



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

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

MATTER OF T-S-, INC.

DATE: JAN. 20, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Florida corporation, seeks to qualify the Beneficiary as an L-1B nonimmigrant intracompany transferee. *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 nonimmigrant petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. ISSUES**

The issues before us are whether (1) the Beneficiary possesses specialized knowledge; or (2) the Beneficiary will be employed in the United States, or has been employed abroad, in a specialized knowledge capacity.

**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:

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

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special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

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

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

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

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

### 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 is a semiconductor manufacturer and is the parent company of the Beneficiary's foreign employer, [REDACTED] located in Germany. The Petitioner seeks to employ the Beneficiary in the position of product marketing manager for a period of three years.

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The Petitioner filed the Form I-129 on February 4, 2014. The Petitioner indicated in the Form I-129 that it employs 2,200 individuals and that it earned \$892.9 million in revenue during the previous year. In a memorandum dated December 31, 2014, the Petitioner stated that it is “a multinational publicly traded company that designs, develops and manufactures innovative, highly integrated radio frequency (RF) solutions with leading compound semiconductor technologies for communications and defense companies worldwide.” The Petitioner explained that the company is “an industry leader in the development of high-power amplifiers for point-to-point radio.”

The Petitioner indicated that the Beneficiary’s “extensive knowledge and experience of our technologies will be utilized for existing product lines and also to define and develop the next generation products that are extremely challenging from both technical and design to cost attributes.” The Petitioner stated that the Beneficiary has “direct working relationships with all of [the company’s] current European P2P radio customers,” including companies such as [REDACTED], and [REDACTED] amongst others. The Petitioner explained that the company has hundreds of P2P radio products that it provides to large corporations around the world.

The Petitioner claimed that the Beneficiary’s area of specialized knowledge is in “Product Marketing and Applications expertise for Radio Frequency (RF) systems related to Point-to-Point (P2P) Microwave Radio, and more specifically the use of Digital Pre-Distortion (DPD) to improve Power amplifier (PA) linearity for next generation radio systems.” The Petitioner indicated that its P2P radio business is part of its “Infrastructure and Defense Products (IDP) division,” and that this department’s accounts make up thirty percent of its revenue. The Petitioner explained that the Beneficiary primarily works “directly with customers to define next generation P2P radio requirements and products” and that this “extensive experience...is critical to the continued growth of the P2P Radio product line.” The Petitioner indicated that the Beneficiary’s knowledge is noteworthy and uncommon explaining his experience as follows:

[The Beneficiary] has 4 years of direct experience with the specific [company] products and customer base and has a high degree of expertise in the field of P2P Radio products and power amplifier linearization utilizing DPD. [The Beneficiary] has extensive knowledge of RF technologies which allow him to quickly assess product development needs and help solve customer issues in a timely manner. Experience gained on the specific products and customer base is invaluable to continued growth of the P2P radio business at [the company].

Based on his extensive knowledge of P2P Radio systems and millimeter wave products in general and GaAs and GaN RF technologies required for next generation radio systems, [the Beneficiary] is an exceptional candidate to move from RF applications to a PMM role within [the company].

The Petitioner stated that the Beneficiary “obtained extensive knowledge through a series of application and system engineering positions at leading telecom companies prior to joining [the company] including [REDACTED] and [REDACTED].” The Petitioner noted that

there is no academic training to replace the Beneficiary's years of hands-on experience with specific products and customers. The Petitioner explained that the Beneficiary has worked as a "key Applications Engineer" for the last four years out of the company's German subsidiary office where he was responsible for "interfacing with domestic sales, marketing, applications and design teams to solve technical problems" and assisting with "closing key design wins contributing to several millions of dollars of business." The Petitioner emphasized that the Beneficiary is "only one of a few" of the company's field application engineers or product marketing managers "with the level of experience specific to [the company's] GaAs and GaN RF millimeter wave products necessary to effectively take over a role that requires both specific technical knowledge of [company] products and maintaining customer relationships developed over the past 4 years." The Petitioner indicated that the Beneficiary's level of knowledge "is very difficult if not impossible to find in the US."

