



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

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

MATTER OF I-A-, INC.

DATE: JULY 18, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software developing and sales company, seeks to temporarily employ the Beneficiary as a professional services consultant under the L-1B nonimmigrant classification for intracompany transferees. 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 had not established that the Beneficiary possesses specialized knowledge, or that he has been employed abroad and would be employed in the United States, in a position requiring specialized knowledge. The Director concluded further that the evidence of record did not establish that the Beneficiary’s employment at the unaffiliated employers’ facilities would be permissible under section 214(c)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director did not consider the factors and guidance provided in the newly adopted L-1B adjudication policy memorandum.<sup>1</sup> The Petitioner claims that the Director did not consider critical evidence submitted and mischaracterized the role offered to the Beneficiary. The Petitioner maintains that it has established with a preponderance of the evidence that the petition should be approved.

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

#### I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized

---

<sup>1</sup> The Petitioner is referring to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), <https://www.uscis.gov/laws/policy-memoranda>.

knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

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

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

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

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

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

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

*Matter of I-A-, Inc.*

the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

## II. SPECIALIZED KNOWLEDGE

The first issue to be addressed 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 specialized knowledge capacity.<sup>2</sup>

### A. Evidence of Record

The Petitioner filed the Form I-129 on August 4, 2015. In a letter submitted in support of the petition, the Petitioner stated that it has been creating software since 1997, and that it is the originator and developer of a systems and application monitoring software product called [REDACTED] which is used in the banking industry. The Petitioner explained that [REDACTED] was built in-house and claimed that “[i]t is the result of 18 years of in-house research and development, so there are very few people in the global job market with [REDACTED] knowledge.”

The Petitioner noted that the Beneficiary began work with its Philippines affiliate as a “Senior Software Developer,” in July 2013. The Petitioner stated that the Beneficiary is part of the “Inbound Data Access” team and that this “team is responsible for developing and maintaining the [REDACTED] component of [its] [REDACTED] software, which is used for monitoring at [its] customer sites.” The Petitioner indicated that the team’s responsibilities “include developing new features, resolving bugs, and troubleshooting issues found by [its] customers and reported through [its] Services teams.” The Petitioner identified the Beneficiary’s responsibilities, as a senior member within the team, as performing design and code reviews and mentoring other developers in coding work. The Petitioner also referred to the Beneficiary as “the foremost expert of the [REDACTED] suite of plug-ins, which comprise [the company’s] Java-based monitoring solution.” The Petitioner stated that the Beneficiary had been “a key developer of [REDACTED] User Interface technologies” and “became an expert on the WebMontage and WebDashboard products which required web development using Java.” The Petitioner also noted that the Beneficiary had “functioned as a deputy team leader.”

The Petitioner claimed that the Beneficiary had been highly trained and received “extensive on-the-job training and mentoring on [its] internal systems, processes, and [its] proprietary [REDACTED] product.” The Petitioner emphasized that the “training is not available to the general public; it is only provided to [the Petitioner’s] employees who are specially trained to provide services to [its] clients with respect to [its] proprietary products, such as [REDACTED]”

---

<sup>2</sup> The Petitioner submitted documentation to support the L-1B petition, including evidence regarding its products, the Beneficiary’s education, the proffered position, and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

*Matter of I-A-, Inc.*

The Petitioner submitted a letter from a representative of the Beneficiary's foreign employer, who confirmed the Petitioner's statements regarding the Beneficiary's work and experience. The foreign employer emphasized that prior to joining the company, the Beneficiary had accrued seven years of experience in software development with unrelated entities, where he acquired experience in C/C++, Java and web development, skills needed for his position with the foreign entity.

The Petitioner concluded:

[The Beneficiary's] combination of advanced education, [prior] work experience, [the company's] on-the-job training, and [the company's] work experience and knowledge sets him apart from other similar professionals within [its] organization. He possesses advanced knowledge of [REDACTED] that is truly special and is not general or "elementary." His knowledge is different from that generally found in the industry, and it is unique to [the company] in large part due to the proprietary nature of [REDACTED]

The Petitioner described the proffered position as part of its professional services team which "is responsible for deploying, installing and configuring [the Petitioner's] proprietary software at client sites throughout the U.S." The Petitioner stated that the Beneficiary would perform the following duties in the United States:

- Requirements gathering, building [REDACTED]-based solutions and configuring [REDACTED] for our customers at their locations (85%)
- [The Petitioner's] internal meetings regarding project management, etc. (15%)

The Petitioner also noted that it was rolling out a new operational analytics tool named [REDACTED] which requires development skills from the professional services team. The Petitioner referenced the Beneficiary's nine years of development experience, including his two years of experience with the Petitioner, as creating a skill set that would make him an ideal consultant for the [REDACTED] product.

