



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

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

MATTER OF P- CORP.

DATE: OCT. 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a three employee “[m]ortgage [b]ank,” seeks to temporarily employ the Beneficiary as a mortgage processor under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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 in a specialized knowledge capacity.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner had not established: (1) a qualifying relationship with the Beneficiary’s foreign employer; and (2) 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 matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record demonstrates by a preponderance of the evidence that the Petitioner and Beneficiary qualify under the pertinent regulations.

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.*

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 (I)(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.

II. QUALIFYING RELATIONSHIP

The Director denied the petition, in part, finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that a beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (I) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
 -
 - (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
 - (J) *Branch* means an operating division or office of the same organization housed in a different location.

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(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

A. Evidence of Record

On the L Classification Supplement, the Petitioner identified the Beneficiary's foreign employer as [REDACTED] and indicated that the Beneficiary has been employed there since March 2013.¹ The Petitioner stated it is a subsidiary of the foreign company.

The initial evidence also included: the Petitioner's certificate of incorporation filed on December 23, 2005 in the State of Delaware; the foreign employer's confirmation of the Beneficiary's employment and assertion that it owns a majority interest in the Petitioner; and the Petitioner's undated letter claiming that as of August 26, 2015, the Beneficiary's foreign employer owned 50.1 percent of its outstanding shares and that [REDACTED] owned the remaining 49.9 percent of its outstanding shares.

In response to the Director's request for evidence (RFE) on the issue of a qualifying relationship, the Petitioner submitted evidence of the foreign entity's incorporation in India on January 4, 2006, copies of auditor's reports on the foreign entity, and accounting notes to the foreign entity's financial statements for the years ending March 31, 2011, 2012, and 2014. These reports do not refer to the foreign entity's ownership of the Petitioner or provide any other information relevant to the claimed qualifying relationship. The Petitioner also submitted copies of its partial IRS Forms 1120, U.S. Corporation Income Tax Return, for the 2013 and 2014 years. The 2013 Form 1120 identified [REDACTED] as the 100 percent owner of the Petitioner's voting stock on the Schedule G attached to the Form 1120.² The Petitioner checked the box "no" on the 2014 Form 1120, Schedule

¹ The Petitioner claims, in response to the Director's request for evidence, that the Beneficiary began his employment with the foreign entity in June 2013. The Beneficiary's resume also indicates that he began his employment with the foreign entity in June 2013.

² The record includes different spellings of this claimed shareholder's first name.

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K, in response to the question asking if a foreign or domestic corporation or other entity owned, directly or indirectly, 50 percent or more of the Petitioner. The Petitioner checked the box "yes" on the 2014 Form 1120, Schedule K, in response to the question asking if an individual owned, directly or indirectly, 50 percent or more of the Petitioner. The record did not include a copy of the Petitioner's 2014 Schedule G attached to the Form 1120.

On appeal, the Petitioner asserts that the "ownership structure percentages (%) are structured so that the Parent Company in India holds majority rule." The Petitioner submits a letter from its accountant dated March 29, 2016, in which the accountant confirms that the foreign entity owns 50.1 percent of the Petitioner and that [REDACTED] owns the remaining 49.9 percent of the Petitioner. The accountant notes that he will amend the Petitioner's 2014 Form 1120 to reflect this ownership and that this information will also be incorporated into the Petitioner's 2015 Form 1120.

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that it has a qualifying relationship with the foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, U.S. Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control.

Here, the Petitioner identifies itself as a corporation authorized to issue 25,000,000 shares of common stock. The record, however, does not include evidence that this stock was issued in 2005 when the Petitioner was incorporated, and if so in what amount and to whom. There is no evidence

in the record that any of the Petitioner's stock was issued to the foreign entity or was transferred to the foreign entity after the foreign entity was incorporated. The record does not include the Petitioner's stock ledger, or evidence of any agreements relating to the voting of its outstanding shares, the distribution of profit, or the management and control of the Petitioner. The record does not include evidence of how the foreign entity acquired the claimed majority ownership in the Petitioner. "[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)). The Petitioner's claim that the Beneficiary's foreign employer owns a majority interest in the Petitioner, is not supported by any documentary evidence of its ownership and control.

