



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

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

MATTER OF K-I-, INC.

DATE: JUNE 27, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an engineering consulting business, seeks to extend the Beneficiary's temporary employment as a technical leader 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary possesses specialized knowledge, or that she 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 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 Director overlooked evidence establishing the Beneficiary's eligibility, compared the proffered position to an occupation listed in the Department of Labor's *Occupational Outlook Handbook (Handbook)* without properly analyzing the submitted evidence, and did not consider the factors and guidance provided in the newly adopted L-1B adjudication policy memorandum.<sup>1</sup> 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.

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<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>.

## 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.

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- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

## II. SPECIALIZED KNOWLEDGE

The first issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether she 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 July 13, 2015. The Petitioner provides engineering and information technology consulting services, employs 450 individuals in the United States, and had gross annual income of approximately \$444 million in 2014. In a letter dated June 29, 2015, the Petitioner provided an overview of its business operations, noting specifically that it had entered into an agreement with [REDACTED] to provide engineering technology solutions and execute the [REDACTED] project. The Petitioner indicated that it uses the [REDACTED] a proprietary tool, in its engineering solutions. The Petitioner explained that the purpose of the [REDACTED] project is "to use [REDACTED] to develop test scripts for the test automation for several different automobile components including the Powertrain, OBD, Chassis, etc."

The Petitioner asserted that the Beneficiary has specialized knowledge of its [REDACTED] and indicated that she would work at [REDACTED] facility as a technical leader. The Petitioner identified the proposed duties and the approximate amount of time spent on each duty and stated that the Beneficiary would use its [REDACTED] to perform each of the following tasks (paraphrased for brevity.):

- Build test specification requirements from vehicle functionality documents for Hybrid & Electric vehicle features. 10%
- Design and develop HIL test plans for new features per project requirements. 10%

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<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.

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- Build prototypes of components and to develop test procedures as well as to conduct tests using software packages and physical testing methods. 10%
- Develop tools to analyze the data from the test results and validate the test results. 10%
- Build HIL models that reflect the hardware and software requirements of the specific vehicle being tested. Supervise and inspect the installation, modification and commission of the HIL systems to ensure they meet the requirements of the project. 20%
- Inspect and test drive vehicles to check for faults with respect to the validation of the embedded software systems and HIL integration. 30%
- Conduct root cause analysis of over 5000 test scenarios to determine OBD compliance and powertrain performance studies. 10%

The Petitioner noted that it had one other employee assigned to this project and this individual designed and implemented test cases and validated vehicle functionality in an HIL verification engineer role, but that this individual did not require the same level of special knowledge of the [REDACTED]. The Petitioner's organizational chart showed the Beneficiary in the position of technical lead with two team members reporting to her.

The Petitioner stated that the Beneficiary was hired by its Indian parent company (the foreign entity) in February 2005 and that during her first year of employment she learned how to use the [REDACTED] and used it under supervision on several projects. The Petitioner stated that the Beneficiary continued to use this program and listed elements of the duties described above pertinent to each of the Beneficiary's specific assignments. The Petitioner also indicated that other individuals worked on the various projects to which the Beneficiary had been assigned and provided a brief statement of job duties for these individuals as well as their academic degrees and salaries.

The Petitioner also included an undated letter signed by the foreign entity's manager of resourcing and titled "Specialized Knowledge Certificate."<sup>3</sup> The foreign entity manager stated that the Beneficiary worked as a technical leader, had a "thorough experience in automotive domain systems and features," performed "MIL/SIL and HIL testing and validation of engine calibrations," and "developed test scripts using Test Stand for Test Automation of Power train / OBD / chassis software for a HIL system." The foreign entity manager stated further that the Beneficiary had been involved in the [REDACTED] project and during her association with this project, had "gained a thorough experience not only in the engine calibrations and systems, but also in some [REDACTED] proprietary tools and software [REDACTED] and [REDACTED]."

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<sup>3</sup> This letter appears to have been prepared in support of the Beneficiary's application for an L-1 visa under the Petitioner's Blanket L petition, which she was granted in February 2011.

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The initial record also included a letter signed on behalf of [REDACTED] confirming its relationship with the petitioning organization and partial purchase orders for engineering services under a master contract described as a “blanket order for services covered by [the Petitioner].”

In response to the Director’s request for evidence (RFE) the Petitioner submitted a letter repeating the Beneficiary’s proposed duties and again listing her prior assignments with the foreign entity. The Petitioner also claimed that its [REDACTED] “is a complex tool that [it] uses to develop and execute comprehensive test plans for the embedded software systems used by [REDACTED] in its automobiles.” The Petitioner asserted that only someone with a background in embedded software systems, the standards related to the software systems, and the proprietary tool can properly customize its proprietary program for a client’s use. The Petitioner maintained that it would take a minimum of one year to train someone to competently execute the Beneficiary’s duties on the [REDACTED] project.

