



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

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

MATTER OF K-I-, INC.

DATE: JULY 26, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as an MES 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 will 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 assignment to an unaffiliated employer’s facility 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 Beneficiary possesses specialized and advanced knowledge of its methods, processes, and techniques for specific project execution and that it would be unable to find anyone else with his deep knowledge of its processes, procedures, and methods for that specific project execution. The Petitioner states that the evidence already submitted establishes the Beneficiary’s eligibility and that it has no additional material to supplement the record. The Petitioner maintains that it has established that the petition should be approved under the preponderance of the evidence standard.

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

#### I. LEGAL FRAMEWORK

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

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 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.

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## 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>1</sup>

### A. Evidence of Record

The Petitioner filed the Form I-129 on May 21, 2015. The Petitioner stated that its gross revenue is over \$400 million and that it currently employs 9000 worldwide. On the L classification supplement to the Form I-129, the Petitioner indicated that the Beneficiary will work offsite at [REDACTED] and explained that it “provides IT, ERP, SAP, Oracle and Sox compliance services to [REDACTED], as if [the Petitioner] was an in-house IT shop.” The Petitioner also noted that the Beneficiary had worked for [REDACTED] from May 2004 to July 2007, as a software engineer, and again from September 2013 to the present.<sup>2</sup> The Petitioner explained further that it employed the Beneficiary in the United States as a Project Leader in H-1B classification from July 2007 to September 2013.

In a letter submitted in support of the petition, the Petitioner stated that it, along with its parent company, “execute software development projects” and it “works with 60+ Global Automotive companies, 15+ leading energy & utility companies, 70+ Global Manufacturing companies and 8 of the top ten semiconductor companies to develop innovative IT solutions in various areas.” The Petitioner asserted that the Beneficiary was being transferred “because of his specialized and advanced knowledge of the execution of the [REDACTED] for [REDACTED]” The Petitioner explained that “[REDACTED] is a proprietary [REDACTED] application used to manage the manufacturing of engines at over 35 plants all over [the] world” and that it and the Beneficiary have worked on this project for many years. The Petitioner explained further that [REDACTED] a “multi technology application based on FlexNet Framework, involves Machine Integration, PLC programming, ERP interfaces, JOB tracing on the shop floor using technologies like Dot Net, Java, Oracle, Maximo, MQ Series, View Ease tools.”

The Petitioner identified the Beneficiary’s day-to-day roles and responsibilities at the foreign entity as follows:

- Configuration Management - Establish and maintain consistency of each product element of [REDACTED] like modules/codes/components/databases/hardware/documents etc. in relation with its revisions, requirements, design and operational

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<sup>1</sup> The Petitioner submitted evidence including documentation of its client’s product, 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.

<sup>2</sup> In response to the Director’s request for evidence, the Petitioner identified the Beneficiary’s position at the foreign entity when he returned to India in September 2013, as an MES consultant.

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information. Control and monitor product element movement between different environments. Execute and record impact with each product element in different environments.