Additionally, the letter submitted by the Petitioner's accountant on appeal does not discuss what documentary evidence he reviewed to confirm the Petitioner's ownership. While the Petitioner continues to assert on appeal that it is a majority-owned subsidiary of the Beneficiary's foreign employer, it does not submit corroborating documentary evidence that the Beneficiary's foreign employer owns, directly or indirectly, more than half of the Petitioner and also controls the Petitioner. Without full disclosure of all stock certificates, agreements, and corporate documents establishing when and how the foreign entity acquired its claimed interest in the Petitioner, the Petitioner has not established a qualifying relationship with the Beneficiary's foreign employer.

As the Petitioner emphasized on appeal, it must establish by a preponderance of evidence that it and the Beneficiary are qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not submitted probative evidence establishing that it has a qualifying relationship with the Beneficiary's foreign employer.

III. SPECIALIZED KNOWLEDGE

The next 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.

On the L Classification Supplement to the Form I-129, the Petitioner indicates it is seeking to classify the Beneficiary as an L-1B nonimmigrant. 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.

A. Evidence of Record

On the Form I-129, the Petitioner claims it is a mortgage bank with three employees while also noting on the L Classification Supplement that it employs more than 50 individuals. The Petitioner also asserts on the L Classification Supplement that the Beneficiary has been employed by the foreign entity since March 2013. In an incomplete letter, dated August 26, 2015, the managing director of the foreign entity noted that the Beneficiary had been its full-time employee but left the space for his initial employment date blank. In the same letter, the managing director stated: "we would like to utilize [the Beneficiary's] skills to strengthen our US presence. His specific roles and responsibilities are also enclosed. In summary, he is responsible for."³

In a separate undated document, the Beneficiary is described as the manager, US operations, who is the "middle man between team India and our US bank."⁴ The Petitioner emphasized that the Beneficiary is "well versed in English and US customs," and is able to "smooth the work/culture issues that come up in the banking world with our team." The Petitioner further noted that the Beneficiary "assures that team India understands the tasks at hand and that they are handled as Americans would expect their banking business to be handled." This document lists specific tasks for the manager, US operations, as follows:

- Jr. Processors report to this individual for daily tasks, status, direction and grooming for their position[.]
- Pipeline efficiency – interacts with each LO on status of files, items left to clear. Responsible for scheduling and meeting any and all milestones on files in timely fashion as not to delay a borrowers [*sic*] loan.
- Jr. Under writing-skills for program guidelines and suggested feedback on files and placement of future loan on certain programs[.]
- File submissions – this individual is responsible for scrubbing/QC checking each file that is sent back from borrower. He scrutinizes these items and prepares for delivery to the lender. From there he is the key touchstone between his office and the lender.

³ The letter does not list what the Beneficiary is responsible for. The letter includes several blank spaces or spaces marked with "xxxxx."

⁴ The Petitioner does not clarify if these are the Beneficiary's proposed duties or his current duties. Subsequently, the Petitioner claims that the Beneficiary performs the same duties for both the foreign entity and the U.S. entity.

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In response to the Director's RFE, the Petitioner submitted a letter, dated December 11, 2015, signed by its managing director. The managing director clarified that the Beneficiary had been working with the claimed parent company since June 2013, and prior to that time he had gained six years of experience in the U.S. mortgage industry. The managing director noted that the Beneficiary had previously worked as a junior underwriter for a bank and as a title examiner for a global services company in India. The managing director stated that the Beneficiary "possesses all the detailed knowledge of the processing of residential mortgages which is very complicated and involves various steps to get a file from origination to closure." The managing director stated further that the Beneficiary "is well versed with our processing methods, communication methods and most important our internal tool – [REDACTED] – which we use to track various entities pipelines." He further noted that the Beneficiary has good relationships with his teammates, has good communication skills, and that his skills will help bridge the gap between clients and itself.