The Petitioner provided an organizational chart relevant to the Beneficiary's assignment in the United States reflecting that he would work in the Transport & Multi-Market (TMM) department. The Beneficiary's proposed department was one of twelve other departments included in the chart, some of which included "High-Power RF Systems," "Strategy and Business Development," "Research," and "Engineering." In the chart, the Petitioner further stated that the Beneficiary "will provide insight and assessment of markets, develop product plans, drive execution for the P2P Radio PL and own responsibility for the financial commitments for revenue and margin for the product line."

In addition, the Petitioner submitted a table that provided a further explanation of the Beneficiary's knowledge. The chart stated that "there are currently 10 Product Marketing Managers (PMM, technical marketing position) in the Infrastructure and Defense Products (IDP) Business Unit at [the company]" and that "only one of those PMMs has the required skills and he currently already holds another critical PMM position within [the company]." The Petitioner explained that no employees "specifically have the exact background and training as [the Beneficiary]."

The Petitioner further provided a listing of duties for the Beneficiary abroad and in his new capacity in the United States. The Petitioner explained that the Beneficiary was tasked abroad with developing new product development plans, acting as a technical marketing point of contact, and with "customer interface and communications." The Petitioner indicated that the Beneficiary would be responsible for developing product plans, establishing and maintaining key customer relationships, establishing pricing for new products, and supporting pricing negotiations once transferred to the United States. Lastly, the Petitioner provided a listing of twenty-eight trainings the Beneficiary completed during his employment with the company and evidence reflecting that the Beneficiary received a master's degree in electrical engineering from a university in Finland.

Furthermore, the Petitioner provided the Beneficiary's resume reflecting that he had acted as an "Account Manager/Field Application Engineer" for the company since October 2010. The resume stated that the Beneficiary worked in the "EMEA sales team supporting the whole EMEA region" acting "as the first technical contact point for the customers" and "managing two accounts as an Account Manager." The resume indicated that the Beneficiary supported the "whole [company]"

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product portfolio,” amongst varied other products, including “GaN transistors” and “Point-to-Point RF devices.” The resume reflected that the Beneficiary previously worked for [REDACTED] as a field application engineer focusing on “mobile phone HPA modules” from September 2008 to October 2010. Prior to this, the resume specified that the Beneficiary had worked with [REDACTED] as an application engineer devoted to “customer and sales technical support on fiber and RF-components, devices and cables” from July 2007 to September 2008. Further, the Beneficiary was shown to have worked in various roles with [REDACTED] from May 2001 through July 2007.

The Director issued a request for evidence (RFE) on February 18, 2015, stating that the evidence submitted was insufficient to establish that the Beneficiary held specialized knowledge or that he would act in a specialized knowledge capacity in the United States. The Director explained that it did not appear that the Beneficiary’s knowledge of the company’s products and technologies was uncommon when compared to other product marketing managers within the company or other professionals in the industry. The Director indicated that it could not be determined how the company’s products and technologies differed significantly from other similar companies and requested that the Petitioner submit additional evidence to establish that the Beneficiary’s knowledge is differentiated from similar positions in the company or in the industry.

The Director asked that the Petitioner submit a letter from the foreign employer explaining how the Beneficiary’s position is different from similar positions; the nature of the product, service, research, equipment, process, or procedure the Beneficiary uses; the minimum time required to obtain the Beneficiary’s knowledge; and significant assignments to which the Beneficiary was assigned. The Director requested that the Petitioner submit evidence to support that the Beneficiary’s knowledge could only be taught through prior experience with the organization. The Director further suggested that the Petitioner submit any patents that are held by the company as a result of the Beneficiary’s specialized knowledge or any published material by the Beneficiary. The Director requested that the Petitioner clarify how many other workers held knowledge equivalent to the Beneficiary and how his training differs from that provided to others in the organization.