The Petitioner concluded further that the proffered position "requires highly specialized knowledge because the position requires both an in-depth knowledge of [REDACTED] (unique to [the Petitioner's] personnel) and also advanced software developer skills." The Petitioner emphasized that while the Beneficiary would work at clients' sites, he would be employed and controlled by the Petitioner and that he would not work on the clients' software but would work on the Petitioner's software purchased or licensed by the end-user clients.

The Petitioner emphasized that because the [REDACTED] product is proprietary, it would be "nearly impossible" to locate a qualified U.S. worker for the Beneficiary's proposed role. The Petitioner specified that it would expect an inexperienced new U.S. hire to require six months of training followed by eight months of on-the-job experience working with a mentor to reach the level of knowledge required for the professional services consultant position. The Petitioner emphasized

(b)(6)

*Matter of I-A-, Inc.*

that the Beneficiary himself was not an “inexperienced new hire” but rather joined the foreign entity in 2013 with an advanced education, seven years of experience, and a relevant, pre-existing skill set.

The Petitioner submitted four emailed statements from its banking clients. The statements all included the same language asserting that the Petitioner’s professional services consultants have “specialized knowledge” and will perform certain tasks for the authors’ companies.<sup>3</sup> The record also includes promotional materials for the Petitioner’s [REDACTED] product.

In response to the Director’s request for evidence (RFE), the Petitioner emphasized that its [REDACTED] and [REDACTED] products are proprietary. The Petitioner repeated the Beneficiary’s work experience with the foreign entity on the [REDACTED] product and reiterated its claim that he has expertise with the suite of plug-ins and user interface technologies which it identified as key components of the [REDACTED] product.<sup>4</sup> The Petitioner indicated that the Beneficiary is one of only two professionals in the [REDACTED] office who performed development work for both native and non-native [REDACTED] components. The Petitioner continued by stating that the Beneficiary was qualified to perform these tasks because of his familiarity with C++ and Java. The Petitioner asserted that the Beneficiary’s “main focus is on handling of tickets and defect [REDACTED]” involves all components of [REDACTED] and could not be “well-performed” by anyone else on the Inbound Access team.

The Petitioner maintained that the Beneficiary’s knowledge of its products is distinct and uncommon in relation to that generally found in the particular industry. The Petitioner noted that even “clients who license its products are not privy to the installation and configuration specifications of products like [REDACTED]” and “are not trained like [the petitioning organizations’] personnel to install and configure the program.” The Petitioner also emphasized that the Beneficiary is the “most-senior member of the Inbound Data Access Team” and has two-plus years of experience with the foreign entity, while one other individual on the team has 20 months experience and the other members of the team have between 4 and 11 months of experience. The foreign entity, in a separate letter, confirmed the information provided by the Petitioner. The Petitioner also asserted that the Beneficiary will bring advanced development knowledge to the U.S. team, as the two other U.S. team members have only specialized product knowledge.

The record in response to the Director’s RFE also included organizational charts for the Petitioner and foreign entity. The foreign entity’s chart depicts the Beneficiary as one of four individuals reporting to a team lead in the department responsible for the development of the [REDACTED] components of the [REDACTED] product. The Petitioner’s organizational chart shows the Beneficiary as

---

<sup>3</sup> Each author identified the tasks as: installation and implementation of monitoring solutions for complex trading environments, consultancy regarding analysis and recommendations for complex trading environments – including detailed understanding of business needs and custom solution design for resolution, and enhancing, improving, optimizing monitoring solutions.

<sup>4</sup> The Petitioner noted that the Beneficiary had worked on 20+ different plug-ins for [REDACTED] giving him a broad understanding of [REDACTED] monitoring and integration capabilities.

