Petitioner submits little supporting documentation to corroborate this assertion, such as emails or internal documentation substantiating this development. 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)).

As discussed previously herein, 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 Petitioner bears the burden of showing that the Beneficiary holds knowledge that is noteworthy or uncommon compared to similarly employed workers both within or outside the organization or that his knowledge is advanced in relation to similarly placed workers.

In the current matter, the Petitioner has provided general comparisons that do not effectively demonstrate that the Beneficiary's knowledge is uncommon or noteworthy when compared to other software test engineers both within and outside the organization. For instance, the Petitioner mentions that only one other engineer at the foreign entity possesses knowledge that is comparable to the Beneficiary's and claims that the Beneficiary's knowledge surpasses that of this similarly placed colleague. However, this vague comparison has little probative value as the Petitioner has not specifically identified this colleague, his duties, education or explained how the Beneficiary and the colleague or similarly placed, and in turn, differentiated. Indeed, the Director requested that the Petitioner submit the duties, education levels and salaries of those in the Beneficiary's immediate department as a means of specifically comparing them and differentiating the Beneficiary. Although the Petitioner submitted salaries and general education levels for the members of the Beneficiary's department with the foreign employer, the Petitioner has not provided explanations of the duties and experience of these colleagues to allow an effective comparison. Further, in response to the RFE, the Petitioner did not provide duties, education levels, and salaries for the Beneficiary's proposed subordinates in colleagues in the United States. Again, 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).

In fact, the Beneficiary's department includes three other senior test engineers and a total of twelve similarly placed professionals including test leads and test engineers. The Petitioner has not submitted sufficient detail regarding these employees to establish that the Beneficiary's knowledge is different, uncommon or more advanced. For instance, as noted, the Petitioner has not provided the duties and experience of any of these employees, but instead claims without explanation or support that the Beneficiary performs different or higher level duties resulting in the claimed specialized knowledge as a member of this twelve person department including more senior staff and four other staff with the same job title. The Petitioner only asserts that the Beneficiary has the highest salary of

the senior testing engineers in this department. However, a slightly higher salary alone does not demonstrate a beneficiary's specialized knowledge. Regardless, it would have been more probative to explain and document the education, experience, and duties of the Beneficiary's colleagues, in conjunction with their salaries, such that an effective comparison based on the totality of the evidence could be made. For example, the Petitioner indicates that the Beneficiary will be working closely with or overseeing sub-teams and a number of other technical advisors and applications engineers, some of which are also listed as "senior." Presumably, these employees will have knowledge and work with the same technologies in which the Beneficiary has knowledge and the Petitioner does not explain the duties and experience of these subordinate employees to differentiate the Beneficiary's knowledge as special or advanced.

Indeed, the evidence indicates that the bulk of the Beneficiary's relevant experience lies in his work with other companies as a test engineer from 2006 to the beginning of his employment with the foreign employer in June 2013. For example, the Petitioner asserts that it would require up to five years to train an engineer for the Beneficiary's position, but the Beneficiary has only eighteen to nineteen months of experience with the Petitioner's group of companies. As discussed, the Petitioner has not articulated or documented how much training the Beneficiary actually received from the foreign entity or provided details regarding his assignments with the foreign entity in support of its claim that he has obtained specialized knowledge during his tenure there. Without this information, we cannot determine whether his experience with the Petitioner's Corporate Action framework has more likely than not resulted in specialized knowledge, or whether such knowledge could be readily transferred to any experienced testing engineer who has worked with third-party technologies such as Testopia, OTRS, Bugzilla, and Quick Test Professional in a similar testing environment.

In sum, the lack of detail and evidence and the relatively short time of the Beneficiary's employment with the foreign employer indicate that it is more likely than not his knowledge is based on client requirements and more widely available software testing technologies, rather than the technologies of the company. In fact, on appeal, the Petitioner states that "this knowledge is not specific to [the company's] products, but yet, is not readily available in the market." The Petitioner also asserts that the Beneficiary's knowledge lies in "using client specific custom tools like OTRS-Testopia-Vision adaptors," again indicating that the Beneficiary knowledge is based more in client specific requirements and third-party technologies rather than on the Petitioner's technologies or proprietary information.