In response, the Petitioner provided a letter dated March 9, 2015, from its senior product line director explaining the “uncommon” nature of the Beneficiary’s knowledge as follows:

[The company], with an employee worldwide count of over 3000, employs hundreds of Product Marketing Managers (PMMs). These PMMs are spread out over different Business Units matching [company] key markets. Specific to [the Beneficiary’s] assigned market, the Infrastructure and Defense Products (IDP) Business Unit, there are currently ten PMMs dedicated to this Unit. Within the IDP Business Unit, there are four primary areas: 1. Defense/Aerospace/Foundry, 2. Transport & Multi-Market, 3. Base Station and Adjacent Markets, and 4. High-Power RF Systems. Out of IDP Unit’s ten PMMs, two are assigned to the Transport & Multi-Market area, and [the Beneficiary] is one of the two. Within Transport & Multi-Market, the areas of specialties include: Very-small-aperture terminal (VSAT), Point to Point (P2P) Radio, and Optical Networks. [The

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Beneficiary's] area of specialty is P2P radio. The only other PMM who has the required specialized skills equal to those of [the Beneficiary] is already responsible for Optical Networks. This leaves [the Beneficiary] as the only PMM with the most specific product level knowledge for P2P, VSAT and millimeter wave applications and required customer relationship experience.

The Petitioner reiterated that the Beneficiary specialized in "specific [company] millimeter wave product line including the specific application of GaAs and GaN technology for P2P radio and VSAT systems and how Digital Pre-Distortion (DPD) will be applied to improve the PA linearity for next generation P2P radio systems." The Petitioner explained that the Beneficiary had written his Master's thesis on this P2P pre-distorter technology in 2004 and provided an abstract of the thesis in support. The Petitioner further indicated that the Beneficiary had been involved in establishing a patent relevant to digital control of P2P microwaves in 2005. Supporting documentation specific to the patent indicated that it was owned by the [REDACTED]

Furthermore, the Petitioner stated that the Beneficiary was set apart because his duties are "dedicated to the specific, niche area of P2P radio microwave and millimeter wave applications." Moreover, the Petitioner claimed that the Beneficiary's "technical and engineering background is required apart from regular marketing skills" and that his "in depth, direct working relationship already established with all of [the company's] current European P2P radio customers like [REDACTED] and [REDACTED] accounting for 30% of [the company's] revenues," distinguishes the Beneficiary from other similar professionals within the company. The Petitioner pointed to "extensive hands on customer support experience" gained by the Beneficiary from his previous positions with other telecom companies including [REDACTED] and [REDACTED] and his three years of experience with the company as a field application engineer where "he learned detailed proprietary information on [company] processes and devices."

In addition, the Petitioner emphasized that the Beneficiary has unique knowledge of the "Digital Pre-Distortion (DPD)" methods utilized by the company which are unique to each radio manufacturer, knowledge which is not held by other PPMs working for the company. The Petitioner further indicated that the company "is the only company in the market able to offer the complete RF product portfolio for P2P and with its unique Gallium Nitrate (GaN) processes to provide the needed higher power amplifiers, increased efficiency and linearity." The Petitioner explained that the Beneficiary will use his knowledge "to help assess how the [company] power amplifier needs to be designed to work best with each radio manufacturer's specific system." The Petitioner stated that the Beneficiary's "experience and expertise" with European customers is "invaluable to how [the company's] products are marketed."

Finally, the Petitioner again indicated that the Beneficiary is "one of a few" of the company's FAEs or PMMs "with the level of experience specific to [company] GaAs and GaN RF millimeter wave products." The Petitioner noted that this knowledge, and his relationships with the company's European customers, allowed the Beneficiary to "produce Design Wins (DW) for [the company]," specifically for [REDACTED]. The Petitioner stated that the Beneficiary's "ability to communicate

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with European customers in both custom and language are key discriminators in his ability to keep [the company] at the forefront of advancement.” The Petitioner indicated that the Beneficiary “possesses four years of experience working with and promoting IDP millimeter wave products including intimate level knowledge of [the company’s] millimeter wave P2P radio products.” In support of these assertions, the Petitioner again provided the Beneficiary’s 2004 patent owned by [REDACTED] and an abstract of his 2005 master’s thesis in “Radio transmitter characterization and linearization.” Further, the Petitioner submitted a list of the company’s products totaling over fifty pages and an internal document listing numerous patents issued to the company as of September 2014.