(b)(6)

*Matter of I-A-, Inc.*

one of three employees reporting to the head of professional services. The record further included the resumes of the individuals in these departments.

The Petitioner also submitted a signed letter from [REDACTED] who worked for [REDACTED] as a Global Chief Technology Officer, and who joined the petitioning company's board as a non-executive director in 2012. [REDACTED] asserted that [REDACTED] is a proprietary solution which is a market leader in its segment used by eight of the top ten banks worldwide. [REDACTED] added that [REDACTED] has over 100 plug-in modules, thousands of configurable parameters, and that knowledge of [REDACTED] is not commonly found in the industry. He added further that the Petitioner's consultants "must possess a rare combination of technical ability and deep product knowledge that allows them to deliver complex solutions to Tier 1 banks in controlled manner" and that [REDACTED] used the petitioning company's consultants to install and configure the [REDACTED] system because its internal teams lacked sufficient special product knowledge.

On appeal, the Petitioner asserts that the Director's denial of the petition applied "outdated adjudication standard and definitions" and did not cite to the agency's August 2015 L-1B policy memorandum. The Petitioner further contends that the Director mischaracterized the nature of the Beneficiary's role by comparing his duties to those of a "generic group of others in the computer science field," and mischaracterized the Petitioner's proprietary product by referring to it as an "internal tool." Finally, the Petitioner states that the Director did not give proper weight to the statements provided by the Petitioner's clients or by [REDACTED]

#### 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 and 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 order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. *See* 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. U.S. Citizenship and Immigration Services (USCIS) cannot make a factual

(b)(6)

*Matter of I-A-, Inc.*

determination regarding the 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. 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.

As the Petitioner emphasized on appeal, it 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.*

In the present case, the Petitioner asserts that the Beneficiary has special knowledge of the company's products and their application in international markets. 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.

The evidence does not support the conclusion that the Beneficiary's current and proposed duties are distinct or uncommon within the petitioning organization's industry, but rather are those duties typically performed by an individual with experience in programming languages and software development. For example, the Petitioner noted that the Beneficiary had seven years of software development experience for other companies and entered the foreign entity's workforce as a senior software developer. We note that each of the Beneficiary's team members at the foreign entity also had from five to eleven years of experience in C++ and/or Java-based software development when first employed by the foreign entity. While the Petitioner also emphasizes the Beneficiary's two years of experience with its [REDACTED] product and more specifically the [REDACTED] component of the [REDACTED] product, the Petitioner has not described any further training the Beneficiary may have received on this component or product with specificity. The record does not include evidence if any or all of the foreign entity's employees are required to undergo any such training and if so the nature and length of the training. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). It appears that the Beneficiary immediately began work on [REDACTED] components, as

(b)(6)

*Matter of I-A-, Inc.*

a senior software developer, using his industry-based knowledge. The minimal evidence submitted does not establish that the company's employees are required to undergo any specialized training in the company's products and methodologies in order to work with [REDACTED]

In reaching this finding we have reviewed the Petitioner's claim that the Beneficiary "received extensive on-the-job training and mentoring" on its internal systems, processes and the [REDACTED] product, training which is not available to the general public. However, the Petitioner does not support this claim with details of the training and mentoring. Again, it appears that the Beneficiary, through his tenure with the foreign entity, gained insight into and familiarity with the petitioning organization's products. The Petitioner, however, has not clearly articulated when or how he gained the claimed specialized knowledge other than this vague reference to "on-the-job" training. We have considered the Petitioner's references to the Beneficiary's assignments on various projects, such as the [REDACTED] suite of plug-ins and the [REDACTED] User Interface technologies, but the record does not include evidence that the Beneficiary's involvement in these particular projects or others required special knowledge that is distinct or uncommon in comparison to other experienced Java-based programmers in the industry. His involvement in developing or programming the [REDACTED] components again appears to be based on his professional experience within the Java-based, C++ programming industry.<sup>5</sup> The Beneficiary cannot be considered a specialized knowledge employee based solely on the length of his tenure with the organization or his general industry experience.