- Release Management – Track, group, monitor, execute and separate product element of [REDACTED] to pre-defined release cycles, hot patches, custom patches. Be a part of central control board of [REDACTED] to define priorities of the deliverable elements and central investigation board to monitor and apply assignments for deliverable elements.
- Build Automation – Prepare Final [REDACTED] Releases/Patches as per release cycles with automated and manual processes. Distribute packages, documentation and other elements in regard of all Releases. It used specific tools like FlexNet GPM & Process Builder Utilities, FlexNet MPI, RegReplace, Documentum Portals and Wiki Portals apart for regular release management tools.
- Quality Management – Monitor, evaluate, verify and confirm various aspects of [REDACTED] Application with respect to standards, regulations and Performance. Functional Testing verifies and confirms every part of software to its requirements.
- Performance Testing – Monitor responsiveness and stability of software at minute [sic] levels with different workload for high performance as per Standards and Regulations defined by central control board of [REDACTED]. It also defines scalability, reliability and resource usage levels of the software. This [sic] results are important to the plants all over world to improve efficiency in the execution and throughput.
- Architecture Management – Manage, define, test and improve mainly hardware architecture for [REDACTED] application. [REDACTED] uses multiple complex sets of Small, Medium and Large level of architectures consist [sic] of database servers, application servers, web servers, desktop clients, workstation clients, handheld clients on scanner, printer etc. Many of the servers are clustered, NLB based or Stand-alone with virtual and real machines. Define the architecture as per the plant's needs and provide advice with regards to the test results from performance testing.
- [REDACTED] Deployment Analyst, Advisor and Trainer – Carry out the analysis of targeted Architecture for various plants worldwide for production and test setups. Provide advice on selection and processes to be followed. Provide training for the deployments in the test location and moving software to productions level.
- Project management – Manage teams for plant implementation of [REDACTED] with respect to task distribution, monitoring, administration, billing etc.
- Client Communication – Present reports to clients for day to day, weekly, monthly activities [sic]. Participate in team meeting to contribute in relation with release management, configuration management, architecture management, quality management and testing elements. Be a bridge between [the Petitioner] and the client.

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The Petitioner noted the Beneficiary's academic credentials and asserted that he "has specialized and advanced knowledge of [REDACTED] and that "[h]is education, qualifications and the experience gained at [the petitioning organization's family of companies] working on the [REDACTED] project, will be of tremendous use in the position offered to him at our company." The Petitioner claimed that "[i]t would be unfeasible to train a US worker in the knowledge that [the Beneficiary] possesses, since the knowledge was gained overseas and required at least one year of experience at [the] foreign employer in India to gain it."

The Petitioner stated that in the capacity of MES consultant for the U.S. entity, the Beneficiary will "implement[,] manage and improve quality of application and Releases and Build Distribution Network" and "lead the Quality and Release Management while conducting business quality analysis and performance analysis and guide them [*sic*] with the business and technology roadmap." The Petitioner claimed that the Beneficiary is an expert in the field of Diesel Engine and Component Manufacturing Execution System (MES) design, development, and testing operations. The Petitioner repeated the day-to-day responsibilities it had listed for the foreign entity as the responsibilities the Beneficiary will perform in the United States. The Petitioner added one additional duty, indicating that the Beneficiary will also be responsible for "all the major and minor builds released from first [REDACTED] release till date as well as maintaining all the environments required for development, testing, packaging, releases and deployment."

The Petitioner maintained that "the job duties require specialized and advanced knowledge of the [REDACTED] project execution which can only come from working on this project for at least one year." The Petitioner stated that the Beneficiary had been selected because of his depth and breadth of knowledge of [the petitioning organization's] execution of the [REDACTED] project. The Petitioner emphasized the Beneficiary's specialized and advanced knowledge of the MES technology for the past seven years, his extensive experience in MES Application FlexNet & MPI, Configuration management and release management, and his [REDACTED] experience of over seven years providing essential domain and practice knowledge. The Petitioner claimed that the Beneficiary had been working on this project since its initiation phase and had "solely built all the major and minor builds released from first [REDACTED] Release till date."

The Petitioner also provided a brief description of different frameworks, tools, and software used in the manufacturing industry and claimed the Beneficiary had expertise in these components. The Petitioner referenced third-party websites that provided additional details regarding the different industry software. The record also included an organizational chart which shows the Beneficiary as the Project Lead in the MES division on the [REDACTED] team, reporting to an individual without a title in the BFSI division on team RTSA, who then reports to a senior project manager in the same BFSI division on the RTSA team. The chart does not show other staff assigned to the same department or project. The Petitioner labeled this as a "foreign organizational chart" dated April 1, 2015.