On appeal, the Petitioner asserts that the Beneficiary "has certain advanced or special skills in the training of new junior processors in quality control and procedures and processing of the company and holds a Bachelor's Degree (B.A.) in Commerce from India." The Petitioner claims that the Beneficiary's "specialized knowledge has been learned throughout the many years of working in this particular field." The Petitioner notes that the foreign entity is involved in software publishing, consultancy, and supply, and submits an Internet printout from a third party website describing the foreign entity's activities. The Petitioner emphasizes that the Beneficiary held a managerial position for the parent company in India from November 2013 to the present and that this position was managerial and involved specialized knowledge.⁵ The Petitioner claims that since the "development of custom software is proprietary, the [B]eneficiary must possess specialized knowledge to do the job as well as supervise subordinates who themselves do not possess this specialized knowledge." The Petitioner asserts further that it has taken the Beneficiary many years to learn complex systems of custom software and software tailored to specific users.

The Petitioner also submits a letter signed by the managing director of the foreign entity, dated April 28, 2016. The managing director provides a lengthy narrative of the Beneficiary's duties which the Petitioner paraphrases in the brief submitted on appeal as follows:

- Coordinate efforts of at least 5 junior mortgage processors at any given time.
- Train new junior processors with processing knowledge and quality control.
- Cross referencing a mortgage applicant's information provided by the customer.

⁵ The record includes evidence that the Beneficiary entered the United States on August 8, 2014, and left the United States on January 4, 2015. The Petitioner states on the L Classification Supplement that the Beneficiary's foreign employment was interrupted only for vacations in the United States. The Beneficiary's passport shows an admission into India on January 6, 2015, and another admission into the United States on March 12, 2015. The Beneficiary's initial position for the foreign entity, mortgage processor, began June 2013 and continued to November 2013, when he was promoted to Manager – US Mortgage Operations. Thus the Beneficiary held this claimed managerial position, which the Petitioner maintains included specialized knowledge, at most from November 2013 to August 2014 and then for another approximate two months from January 6, 2015, to March 12, 2015. The total period of time he spent in the position is less than one year.

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- Identify applicant's income, pay-stubs, and tax returns are consistent.
- Reconcile potential discrepancies prior to submitting and [sic] mortgage loans.
- Ensure high levels of quality control are accomplished with the team.
- Recommend the termination/firing of junior processors at his own discretion.
- Uses program guidelines and lender overlay requires specialized knowledge.
- Identify critical items in loan which would cause the loan to be denied.
- Maintain the quality of a file following underwriting review.
- Able to use companies [sic] advanced proprietary programs/software which require specialized knowledge.

In the Petitioner's letter submitted on appeal, the Petitioner states that the Beneficiary's "position in the United States is identical to his position in India." The Petitioner also provides a lengthy narrative of the Beneficiary's proposed U.S. duties which is paraphrased, in part, in the brief submitted on appeal as follows:

- Manage sales pipelines for 10 loan officers and delegate responsibilities for a team of 5 processors who are required to report to him as subordinates.
- Mortgage Loan Originators (MLO) depend on him for discretion and judgment.
- Beneficiary has advanced familiarity with guidelines and overlays.
- Familiarity with company's initial loan application via [REDACTED] (data entry origination software)[.]
- Beneficiary audits and delivers to applicants via an [REDACTED] (mortgage application disclosure tool)[.]
- [D]eveloped a system called privoloans.com that helps track the status of a file right from the time it comes to us through the processing stages.
- Rejects loan applications that do not meet compliance standards of industry.
- Differentiate between loan conditions meant to be fulfilled by processors, mortgage loan originators, and mortgage applicants.
- Position in the United States is similar to position in India because the company uses custom software and proprietary knowledge.
- Producing, retention, production, and compliance reports.
- Beneficiary has advanced knowledge of [E]xcel spreadsheet formulas.

The Petitioner also points out that sample reports are being submitted to show that the work is complex and requires specialized knowledge of its policies and procedures. In the Petitioner's letter submitted on appeal, the Petitioner notes that lenders use their own varying sets of lender overlays and underwriting guidelines and emphasizes that the Beneficiary has memorized hundreds of pages of these guidelines and overlays. The Petitioner asserts that the Beneficiary's acquisition of this knowledge through years of experience establishes the Beneficiary's managerial role and is the "foundation for his specialized knowledge, since this knowledge cannot be readily learned or acquired by another individual without significantly disrupting business." The Petitioner claims that the Beneficiary's advanced familiarity with guidelines and overlays and "practicing this advanced knowledge in real situations requires a separate and distinct category of mortgage processor

knowledge.” The Petitioner maintains that “when this advanced knowledge is consistently practiced without error and without risk to the sponsor,” the individual is demonstrating capability that “is special or ‘surpasses the usual’”.