The Petitioner did provide information regarding the training that would be required for a "new inexperienced U.S. hire," noting that such an employee would require six months of unspecified training following by eight months of on-the-job experience under the supervision of a mentor. The Petitioner, however, emphasized that the Beneficiary was not inexperienced when hired by the foreign entity, and it is implied that he therefore required considerably less, if any, training to perform the duties. The Petitioner's statement regarding training requirements for inexperienced hires suggests that an experienced software professional with Java, C/C++ and web development experience could perform the duties of the position with minimal time spent on training in the Petitioner's proprietary products and processes for product installation, customization and support.

We also note that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. Whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. Further, knowledge that can be easily imparted to another individual with a similar educational and

---

<sup>5</sup> As the Petitioner has not specified the amount or type of training its employees receive in the company's tools and procedures, it cannot be concluded that its processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced software developer who had no prior experience with the Petitioner's family of companies. Based on the evidence submitted, it appears the Petitioner's internal processes and project implementation practices can be readily learned on-the-job by employees who otherwise possess the requisite technical and functional background in the information technology field.

*Matter of I-A-, Inc.*

professional background does not qualify as special, even if such knowledge is proprietary. We note the Petitioner's assertion that its [REDACTED] software is a market leader within the banking industry and that eight out of ten banks use its software. However, without a substantive explanation or evidence, we cannot conclude that the software itself or the petitioning company's internal methodologies to install and configure its established [REDACTED] software is particularly complex or distinct within the industry, or more importantly that it would take a significant amount of time to train an experienced software developer with similar Java, C/C++ and web development skills to perform the duties required of the position.<sup>6</sup>

The record does not include evidence demonstrating that the Beneficiary was involved in the original conceptualization and design of the Petitioner's proprietary [REDACTED] software. Although the software was designed in-house, it was designed more than 15 years prior to the Beneficiary's employment with the foreign entity. The Petitioner referenced the Beneficiary's team's involvement in developing new features for the [REDACTED] product, but does not articulate how or why his knowledge in performing these tasks is distinct or uncommon from others performing similar work within this industry. The record does not include a comprehensive discussion of the Beneficiary's role or contribution to the development of the Petitioner's software while employed at the foreign entity. It has not been established that his work for the foreign entity requires knowledge that is distinct, noteworthy, or uncommon when compared to other programming professionals in the IT industry.

The Petitioner also claims that the Beneficiary possesses advanced product knowledge and advanced development knowledge. The concept of "advanced knowledge" concerns knowledge of an organization's processes and procedures that is greater than that of the company's other employees. Thus, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge of or expertise in its processes and procedures that is greatly developed or further along in progress, complexity and understanding in comparison to other workers in its operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

The Petitioner asserts that as the Beneficiary is part of the [REDACTED] development team, he has advanced knowledge of how the product works. The Petitioner also asserts that the Beneficiary's quantity of experience sets him apart from his colleagues. We note, however, that the foreign entity's organizational chart shows the Beneficiary reporting to a team lead and the team lead's resume shows that this individual had 11 years of industry experience when starting work at the foreign entity in the position of team lead. This individual started work at the foreign entity more than a year after the Beneficiary started work for the foreign entity. Thus, it does not appear that the foreign entity placed any emphasis on the quantity of time its personnel began working with the proprietary product when it assigned roles within the department, but rather relied on the industry

---

<sup>6</sup> Here we note the Petitioner's reference to its new product, [REDACTED] which it expects will require more development skills from the U.S. professional services team. However, the record does not include sufficient information regarding this product and the Petitioner does not indicate that the Beneficiary will spend any specific amount of time working on the development of this product.

*Matter of I-A-, Inc.*

experience held by each individual.<sup>7</sup> The Petitioner does not articulate why the Beneficiary's two years of experience with its product should be considered advanced knowledge when compared to the basic software programming knowledge possessed by others within the department. Again, the Petitioner does not provide probative evidence of the Beneficiary's training or explain and provide detailed evidence of the specific knowledge that sets the Beneficiary apart from others working within the foreign entity's Inbound Data Access department.