The initial record also included a master services agreement between [REDACTED] and the foreign employer, effective January 1, 2015, and a document providing an overview of the project titled [REDACTED] This document explains the general functionality of an MES

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within a manufacturing plant's systems hierarchy and provides background on the [REDACTED] project. The project document explains that [REDACTED] engine assembly plants have previously used different, plant-specific solutions for MES which had led to change management issues, operational risks, and difficulties in finding technical support resources. [REDACTED] was developed to ensure standard functionality of MES across plants and is built using the following technologies: servers/databases (Windows Server, VMware, Oracle, SQL Server); MES App/Development Tools (Apriso, FlexNet, Microsoft.net and Microsoft Visual Studio); web and interface tools (Microsoft IIS, XML, HTML, Javascript, Microsoft Office); and quality and release tools (Rational Quality Manager, ClearQuest, Rational ClearCase, Wiki and Documentum).

In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary returned to India in September 2013, "to work extensively and exclusively" on [REDACTED] as an MES consultant. The Petitioner reiterated that [REDACTED] is a proprietary [REDACTED] application used to manage the manufacturing of engines at over 35 plants all over the world. The Petitioner asserted that the Beneficiary is a subject matter expert in automating build and deployment processes and has attained domain knowledge in the Manufacturing Execution Systems, Diesel Engines and Components, and Engine Calibrations by virtue of his involvement in projects in these domains. The Petitioner repeated information previously provided in its letter submitted in support of the petition and provided an allocation of the Beneficiary's time to be spent on the various duties previously provided. The Petitioner noted that the Beneficiary was selected for the proffered position based on his experience with components and software within this domain. The Petitioner also described the Beneficiary's knowledge as follows:

Typically less than 1 person per 80 to 100 [company] employees is considered unique or in possession of uncommon (i.e. specialized) knowledge. You will note that any time we have approximately 9000 employees worldwide (of which about half are deployed on US client projects). In the USA, we have approximately 450+ employees, and including our US based affiliates, we have 750+ employees. Of these total employees, only about 1% to 3% are considered to have knowledge that is "uncommon" (i.e. advanced and specialized).

[The Beneficiary's] specialized and advanced knowledge is derived from 3 sources: (i) the foundation of her [sic] knowledge is his education, his 16+ years of experience in this field and the training that he received at [the company;] (ii) this knowledge has become more focused, specialized and advanced as he has worked as an MES Consultant for 7+ years; (iii) he has knowledge that is even more focused and unique (i.e. highly specialized and advanced) since he has worked exclusively on this project for our client [REDACTED]. Thus, he does have specialized and advanced knowledge that is required in the USA.

The Petitioner explained that the Beneficiary will "work closely with [REDACTED] management, in understanding, determining and articulating the need for the requirements" and that he "works closely with [the foreign employer] HR, delivery team and finance to put together the proposal,

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which he submits, negotiates and closes.” The Petitioner asserted that the Beneficiary “will work very closely in project execution and delivery” and that “[t]his specialized and advanced knowledge can only be gained by at least one year of in-house overseas employment, doing these activities and working on this project for [REDACTED]”

The Petitioner also submitted a letter from the Beneficiary’s foreign employer, dated July 29, 2015. The foreign employer’s representative stated that the Beneficiary “has a thorough specialized and advanced knowledge and experience in [the petitioning organization’s family of companies] onsite-offshore processes, methodologies and tools on application software development and maintenance” by virtue of his 11 years of project experience within the company, and noted that the typical tenure for consultants is only three years.

The foreign employer also provided a list of trainings the Beneficiary had completed during his time with the foreign entity including the following courses, along with their timing and duration: interpersonal skills in 2005 (2 days); leadership skills in 2005 (2 days); CMMI and OMS overview in 2005 (2 days); test automation and automation tools in 2006 (3 days); and, advanced C# in 2006 (5 days). The foreign employer also listed the Beneficiary’s training obtained while working in the United States including: introduction to Apriso FlexNet 9.4 in 2007 (3 days); getting started FlexNet 9.4 in 2007 (2 days); Process Builder FlexNet 9.4 in 2007 (7 days); ClearCase training in 2008 (1 day); conflict management in 2009 (2 days); FlexNet 9.5 – system administration in 2011 (5 days); FlexNet 9.5 – production in 2011 (5 days); FlexNet 9.5 – job scheduler and executor in 2011 (5 days); FlexNet 9.5 – schema builder in 2011 (5 days); and, project management certification between February and May 2013 (15 days).