On March 18, 2015, the Director denied the petition, finding that the Petitioner had not established that the Beneficiary possessed specialized knowledge, or that he had been employed abroad and would be employed in the United States in a specialized knowledge capacity. In denying the petition, the Director noted that the Petitioner did not demonstrate how the Beneficiary’s completion of his thesis constituted specialized knowledge. The Director also noted that the Beneficiary was one of six individuals who contributed to the submitted patent, indicating that the Petitioner did not establish that the Beneficiary’s knowledge is special compared to his other collaborating inventors. The Director further concluded that the patent was of little relevance to establishing that the Beneficiary held special knowledge of the company’s proprietary technology given that it was owned by [REDACTED]. The Director concluded that the Beneficiary’s knowledge was mainly gained outside of the petitioning company, and that the Petitioner had not provided sufficient evidence to demonstrate that the Beneficiary’s knowledge is special when compared to his colleagues within and outside the company. The Director stressed that knowledge of customer requirements or specific projects does not alone demonstrate specialized knowledge and that the Petitioner had not shown that the Beneficiary’s knowledge was sufficiently complex or different compared to others similarly placed in the industry.

On appeal, the Petitioner asserts that the Beneficiary has specialized knowledge of the company’s products, services and technologies not commonly held in the industry or within the company, and that he has advanced knowledge of the company’s complex marketing processes and procedures in comparison to his colleagues at the company. The Petitioner contends that the Director acted in error by not applying the preponderance of the evidence standard, but a higher standard of proof. The Petitioner stated that the Director issued an unnecessary and contradictory RFE despite the Petitioner providing comprehensive explanations and evidence in support of the petition which addressed each issue set forth in the RFE. The Petitioner asserts that the Beneficiary is the only PMM with specific knowledge of P2P radios and states that he holds a “unique and proprietary skill learned while assigned to European customers,” facilitating his ability to market to these customers. The Petitioner contends that the Director failed to sufficiently articulate why the Petitioner’s assertions and evidence were not adequate to establish that the Beneficiary’s knowledge as specialized.

## B. Analysis of Specialized Knowledge

Upon review, the Petitioner's assertions are not persuasive. The Petitioner has not established that the Beneficiary possesses specialized knowledge or that he has been and will be employed in a position that requires specialized knowledge.

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, a petitioner must show that the individual has been and will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts or prongs. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

U.S. Citizenship and Immigration Services (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 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 in the petitioning company and/or against others holding comparable positions in the industry. 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 special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the Petitioner's claims are based on both prongs of the statutory definition, asserting that the Beneficiary has both a special knowledge of the company's products and their

application in international markets, as well as an advanced level of knowledge of the company's processes and procedures.

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.

Here, the Petitioner does not describe with specificity the proprietary information and products in which the Beneficiary holds specialized knowledge. For instance, the Petitioner generally states that the Beneficiary holds special knowledge in the company's P2P radio technology. The Petitioner submits a lengthy list of products and patents it holds, but does not identify the specific products and patents with which the Beneficiary is claimed to have worked and in which he holds expertise. The Petitioner indicates that it holds unique technology in using gallium nitrate (GaN) in high-powered amplifiers, but does not submit supporting documentation to support this assertion or identify the specific products or patents that relate to this asserted proprietary technology. The Petitioner explains that the Beneficiary gained exclusive knowledge regarding the linearization of customer radios and how the company's power amplifiers are configured in these customer environments. However, the Petitioner has not submitted detailed explanations of these specific customer projects, such as the "design wins" produced by the Beneficiary, nor has it provided supporting documentation to substantiate these assignments. Moreover, the Petitioner provides a listing of more than twenty trainings the Beneficiary completed while working for the company, but does not articulate how the completion of these trainings is relevant to his specialized knowledge or how this accomplishment distinguishes his knowledge as "special" when compared to his colleagues. 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 noted, we cannot make a factual determination regarding the Beneficiary's specialized knowledge if the Petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the Beneficiary gained such knowledge. Here, the Petitioner makes general statements regarding the knowledge held by the Beneficiary and how he gained this knowledge, but does not provide sufficient detail and supporting documentation to corroborate these statements.