In sum, we have little doubt that the Beneficiary is a valuable employee of the company or that he is qualified for the proposed position in the United States. However, the Petitioner's claim is primarily based on the fact that the Beneficiary has many years of test engineering experience and knowledge of a specific client's requirements. The Petitioner has provided little evidence to set the Beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. 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.

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IV. L-1 VISA REFORM ACT

The next issue to be addressed is whether the Beneficiary's placement at a client worksite is in compliance with the requirements of the L-1 Visa Reform Act, as specified in section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2).

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

- (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
 - (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
 - (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

In denying the petition, the Director concluded that the Beneficiary's value appeared to involve the Beneficiary's familiarity with client software, methods and procedures rather than advanced or special knowledge of the company's internal or proprietary information exclusively.

On appeal, the Petitioner states that the Beneficiary's duties involve customizing the company's software to meet its client's business needs and do not involve knowledge of the client's software, methodologies, procedures, products, or services.

First, we are unable to determine whether the technology the Beneficiary will primarily utilize in his proposed U.S. assignment is company knowledge or that commonly held in the industry. The Petitioner has not provided sufficient detail regarding the Beneficiary's assignment in the United States, the specifics of the project, the specific technologies with which he will be working, and/or what service he will be providing to the client. Although the Petitioner submits a Professional Services Agreement it has in place with [REDACTED] it is only a general agreement and does not indicate the services or technologies that will be provided pursuant to the Beneficiary's specific project assignment. Further, the Petitioner did not provide an organizational chart reflecting the structure of the client worksite. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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Indeed, although the Petitioner suggests that the project will involve the [REDACTED] framework in which the Beneficiary is asserted to have specialized knowledge, the Petitioner has not submitted an supporting documentation to corroborate this assertion. Therefore, in sum, the Petitioner has not submitted sufficient evidence regarding the Beneficiary's U.S. assignment to determine whether he will be primarily under the supervision and control of his company or the client or whether he will be primarily providing proprietary technology owned by the company.

Further, as previously discussed herein, the Petitioner presents an apparent contradiction when discussing whether the Beneficiary's claimed specialized knowledge is primarily based in company technology or client requirements. The Petitioner states that the Beneficiary is aware of the "data flow of the application," as opposed to his colleagues both inside and within the organization, who are asserted as having only knowledge of "manually testing the workflow." The Petitioner indicates that "this knowledge is not specific to [the company's] products, but yet, is not readily available in the market." The Petitioner asserts that the Beneficiary's knowledge lies in "using client specific custom tools like OTRS-Testopia-Vision adaptors," indicating that the Beneficiary's knowledge is based more in client specific requirements and knowledge of the client than in the company's technologies. Again, it is reasonable to conclude that if the Beneficiary's knowledge is not specific to the company or the industry, as stated by the Petitioner, than it must be specific to the client. In contrast, in apparent direct contradiction, the Petitioner states on appeal that the Beneficiary's duties involve customizing the company's software to meet its client's business needs and that it does not involve knowledge of the client's software, methodologies, procedures, products, or services. 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).

Based on the omissions in the submitted evidence and inconsistencies in the Petitioner's statements, we are unable to conclude that the Beneficiary's placement at the client worksite will be an assignment in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary. *See* L-1 Visa Reform Act of 2004, Section 214(c)(2)(F)(ii). For this additional reason, the appeal will be dismissed.

V. BEYOND THE DIRECTOR'S DECISION

Beyond the decision of the Director, we note that the Petitioner indicated under penalty of perjury in Part 4 of the Form I-129 petition that the Beneficiary had never been denied the requested classification. The current petition was filed on January 30, 2015. However, U.S. Department of State records indicate that the Beneficiary was previously denied an L-1B visa at the U.S Consulate in [REDACTED] India on October 30, 2014, after submitting a Form I-129S, Nonimmigrant Petition Based on Blanket L Petition. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." As the Petitioner

did not disclose the previously filed petition and its denial, the petition will be denied for this additional reason.

We may deny an application or petition that fails to comply with the technical requirements of the law 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, 1037 (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).

VI. 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, 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.

Cite as *Matter of N-C-O-A-*, ID# 15359 (AAO Feb. 8, 2016)