The Petitioner also refers to the Beneficiary's advanced development knowledge and contrasts this knowledge with the lack of development knowledge of the Beneficiary's proposed two team members at the U.S. entity, whose knowledge is claimed to be more narrowly focused on the Petitioner's product. The Petitioner does not articulate how the Beneficiary's extensive, but general, software development knowledge gained primarily outside the petitioning organization, qualifies as advanced knowledge of the Petitioner's processes or procedures. The record does not show that the Beneficiary's development knowledge is greater than his team lead or the other members of his team at the foreign entity. We observe further that although the Petitioner references the roll out of a new product, [REDACTED] the Petitioner does not indicate that the Beneficiary will be primarily involved in any sort of development if employed at the Petitioner but rather would spend 85% of his time gathering requirements, building [REDACTED]-based solutions, and configuring [REDACTED]. Again, the Beneficiary's development knowledge is not specialized knowledge as it would appear that experienced software development professionals with the same common skillset would be able to quickly attain any requisite knowledge to perform development tasks at the foreign entity or at the Petitioner's U.S. offices.

The record does not support the Petitioner's claim that the Beneficiary has advanced product or development knowledge of its products, processes, or procedures. Here, the Petitioner has not submitted evidence of the duties and training of any of the other employees in the Beneficiary's department. Accordingly, we cannot distinguish the Beneficiary's employment and experience within the foreign entity's Inbound Data Access department with any of its other employees.<sup>8</sup> The record here does not include probative evidence that the Beneficiary's knowledge is apart from the basic knowledge possessed by others within the company.

We have reviewed the statements provided by the Petitioner's clients in the banking industry, who all uniformly stated that the Petitioner's professional services consultants have specialized knowledge. These statements include almost identical language and as a result of the similarities, we have concern that the language used is not the authors' own. The probative value of these documents is further diminished because the authors do not provide any explanation of why the

---

<sup>7</sup> The team lead's resume shows 11 years of industry experience when starting work at the foreign entity, while the Beneficiary possessed 7 years of industry experience.

<sup>8</sup> As noted above, the Beneficiary's tenure at the foreign entity alone is insufficient to establish that the Beneficiary has either advanced or special knowledge; especially when other members of the Inbound Data Access department have either a similar amount of experience (20 months) or have been placed in higher positions without any training or knowledge related to the petitioning organizations products.

(b)(6)

*Matter of I-A-, Inc.*

knowledge of the Petitioner's professional services consultants is specialized as defined in the regulations.

We have also reviewed the letter signed by [REDACTED] submitted in response to the Director's RFE. While we recognize that the Petitioner's [REDACTED] software has many plug-in modules and thousands of configurable parameters, [REDACTED] does not support his conclusion that the Petitioner's consultants must possess "deep product knowledge." Most companies that develop and sell a software product have internal methodologies to install and configure their software. Here, the Petitioner does not provide sufficient probative evidence demonstrating that the Beneficiary's combination of professional experience, project assignments, and knowledge of its proprietary software and methodologies has resulted in his possession of knowledge that is distinct or uncommon compared to similarly employed workers in the industry or within the petitioning company. The Petitioner also has not established that the Beneficiary's knowledge is greatly developed or further along in complexity, and understanding than is generally found within the employer. As determined above, the Beneficiary does not satisfy the requirements for possessing specialized knowledge.

The Petitioner may find the Beneficiary to be an ideal fit for their organization based on his skills and experience. However, these traits do not establish the Beneficiary's eligibility for L-1B classification. Merely establishing that the Beneficiary has held and will undertake an important position will not satisfy the Petitioner's burden of proof. The Petitioner must still submit evidence to establish that it will employ the Beneficiary in a specialized knowledge capacity. While the Beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge; the regulations specifically require that the Beneficiary possess an "advanced level of knowledge" of the organization's processes and procedures, or a "special knowledge" of the company's product, service, research, equipment, techniques, or management. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). In the present matter, the Petitioner's claim appears to be based primarily on the Beneficiary's tenure with the company, which has resulted in greater familiarity with the Petitioner's software and methodologies, but not at a specialized knowledge level.

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. *See* Section 214(c)(2)(B) of the Act.

### III. L-1 VISA REFORM ACT

The next issue to be discussed is whether the Petitioner has provided evidence of its compliance with the L-1 Visa Reform Act.

Section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (the "L-1 Visa Reform Act"), in turn, provides:

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 specific to the petitioning employer is necessary.