The Petitioner has not submitted sufficient evidence to differentiate the Beneficiary from his colleagues and other professionals similarly placed in the industry. The Petitioner states that the Beneficiary is the most knowledgeable or one of its most knowledgeable employees, but does not identify the other employees with this level of knowledge or detail their education or experience. Further, the Petitioner has not provided an organizational chart reflecting the Beneficiary's department and the experience, duties, and education levels of his colleagues as necessary to compare the Beneficiary's knowledge to other similarly-placed employees. It is not sufficient to merely state that the Beneficiary is the most knowledgeable or that he is special by virtue of his assignment to a specific department. Indeed, it is reasonable to conclude that there are various other

engineers and product marketing managers assigned to specific departments holding knowledge intimate to these departments and their corresponding assignments. The Beneficiary's special knowledge must be established with clear objective documentary evidence. As noted, 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. However, the evidence in the record is insufficient to meaningfully compare the Beneficiary against his colleagues as necessary to demonstrate that his knowledge is special.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, 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.

Here, the Petitioner makes conflicting statements as to the Beneficiary's level of expertise within the organization. The Petitioner alternates between stating that the Beneficiary is "one of a few" employees holding this level of knowledge, to stating that he is one of two individuals holding this level of knowledge, to finally stating that he is the Petitioner's most knowledgeable employee with regard to the P2P technology. Indeed, in apparent contrast, the Petitioner has provided a listing of what appears to be hundreds of products and patents, along with an assertion that its P2P radio technologies account for thirty percent of the company's revenue. However, the evidence does not demonstrate that the Beneficiary developed any P2P products for the company, despite claiming that he possesses the most knowledge of these technologies in the entire company. Although the development of products is not required to establish specialized knowledge, in the current matter, where it is clear that hundreds of products have been developed in the Beneficiary's asserted field of expertise and there is no evidence that he has contributed to any of this development, it is reasonable to assume that others have and thereby hold similar, if not superior, knowledge of the company's technologies.

In fact, the submitted organizational chart for the Beneficiary's proposed assignment in the United States lists other departments that reflect technological expertise similar to that of the Beneficiary, including "high power RF systems," "strategy and business development," "research," and "engineering" departments. The Petitioner further indicates that there is a "high-power RF systems" department within the Beneficiary's own greater infrastructure and defense products (IDP) department of which he is not a member. The Petitioner does not submit specific evidence to clarify this apparent ambiguity, such as detailed information on the experience and education of the Beneficiary's colleagues or specific descriptions of how the Beneficiary gained superior or uncommon knowledge at the expense of these colleagues. Indeed, given the sizable contribution of P2P technology to the company's revenue, it is questionable whether the Beneficiary is the most knowledgeable or one of the most knowledgeable in this technology without specific corroborating evidence, such as that previously mentioned. As previously noted, it is incumbent upon the

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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).

In comparison to the lack of detail on how the Beneficiary gained advanced knowledge in P2P radio technology, the Petitioner provides substantial evidence that the greater part of the Beneficiary's knowledge lays outside the company's products and processes. For instance, the Petitioner provides evidence of a patent to which the Beneficiary contributed while employed with [REDACTED]. Likewise, the Petitioner submits evidence suggesting that the Beneficiary authored his master's thesis in "radio transmitter characterization and linearization." However, the Petitioner does not articulate how these accomplishments, completed approximately ten years prior to the commencement of his employment with the company, bear any relation or contribute to the Beneficiary's current knowledge of the company's products and processes. In fact, the Beneficiary's work in P2P technologies prior to his employment with the company, including the patent owned by [REDACTED] suggest that this knowledge may be widely held by those similarly placed in the industry. Although these accomplishments appear professionally impressive, the Petitioner does not specifically explain how this work sets the Beneficiary apart from his colleagues within and outside the company, particularly while he is working with a company shown to have hundreds of patents and products and garnering thirty percent of its revenue from P2P technology.