The Petitioner also submitted a list showing that the Beneficiary had attended 19 training sessions on different topics since she began her employment with the foreign entity in March 2005.<sup>4</sup> The Beneficiary initially received training for five days on the [REDACTED] to learn a graphical programming language. She completed her second training course, in [REDACTED] (a programming environment used to develop test and control systems) ten months later in January 2006. In the years that followed, the Beneficiary received several additional one- to five-day trainings on various topics. Eight of the nineteen training sessions required only one to four hours of attendance. The list shows that the Beneficiary had one four-day training session on a [REDACTED] in April 2007, and one five-day training session on [REDACTED] in July 2007. In a letter signed by a group manager on the foreign entity’s behalf, the manager confirmed the Beneficiary’s experience on various projects and the number of employees she worked with while employed at the foreign entity.

On appeal, the Petitioner submits previously submitted documentation and asserts that it has met its burden of proof with a preponderance of evidence.

**B. Analysis**

Upon review of the petition and the evidence of record, including the Petitioner’s appeal, we conclude that the record does not establish that the Beneficiary possesses specialized knowledge or that she 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

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<sup>4</sup> Nine of the nineteen training sessions appear to have occurred subsequent to the Beneficiary’s entry into the United States.

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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.

In the present case, the Petitioner asserts that the Beneficiary has special knowledge of the company’s [REDACTED] and its application in developing and executing comprehensive test plans for [REDACTED] automobile embedded software systems. The Petitioner, however, does not provide a detailed explanation of its [REDACTED] technology in layman’s terms or any documentary evidence related to this technology. We acknowledge that the Petitioner stated that this technology allows it to automate the testing process, to enhance its [REDACTED] to update the hardware-in-loop (HIL) model, and to implement automated scripts; however, the description provided does not convey an understanding of these components or an explanation of any special skills necessary to use the program. The

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description does not identify when the program was conceptualized, the platform it was built on, or how the software was created and the Beneficiary's involvement, if any, in these processes. The Petitioner does not include any information on the amount and type of training required to use the program. Without detailed information on the program or the required training to effectively use the program, we cannot conclude that knowledge of the program could be considered distinct or uncommon within the software testing field. Without additional detail, we also cannot ascertain whether it is similar to other testing methodologies that are used throughout the industry and whose use could be easily imparted to another experienced software testing professional. Based on the minimal information and evidence submitted regarding the [REDACTED] and its training requirements, it appears more likely than not that the program is similar to other testing software that requires limited or no training and relies on familiarity to use the software.

We do note that the Beneficiary had five days of training on [REDACTED] and four days of training on a [REDACTED] in 2007, two years after she was first employed by the foreign entity.<sup>5</sup> The Petitioner does not articulate how such limited training would form a basis for specialized knowledge. Upon review, the evidence of record suggests that the Petitioner's technical employees undergo only limited short-term training sessions. 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. The Petitioner also does not identify how any of the Beneficiary's training is different from training received by other employees. It appears that the internal systems and tools used for the petitioning organization's automotive segment are reasonably used company-wide by employees working in this industry segment. While the Petitioner asserts that it detailed how the Beneficiary acquired her specialized knowledge, the evidence does not support the Petitioner's assertion. The record does not include probative evidence 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 or electrical engineer who had no prior experience with the Petitioner's family of companies to perform the work described.

We have reviewed the Petitioner's claim that it is the Beneficiary's "hands-on-experience" with various programs and components that demonstrate how the Beneficiary acquired specialized knowledge. And we have considered the descriptions of various projects and the Beneficiary's duties relating to those projects. However, the Petitioner does not offer any analysis on how the Beneficiary's day-to-day work experience resulted in her specialized knowledge. We recognize that the Beneficiary may have gained insight into and familiarity with the petitioning organization's

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<sup>5</sup> Here we note an inconsistency between the Petitioner's list of the Beneficiary's training sessions showing she was trained on these components in 2007, and the foreign entity's claim that during the first year of the Beneficiary's employment, in 2005, she learned how to use the [REDACTED]. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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products and processes during her tenure at the foreign entity. But the Petitioner has not established that the Beneficiary's work experience on various projects resulted in knowledge that is distinct, noteworthy, or uncommon in comparison to the knowledge of other similarly employed workers in the automotive testing industry. Again, the Petitioner does not detail what aspects of its software tool or other programs are complex, require specific training, and repeated supervised use. Simply stating that this is so without underlying explanations or evidence is insufficient. Based on the evidence submitted, 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 automotive testing technology field. The Petitioner has not established that the work performed and to be performed requires more than a brief period of training and some initial supervision. The Petitioner has not supported its claim that it would take a minimum of one year to train someone to competently perform the work described.