On appeal, the Petitioner asserts that the Beneficiary has been employed with it and the foreign entity for more than the required year and reiterates that the Beneficiary gained valuable specialized and advanced knowledge of its methods, processes, techniques for executing specific types of projects for [REDACTED], and that this knowledge is required to properly execute and complete the project in the United States. The Petitioner claims that the Director discredited or disregarded evidence submitted and did not articulate why. The Petitioner repeats that [REDACTED] is a proprietary [REDACTED] application used to manage the manufacturing of engines at over 35 plants all over the world, that the Beneficiary has worked on this application for many years, and that [REDACTED] is one of its most important customers. The Petitioner emphasizes that it is unable to find anyone with the Beneficiary’s deep knowledge of its processes, procedures, and methods for executing the [REDACTED] project. The Petitioner states that it has no additional material to submit to augment the record.

## B. Analysis

Upon review, the Petitioner has not established 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).

As the Petitioner emphasized on appeal, it must prove by a preponderance of evidence that it and the Beneficiary are 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 order to establish eligibility, a 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 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. 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.

When determining whether a beneficiary has special knowledge, we look to the petitioner’s descriptions of this knowledge, including any internal tools, systems, and methodologies that are specific to it. We also consider the weight and type of evidence submitted in support of its claims. Because “special knowledge” concerns knowledge of the petitioning organization’s products or services and its application in international markets, a 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.

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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.

In the present case, the Petitioner does not sufficiently describe the Beneficiary’s specialized knowledge. For instance, the Petitioner indicates numerous times in the record that the Beneficiary has “specialized and advanced knowledge of the execution of the [REDACTED]”. However, the Petitioner does not provide a detailed explanation of this technology in layman’s terms. To the extent that the Petitioner has explained the technology involved, the record indicates that [REDACTED] company-wide version of an MES application, a type of system that is widely used in the manufacturing industry. Similarly, the record reflects that this system is built in an environment that involves common third-party technologies such as: servers/databases (Windows Server, VMware, Oracle, SQL Server); MES App/Development Tools (Apriso, FlexNet, Microsoft.net and Microsoft Visual Studio); web and interface tools (Microsoft IIS, XML, HTML, Javascript, Microsoft Office); quality and release tools (Rational Quality Manager, ClearQuest, Rational ClearCase, Wiki and Documentum); and Machine Integration, PLC programming, ERP interfaces, and JOB tracing which uses Dot Net, Java, Maximo, MQ Series, and View Ease technologies. The Petitioner has not identified any aspects about the technologies used or the system itself which distinguishes it from other MES systems used to perform the same manufacturing plant functions. An experienced software engineer who has worked in the manufacturing domain would reasonably be familiar with similar technologies and the functionalities and modules built into the system.

The Petitioner’s attempts to differentiate the Beneficiary’s knowledge from that generally held by other MES consultants are not adequately supported. The Petitioner’s description of the Beneficiary’s current and proposed duties does not convey an understanding of the actual tasks or an explanation of any special or advanced skills necessary to implement and support the system. The information in the record does not identify when the program was conceptualized, or address when the system was enhanced or created, and the Beneficiary’s actual involvement, if any, in these processes.<sup>3</sup>

The Petitioner does not include any information on the amount and type of training required to implement and support the [REDACTED] application. We find, for example, that the foreign employer

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<sup>3</sup> According to the Beneficiary’s resume, he received training in [REDACTED] 2.8 and 3.10” and he lists only these two versions of [REDACTED] under his “Technology Experience.” This information suggests that he was not involved in the initial design or enhancement of the system, despite his involvement in its deployment of the latest versions of the system at client plants. Further, this information undermines the Petitioner’s claim that the Beneficiary “solely built all the major and minor builds released from first [REDACTED] Release till date.”