Section 214(c)(2)(F) of the Act is applicable to all L-1B petitions filed after June 6, 2005, including petition extensions and amendments for individuals that are currently in L-1B status. *See* Pub. L. No. 108-447, Div. I, Title IV, § 412, 118 Stat. 2809, 3352 (Dec. 8, 2004).

Assuming *arguendo* that the Petitioner had established that the Beneficiary possesses specialized knowledge, the terms of the L-1 Visa Reform Act would still mandate the denial of this petition. The Director noted in the decision that as “the evidence does not establish that the proposed employment qualifies as requiring specialized and/or advanced knowledge,” the Petitioner has not established that the placement of the Beneficiary at the worksite of unaffiliated employers is not labor for hire.

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel nor the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

If a petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As a threshold question in the analysis, USCIS must examine whether the beneficiary will be stationed primarily at the worksite of the unaffiliated company. *See* section 214(c)(2)(F) of the Act. In this matter, the Petitioner indicated on the Form I-129 and in accompanying statements that the Beneficiary will work at its clients’ locations. The Petitioner provided a five-month itinerary showing the Beneficiary would travel to five different facilities staying at each facility for approximately two or three weeks.

(b)(6)

*Matter of I-A-, Inc.*

Based on this information it appears the Beneficiary will be primarily employed as a consultant at the worksites of unaffiliated employers, thereby triggering the provisions of the L-1 Visa Reform Act. The Petitioner therefore must establish both: (1) that the Beneficiary will be controlled and supervised principally by the Petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. See section 214(c)(2)(F) of the Act.

Thus the Petitioner must establish that it would principally control and supervise the Beneficiary at the clients' worksites and must demonstrate that the Beneficiary's offsite employment is connected with the provision of the Petitioner's product or service which necessitates specialized knowledge that is *specific to the petitioning employer*. If the Petitioner does not establish both of these elements, the Beneficiary's employment will be deemed an impermissible arrangement to provide "labor for hire" under the terms of the L-1 Visa Reform Act.<sup>9</sup>

Here, the Petitioner has provided four emails purporting to be from four different client entities. Each statement includes language that the entity does not have an employment relationship with the Petitioner's employees and that the employees placed at their worksite will be supervised by the Petitioner's other employees, and further that the bank is not involved in the day-to-day supervision of the Petitioner's personnel. The record, however, does not include copies of the contracts, licenses, or sales agreements, governing the work to be done by the Beneficiary at the clients' worksite.

Without probative evidence documenting the nature of the services to be provided with respect to the [REDACTED] software, and any restrictions the Petitioner's clients have established regarding the employment, supervision, or control of the Beneficiary, the Petitioner has not established that it will principally control and supervise the Beneficiary. The record is deficient in this regard. Again, "going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). While we acknowledge the emails provided, the contracts referenced within the emails have not been submitted. Accordingly, we cannot make an informed determination on the Petitioner's supervision and control of the Beneficiary's work. Additionally, without the contracts or other probative evidence, the Petitioner has not established that the installation and implementation of the software and/or the consulting the Beneficiary will provide requires the assignment of employees who possess specialized knowledge of the Petitioner's software or methodologies of the petitioning company.

Overall, the Petitioner has not shown that any of the products or services to be supported or enhanced will require the application of the Petitioner's own technologies beyond using the company's standard methodologies for project development and delivery. It is incumbent upon the Petitioner to establish that the position for which the Beneficiary's services are sought is one that

---

<sup>9</sup> The Director did not address whether the Petitioner had established that it would principally control and supervise the Beneficiary at the clients' worksites.

primarily requires knowledge specific to the Petitioner. Here, the Petitioner has not provided corroborating evidence demonstrating that the Beneficiary's placement with the unaffiliated employers is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Again we note that the two other professional services consultants did not appear to have any specialized knowledge of the Petitioner's proprietary software when hired, and further that the Petitioner has not submitted evidence of the training or offered explanations regarding how these individuals are able to perform the duties required. Upon further review, without the sales contracts and/or licensing agreements, it is not clear that the sale or licensing of the Petitioner's proprietary software actually requires the Petitioner's personnel to install, configure, or enhance it.

Accordingly, the Petitioner has not met its burden of establishing that the Beneficiary's placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

#### IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 136; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of I-A-, Inc.*, ID# 17550 (AAO July 18, 2016)