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. It is reasonable to believe that all companies develop internal tools, methodologies, and software. Without a substantive explanation or evidence, we cannot conclude that the petitioning company's internal methodologies to test the embedded software systems used by [REDACTED] in its vehicles is particularly complex or uncommon compared to testing modules used by other companies in a similar industry, and that it would take a significant amount of time to train an experienced software or electrical engineer to perform the duties required of the position.

We have also considered whether the Beneficiary possesses advanced 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.

We note here that the Petitioner claims that it offered a comparison of the Beneficiary's knowledge to others working on each of the projects to which the Beneficiary was assigned. Upon review, however, the Petitioner provides only a brief statement regarding the job titles and duties of the other employees on each of the projects and identifies their academic degrees and salaries. The information provided is insufficient to compare the Beneficiary's knowledge and the knowledge of the foreign entity's other workers on these projects. The Petitioner does not specify if these other employees were required to take specific trainings prior to working on a specific project and if so the amount of time required for their training. It is not possible to ascertain that the Beneficiary's duties required special or advanced knowledge, greater than other workers in the automotive testing industry, or greater than others within the petitioning organization.

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We have also considered the Petitioner's claim that the Beneficiary's quantity of experience sets her apart from her colleagues. We note, however, that the Petitioner has not included evidence demonstrating when the Beneficiary's colleagues were hired, when they began working on specific projects, when and for how long they received training on specific components of the petitioning organization's software and methodologies, and detailed information regarding the work they actually performed. Again, we are unable to make an informed comparison of the Beneficiary's knowledge to the knowledge of her colleagues. Further, despite the Beneficiary's ten-year tenure with the Petitioner's group, the Petitioner asserts that it would take one year to train a U.S. employee to perform her duties as technical lead, thus suggesting that the knowledge required is not advanced in comparison to that held by other employees already working for the company.

The Petitioner does not explain and provide detailed evidence of the specific knowledge that sets the Beneficiary apart from others working within the petitioning organization's automotive department. We acknowledge the Beneficiary's two awards for productivity and technology excellence. However, the Petitioner does not provide specifics demonstrating how the Beneficiary's contributions and resulting awards are different than those received by other employees. The Petitioner here does not articulate how the Beneficiary gained knowledge not possessed by other similarly-employed workers, other than stating that she has five years of experience working with the [REDACTED]

The record does not include sufficient probative evidence demonstrating that the Beneficiary's combination of professional experience, project assignments, and knowledge of the Petitioner's proprietary software and methodologies has resulted in her 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 the process, complexity and understanding than is generally found within the employer. As determined above, the Beneficiary does not satisfy the requirements for possessing specialized knowledge.

We also note a discrepancy between the foreign entity's initial statement regarding the Beneficiary's work experience and the initial statement the Petitioner submitted. The foreign entity, in a letter that was likely written just prior to the Beneficiary's initial transfer to the United States in 2011, indicated that the Beneficiary through "her association with [REDACTED] for the project" has "gained a thorough experience not only in the engine calibrations and systems, but also in some [REDACTED] proprietary tools and software [REDACTED]" The Beneficiary's list of trainings indicated that the Beneficiary's initial five-day training in graphical programming language was related to the [REDACTED] tool. Notably, the documents prepared in support of the Beneficiary's L-1B visa application, which the Petitioner submitted, did not mention the [REDACTED] at all. On the other hand, the Petitioner listed the projects the Beneficiary worked on using its [REDACTED]. The projects listed include projects for a number of companies, but do not include any work at the foreign entity for or on account of [REDACTED]. In response to the Director's RFE, the foreign entity reiterated that the Beneficiary had been associated with the [REDACTED] project, but also

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enumerated the same projects initially itemized. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See, Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is thus unclear whether the Petitioner is relying on the Beneficiary's familiarity with its [REDACTED] or is relying on the Beneficiary's work with [REDACTED] and its systems and programs as the claimed basis for the Beneficiary's specialized knowledge and the knowledge required of the proffered position.