The Petitioner includes samples of Excel spreadsheet reports, and emphasizes that the Beneficiary is able to expand and improve upon these reports without being told to do so.

The Petitioner asserts in the brief accompanying the appeal, that the Beneficiary’s specialized knowledge was acquired after many years of experience working with the company and that the junior processors do not have the Beneficiary’s specialized knowledge. The Petitioner claims that the Beneficiary possesses knowledge proprietary to the organization and that this knowledge involves special or advanced knowledge in the residential mortgage field. The Petitioner reiterates that the Beneficiary has advanced familiarity with guidelines and overlays of the company, has experience in the custom software and programs of the company, and that the knowledge cannot be learned overnight. The Petitioner also submits a chart showing that the Beneficiary acts as the primary contact for loan officers and mortgage lenders, and that the junior processors report to him.

B. Analysis

Upon review, 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, a petitioner must show that the beneficiary 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 a beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding a beneficiary’s specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary’s knowledge. The petitioner should also describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

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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 a given 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 a given beneficiary’s knowledge or expertise is advanced or special, and that the beneficiary’s position requires such knowledge.

Here, the Petitioner has provided general information regarding its business, noting that it provides back office loan processing services.⁶ The Petitioner asserts that the Beneficiary’s experience at the foreign entity provided the foundation of his specialized knowledge. 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.

When determining whether the 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 the Petitioner, and the weight and type of evidence submitted in support of its claims. Here, the Petitioner initially suggested that the Beneficiary’s specialized knowledge is based on knowing the English language, U.S. customs, and understanding the needs of American banking customers. The Petitioner, however, did not reference the software or “proprietary” knowledge used to perform these duties or otherwise state that he possesses specialized knowledge specific to the petitioning organization. In response to the Director’s RFE, the Petitioner adds that the Beneficiary “is well versed with our processing methods, communication methods and most important our internal tool – [REDACTED].” On appeal, the Petitioner adds that the Beneficiary is familiar with the company’s initial loan application via [REDACTED] a data entry origination software. The Petitioner does not explain why the initial record did not refer to any proprietary knowledge, this “internal tool” or third party software.

Moreover, upon review, the Petitioner has neither explained nor documented its internal tools, systems, or methodologies, nor clarified what sets them apart from other loan processing businesses desiring to provide an error- and risk-free service to mortgage lenders. Although the Petitioner claims that the foreign entity is involved in software publishing and consultancy, the record does not include any evidence of the specific software, tools, or systems created by the foreign entity and used by the Beneficiary or the Petitioner. For example, the Petitioner references its use of third party software, [REDACTED]. However, an Internet search reveals a third party, a U.S. company, created

⁶ The record includes a one-year agreement entered into on December 31, 2013, between the Petitioner and [REDACTED] wherein the Petitioner agreed to provide mortgage processing back office services. The Petitioner’s promotional materials indicate that it provides mortgage and accounting services, and in 2014 entered into a partnership with [REDACTED] in India to offer consulting services to Indian companies.

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this software in 1991. The Petitioner submits no evidence that it has modified or otherwise customized this widely available software. Similarly, the record includes no evidence of the foreign entity or the Petitioner's involvement in the creation or customization of the mortgage application disclosure tool () created by (). Additionally, while the Petitioner asserts that the Beneficiary is well-versed in its internal tracking tool, () it does not provide further evidence regarding the development, use, or training needed to use the tool. The Petitioner does not indicate when this tool was developed and further references the Beneficiary's involvement in the development of the tool, without providing any supporting evidence, for the first time on appeal. >

Without a detailed explanation or evidence of the foreign entity and the Petitioner's internal tools, systems, and methodologies, it cannot be concluded that they are particularly complex or different compared to those utilized by other loan processing companies, or that it would take a significant amount of time to train a loan processor to perform the duties required of the position. The Petitioner here also has not sufficiently explained the training or experience requirements deemed to be sufficient for mastery of its product, services, systems, and methodologies. 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.