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provided no information on any training received by the Beneficiary when he returned from the United States to India to work at the foreign entity. We acknowledge the Petitioner's claim that the "specialized and advanced knowledge can only be gained by at least one year of in-house overseas employment, doing these activities and working on this project for [REDACTED]" However, the Petitioner has not submitted details of the Beneficiary's actual activities associated with this program during his work at the foreign employer subsequent to his return from the United States. According to the Beneficiary's resume, his initial involvement with the [REDACTED] project occurred while he was working for the Petitioner in the United States.

Without detailed information on the [REDACTED] program or the required training to effectively use the implement and support [REDACTED] we cannot conclude that knowledge of the system is distinct or uncommon within the manufacturing systems field. Without additional detail, we also cannot ascertain what makes any enhancements to the MES software different from other methodologies used throughout the industry and whose use could be easily imparted to other experienced manufacturing software professionals. Based on the minimal information and evidence submitted regarding the [REDACTED] program and its training requirements, it appears more likely than not that the program is similar to other MES software that requires common IT skills and manufacturing domain familiarity to use the software.

We do note that the Beneficiary had approximately 12 days of training on Apriso FlexNet 9.4 in 2007 and approximately 20 days of training on FlexNet 9.5 in 2011, while in the United States working at the [REDACTED] facility. The Petitioner does not explain how this training assisted the Beneficiary in developing his skills for use on the [REDACTED] program or if FlexNet, a third-party software application, is part of the Beneficiary's foundation for the claimed special knowledge. Moreover, the Petitioner does not articulate how such limited training on third party software would form a basis for specialized knowledge. Upon review, the evidence of record suggests that the Petitioner's technical employees undergo limited short-term training sessions on third-party software. The record does not demonstrate that the Beneficiary or the Petitioner's other technical employees must attend extensive training sessions in the company's processes and methodologies, or intensive training related to their project assignments. It appears that the internal systems and tools used within the petitioning organization's manufacturing segment are reasonably used company-wide by its employees working in this domain, and that these systems and tools are similar to those used industry-wide. While the Petitioner asserts that it detailed how the Beneficiary acquired his specialized knowledge, the evidence does not support the Petitioner's assertion.

We have reviewed the Petitioner's claim that the Beneficiary's MES Application FlexNet, MPI configuration and management and release management experience, as well as his more than seven years of [REDACTED] experience, provided him with essential domain and practice knowledge. The Petitioner emphasizes that it is the Beneficiary's MES consultant work and his exclusive work on the [REDACTED] project for its client, as well as his education and his 16 plus years of experience in this field that is the foundation of the Beneficiary's specialized knowledge. However, the Petitioner does not offer any analysis on how the Beneficiary's day-to-day work experience and minimal training resulted in his specialized knowledge. We recognize that the Beneficiary may have gained

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insight into and familiarity with the petitioning organization's processes while working for its client in the United States and subsequently while at the foreign entity. Based on the evidence submitted, however, 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 manufacturing systems field. The Petitioner has not established that the Beneficiary's work experience either on [REDACTED] and other third-party technologies or as an MES consultant constitutes "specialized knowledge," such that his knowledge is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the manufacturing industry.

We also find that to the extent that the Petitioner provides more specificity with respect to the Beneficiary's knowledge, this evidence reflects that the Beneficiary's knowledge is based more on third-party and client technology and processes rather than the petitioning company's processes and procedures. In the letter submitted in support of the petition and repeated in response to the Director's RFE and on appeal, the Petitioner states that "[REDACTED] is a proprietary [REDACTED] application used to manage the manufacturing of engines at over 35 plants all over [the] world."<sup>4</sup> The Petitioner also emphasizes the Beneficiary's work at [REDACTED] in the United States and his subsequent focus on [REDACTED] project when he returned to work in India. However, the Beneficiary's familiarity with the client's systems and project requirements, while valuable to the Petitioner, cannot form the primary basis of a determination that he possesses specialized knowledge.