We have reviewed the articles submitted to establish the complexity of electronics in the modern automotive industry and we understand the importance of testing automotive embedded software systems. The Petitioner maintains that its tools used to test these systems and the knowledge related to using its tools requires knowledge beyond those of a software developer.<sup>6</sup> Again, we recognize that the petitioning organization uses a specific software tool to develop software automated test scripts to test the embedded software systems in vehicles manufactured by [REDACTED]. However, the Petitioner has not submitted probative evidence that the use of this tool requires specialized knowledge. Thus, the Petitioner has not established that the proffered position which requires the use of this tool requires specialized knowledge. The record does not include evidence that the Petitioner's employees must undergo extensive training on this tool or the petitioning organization's other internal systems and methodologies in order to perform the duties of the proposed position.<sup>7</sup> Further, the record does not contain a statement of work or other detailed description of the project on which the Beneficiary will work and thus does not specify the nature of the services the Petitioner is contracted to perform or the need for its employees to use the [REDACTED].

In fact, the [REDACTED] is mentioned only in the Petitioner's and foreign entity's recent statements and is not documented in any supporting materials, or mentioned in the Beneficiary's previous L-1B visa application materials. "[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)).

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

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<sup>6</sup> The service center's decision referenced the Beneficiary's job duties for the foreign entity and determined that they are typical of a software developer as described in the U.S. Department of Labor's *Occupational Outlook Handbook*. Based on this comparison, the Director concluded that there was insufficient evidence to establish that the foreign position requires "a special or advanced level of knowledge in the information technology field." The decision does not address other documentation submitted to corroborate the Petitioner's claim that the work at the foreign entity required specialized knowledge.

<sup>7</sup> The Petitioner's organizational chart shows there are two other team members who will report to the Beneficiary and the Petitioner references one other individual who will perform work on the proposed project. The Petitioner claims that the other team member on this project will work as an HIL verification engineer, a position that does not require the same level of knowledge of the [REDACTED] program. The Petitioner does not include other information or documentation regarding this individual's duties or the knowledge required of those duties. The record does not include sufficient evidence to compare the Beneficiary's proposed role with this individual or with other members of the project team.

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established that the Beneficiary has specialized knowledge and that she has been and would 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”), 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).

#### B. Analysis

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 determined that “[i]nsufficient documentary evidence was presented to show that specialized knowledge specific to [the Petitioner] is necessary in order to perform the work on the [redacted] project.” The Director concluded that the Petitioner had not established that placing the Beneficiary at the unaffiliated employer’s worksite was not labor for hire.

One of the main purposes of the L-1 Visa Reform Act amendment was 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 Jun 10,

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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 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. Based on this information 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 concluded that the Petitioner had submitted sufficient evidence to establish that it would principally control and supervise the Beneficiary at the client's worksite. As noted above, the Director found that the Petitioner had not established that specialized knowledge specific to it would be necessary to perform work on the [REDACTED] project. The Petitioner does not address this issue on appeal.

Upon review, the record does not include sufficient probative consistent evidence demonstrating that testing [REDACTED] embedded software systems requires the assignment of employees who possess specialized knowledge of the Petitioner's software or methodologies. We note again the inconsistent information between the Petitioner's statements and those of the foreign entity relating to the Beneficiary's experience with [REDACTED] tools and methodologies. It appears that the Beneficiary's knowledge of and work experience with [REDACTED] software systems 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 primarily requires knowledge specific to the Petitioner. The Petitioner has not established that its [REDACTED] or other internal methodologies are so complex that they require specialized knowledge. Further, although the Petitioner emphasizes that the [REDACTED] forms the basis of the Beneficiary's specialized knowledge, it has provided no documentary evidence regarding this technology or establishing its claimed proprietary nature.

We have reviewed the letter signed on behalf of [REDACTED] stating that [REDACTED] expects the Petitioner's employees to be professionals and "to have in-depth knowledge of [the Petitioner's] processes and

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practices including detailed expertise and ongoing experience with the Petitioner's technologies and operational techniques and procedures." The letter-writer does not further describe the Petitioner's processes or technologies and does not offer a definitive statement regarding the Beneficiary's knowledge or why it is required for the specific project to which she is assigned.

The Petitioner also submits incomplete purchase orders that do not relate directly to the Beneficiary's proposed position. The record includes evidence that the Petitioner has an ongoing contract to provide services to [REDACTED] but does not include a master agreement between the Petitioner and [REDACTED] the statement of work for the specific project to which the Beneficiary would be assigned, or information relating to requirements of the Petitioner's specific processes, technologies, and procedures. Without this information and probative evidence from the Petitioner we cannot conclude that the Beneficiary's work requires specialized knowledge of the Petitioner's products or services. Overall, the record does not include corroborating and consistent 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 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-I, Inc.*, ID# 17022 (AAO June 27, 2016)