In addition, the Petitioner has offered little evidence to differentiate its claimed proprietary technologies and standards from those used by other companies operating in the same industry sector. The Petitioner merely states that it innovatively uses GaN technology, but does not explain the manner in which it is used or support this claim with documentation. The Petitioner does not identify the specific patents relevant to its asserted GaN technology. As such, the Petitioner has not established how knowledge of the company's technologies, standards, and methodologies qualifies as different or uncommon from what is generally known by experienced engineers working with other companies in the field. In fact, the evidence provided suggests that this knowledge may be widely held as it indicates that the Beneficiary worked intimately with these technologies prior to his employment with the foreign employer. However, the Petitioner does not compare the Beneficiary with others who may be similarly placed in the industry. Without appropriate explanations or evidence to this effect, we are unable to determine with any likelihood whether the Beneficiary possesses advanced knowledge, or perhaps is simply one of many holding the same type and level of knowledge in the industry.

Without appropriate comparisons, it appears that the Beneficiary's knowledge is more likely based on his familiarity with specific customer requirements. Indeed, the Petitioner emphasized this in response to the Director's RFE, stressing the Beneficiary's understanding of European customer requirements, his ability to market products to these customers, and his ability to configure the company's products in the specific customer environments. Further, the Beneficiary's duties are more reflective of an employee focusing on marketing and sales than commanding expertise in the company's products and technologies, indicating that he was, and will be, responsible for managing

accounts, maintaining customer relationships, communicating with customers, understanding customer use models, establishing pricing, and supporting pricing negotiations. By comparison, it appears based on the organizational charts provided in the record that there are departments working with P2P technology without such a sales and marketing focus, including development and research departments, as well as a sector specifically devoted to high-power RF systems. Again, given the breadth of the company's apparent expertise in P2P technology, it is questionable whether the Beneficiary could be considered one of the most knowledgeable or the most knowledgeable employee in this technology without being directly involved in the development of the company's P2P products and technology. Indeed, as previously noted, the Petitioner provides little supporting documentary evidence of the Beneficiary's expertise in the company's specific P2P technology, but only evidence that he worked with these general technologies while not employed with the company. Once 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.

On appeal, the Petitioner suggests that the Director issued a frivolous and contradictory RFE. In the RFE, the Director requested that the Petitioner submit a letter from the foreign employer explaining how the Beneficiary's position is different from similar positions; the nature of the product, service, research, equipment, process, or procedure the Beneficiary uses; the minimum time required to obtain the Beneficiary's knowledge; and significant assignments to which the Beneficiary was assigned. We note, however, that the Petitioner's response to the RFE provided insufficient explanation and evidence to clarify these issues. Specifically, the Petitioner did not identify the specific company products or patents in which the Beneficiary has special or advanced knowledge. The Petitioner did not specifically compare the Beneficiary to any of his colleagues within or outside the company in order to set him apart. The Petitioner did not articulate the minimum time it believed was required to gain the Beneficiary's level of knowledge. Further, the Petitioner did not provide specifics regarding the Beneficiary's assignments and how they allowed him to gain knowledge at the expense of his colleagues. In fact, to the extent that the Petitioner provides detail regarding these assignments, it suggests that the Beneficiary's knowledge may be more based in customer requirements rather than the proprietary technology of the Petitioner.

Indeed, the Petitioner did not provide a single piece of supporting evidence to substantiate the Beneficiary's assignments and the asserted expertise claimed to have been gained while employed with the foreign employer. Therefore, while the Petitioner's assertions regarding the frivolity of the RFE are noted, we find that the RFE was appropriate in light of the evidentiary deficiencies. Although the RFE afforded the Petitioner the opportunity to supplement the record with additional documentary evidence, the Petitioner did not submit sufficient evidence to establish the Beneficiary's eligibility.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge, or that he has been employed in the United States, or has been employed abroad, in a specialized knowledge capacity. *See* Section 214(c)(2)(B) of the Act.

#### IV. CONCLUSION

The petition will be denied and the appeal 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.

Cite as *Matter of T-S-, Inc.*, ID# 15186 (AAO Jan. 20, 2016)