We acknowledge the Petitioner's assertion that the Beneficiary has been working on this project since its initiation phase and had "solely built all the major and minor builds released from first [REDACTED] Release till date." However, the Petitioner has not identified when the new generation of MES technology was created, who the Beneficiary worked with, and a detailed description of the Beneficiary's contributions to the technology. Further, 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 individuals in the industry. It is reasonable to believe that all companies develop internal tools, methodologies, and software. Without a substantive explanation or evidence, we cannot conclude that [REDACTED] technology is particularly complex or uncommon compared to MES technology used by other companies in the manufacturing industry, and that it would take a

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<sup>4</sup> Although the Petitioner refers to [REDACTED] as its affiliate and part owner, the record does not include any documentary evidence to support this relationship. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, we note that the Petitioner marked "yes" on the Form I-129 where asked if the beneficiary will be stationed primarily offsite at the worksite of an employer other than the Petitioner or its affiliate, subsidiary, or parent. Therefore, it does not appear that the Petitioner claimed a qualifying affiliate or parent-subsidary relationship with [REDACTED] despite some possible common ownership between the two companies.

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significant amount of time to train an experienced software engineer who had no prior experience with the Petitioner's family of companies to perform the duties required of the position.

We have also reviewed the record to determine if the Petitioner submitted evidence to support its assertion that the Beneficiary had "advanced knowledge" of its processes and procedures. To establish that a beneficiary has advanced knowledge, a 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. As noted above, such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

Here, the Petitioner has not provided sufficient information to compare the Beneficiary's knowledge and the knowledge of the foreign entity's other technical workers. We have considered the Petitioner's implied claim that the Beneficiary's quantity of experience sets him apart from his colleagues. However, the Petitioner has not included evidence demonstrating when the Beneficiary's colleagues were hired, and when they began working on specific projects. Nor has the Petitioner provided detailed information regarding the work they actually performed. The Petitioner does not specify if all of its technical employees are required to train on specific components of the petitioning organization's software and methodologies prior to working for it or prior to working on a specific project and if so the amount of time required for their training. Nor has the Petitioner identified how any of the Beneficiary's training differs from training received by the petitioning organization's other employees. It is not possible to ascertain from the record that the Beneficiary's duties at the foreign entity required special or advanced knowledge, greater than other workers in the MES segment, or greater than others within the petitioning organization. We are unable to make an informed comparison of the Beneficiary's knowledge to the knowledge of his colleagues.

The Petitioner also repeatedly asserts that [REDACTED] is its largest client, it has performed work for this client for many years, and [REDACTED] outsources its IT, ERP, Oracle, and SOX compliance services to the petitioning organization. We acknowledge that any client project executed, by the petitioning company or any other technology consulting company, is unique in that it reflects the particular technological needs and business requirements of the individual client requesting the consulting services. However, all information technology consultants within the petitioning organization would be familiar with the Petitioner's internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. The Petitioner as a practical matter has many employees assigned to work on [REDACTED] projects, and its claim that the Beneficiary is somehow the only employee in the organization currently capable of supporting or upgrading the client's [REDACTED] system is not supported by the evidence. Rather, it is reasonable to conclude that many employees have one year of experience working for this client. Without a more detailed explanation of the Beneficiary's specific knowledge and how his knowledge compares to others, the Petitioner has not established that his history with this client is sufficient to establish specialized knowledge.

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We have also reviewed the Petitioner's general comparisons within its organization submitted to demonstrate that the Beneficiary's knowledge is uncommon or noteworthy when compared to similarly employed workers both within and outside the organization. For instance, the Petitioner vaguely states that only "1% to 3%" of its 9000 employees worldwide hold specialized knowledge and suggests that the Beneficiary fits within this class of special employees. According to the Petitioner's assertion, it is suggested that certain employees are deemed special and advanced by their mere mention and inclusion within a specific class. However, the Petitioner must do more than articulate that a few of its employees hold special and/or advanced knowledge within its overall organization to demonstrate that a particular beneficiary holds specialized knowledge. Merely asserting that the Beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the Petitioner's burden of proof. 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 (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Upon review of the totality of the record, the Petitioner has not submitted sufficient probative evidence demonstrating that the Beneficiary's combination of professional experience, project assignments, and knowledge of the Petitioner's and client's software and methodologies has resulted in his possession of knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company. The record also does not include evidence establishing 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. Additionally, the record does not establish that the Beneficiary's work for the foreign entity either as a software engineer or an MES consultant, required specialized knowledge or that the Beneficiary's duties in the United States working at the [REDACTED] facility will require specialized knowledge.

We do not doubt that the Beneficiary is a valuable employee who is well-qualified for the proposed position in the United States. However, based on the evidence presented the Petitioner has not established that the Beneficiary has specialized knowledge and that he has been or will be employed in a capacity involving specialized knowledge.

### III. L-1 VISA REFORM ACT

#### A. Legal Framework

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

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- (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).

#### B. Analysis

Even if 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 determined that the Petitioner had not established that the Beneficiary's placement at the [REDACTED] facility required specialized knowledge specific to the petitioning organization.<sup>5</sup> The Director concluded that the Petitioner had not established that placing the Beneficiary at the unaffiliated employer's worksite was not labor for hire. The Petitioner does not address this issue on appeal.

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 the petitioner does not 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

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<sup>5</sup> One of the main purposes of the L-1 Visa Reform Act amendment is to prohibit the outsourcing of L-1B intracompany transferees to unaffiliated U.S. employers to work with "widely available" computer software and, thus, help prevent the displacement of United States workers by foreign labor. *See* 149 Cong. Rec. S11649, \*S11686, 2003 WL 22143105 (September 17, 2003); *see also* Sen. Jud. Comm., Sub. on Immigration, Statement for Chairman Senator Saxby Chambliss, July 29, 2003, available at <http://www.loc.gov/law/find/hearings/pdf/00122982476.pdf>, (last visited July 22, 2016).

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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 client's location. Although the Petitioner referenced this client as an affiliate and partial owner, the record does not include evidence establishing any affiliation according to immigration requirements. Thus, we find that the Beneficiary will be primarily employed as a consultant at the worksite of an unaffiliated employer, thereby triggering the provisions of the L-1 Visa Reform Act. The Petitioner therefore must establish both elements cited above. *See* section 214(c)(2)(F) of the Act.

Here, the Director did not address whether the Petitioner had submitted sufficient evidence to establish that it would principally control and supervise the Beneficiary at the client's worksite. We also do not reach this question as the Petitioner has not established 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.

Upon review, the record does not include sufficient probative evidence demonstrating that working in an MES environment at the [REDACTED] facility, when using the client's [REDACTED] software, requires the assignment of employees who possess specialized knowledge of the Petitioner's software or methodologies. It appears that the Beneficiary's knowledge of and work experience within the manufacturing industry and using the client's [REDACTED] software system is what is required to work in the proposed position. It is incumbent upon the Petitioner to establish that the position for which the Beneficiary's services are sought is one that requires knowledge specific to the Petitioner. The Petitioner has not established that its internal processes or methodologies are so complex that they require specific training or extensive experience. Further the Beneficiary's knowledge of the client and its [REDACTED] system is not specialized knowledge specific to the Petitioner.

The Petitioner has not provided probative documentary evidence that it will be providing a product or service to [REDACTED] that requires specialized knowledge or that it requires knowledge that is specific to its products, processes, or methodologies. Overall, the record does not include corroborating evidence demonstrating that the Beneficiary's placement with the unaffiliated employer is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

Accordingly, the Petitioner has not met its burden of establishing that it has complied with the requirements of the L-1 Visa Reform Act.

#### 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. The burden is on the Petitioner to show 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.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of K-I, Inc.*, ID# 17929 (AAO July 26, 2016)