In the Petitioner's letter submitted on appeal, the Petitioner references the number of lender overlays and underwriting guidelines used throughout the industry and emphasizes that the Beneficiary has memorized hundreds of pages of these guidelines and overlays through his years of experience. However, the Beneficiary's knowledge, learned throughout the years working for other companies in the mortgage industry field, is not specialized knowledge of the Petitioner's product, services, methodologies, procedures, and processes.⁷ The Petitioner has not submitted probative evidence that the Beneficiary's memorization and application of this third party and general industry information is special knowledge of its company product and services, and the application of those products and services in international markets. The record here does not include sufficient evidence demonstrating that the Beneficiary's knowledge is distinct among others of a kind, is distinguished by some unusual quality, or is otherwise uncommon or noteworthy.⁸

The Petitioner also asserts on appeal that it has taken the Beneficiary many years to learn complex systems of custom software and software tailored to specific users and that since the "development of custom software is proprietary, the [B]eneficiary must possess specialized knowledge to do the

⁷ We again observe that the Beneficiary worked as a loan processor for the foreign entity from June 2013 to November 2013, and then was promoted to a claimed managerial position, where he worked until his vacation in the United States from August 2014 to January 2015. Upon his return to India he then worked for an additional two months before his entry into the United States. Accordingly, the Beneficiary spent less than one year at the foreign entity in the claimed managerial capacity that formed the foundation for his claimed specialized knowledge.

⁸ We have reviewed the Petitioner's claim that the Beneficiary consistently applies his familiarity with guidelines and overlays without error and risk to the sponsor, and that in doing so he demonstrates a capability that "is special or 'surpasses the usual'". However, the Beneficiary's reliability in performing his work error-free does not demonstrate specialized knowledge.

job as well as supervise subordinates who themselves do not possess this specialized knowledge.” However, neither the foreign entity nor the Petitioner submits evidence of the custom software or explains the development of any proprietary software. Further, the Petitioner has not identified any training undertaken by the Beneficiary or any of the foreign entity’s employees upon their initial employment that is specific to the foreign entity or the Petitioner’s product or service. The record shows that the Beneficiary immediately began work as a mortgage processor for the foreign entity and was promoted six months later, without benefit of any identified training, to a managerial position that the Petitioner claims involved specialized knowledge. Upon review of the totality of the record, there is no probative evidence demonstrating that the company’s product, services, procedures, and policies are so complex that an experienced mortgage processor could not readily learn and apply them. The Beneficiary cannot be considered a specialized knowledge employee based solely on his education and his short tenure with the organization.

The Petitioner also avers that the Beneficiary “has certain advanced or special skills in the training of new junior processors in quality control and procedures and processing” and that his knowledge of the guidelines and overlays is advanced as compared to others. Because “advanced knowledge” concerns knowledge of an organization’s processes and procedures, 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. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others in the industry or in the petitioning organization.

In this matter, the Petitioner has not submitted sufficient documentation to support its claim that the Beneficiary has advanced knowledge of the Petitioner’s processes and procedures. As observed above, the Petitioner has not detailed its or the foreign entity’s processes and procedures. While the Beneficiary has junior processors reporting to him and the Petitioner references that the Beneficiary will be responsible for training them, the record does not support a claim that these individuals will be trained on processes and procedures that are specific to either the foreign entity or the Petitioner. Again, the record does not include probative evidence of software, tools, or specific processes and procedures that are not commonly found within the industry. The Petitioner has not submitted evidence of any required training for any of its or the foreign entity’s mortgage processors, junior or managerial. We also note that the Petitioner has not offered comparative evidence of the salaries, education, duties, and tenure of other similarly employed workers or otherwise submitted evidence that differentiates the Beneficiary’s knowledge from the other employees within his department or with any other individuals within the foreign organization.

We have reviewed the Beneficiary’s contributions to the foreign entity and Petitioner in terms of analyses and improvement of Excel and other reporting processes. While the Petitioner emphasizes that the Beneficiary has been a valuable employee, the Petitioner has not explained how these contributions evidence special or advanced knowledge of the company’s processes and procedures. This information is of little probative value without a specific comparison of the Beneficiary’s work with his actual colleagues abroad and in the United States. The Petitioner does not explain or

document how the Beneficiary was able to gain his level of knowledge, other than his years of experience within the mortgage industry. Although the Petitioner submits copies of Excel spreadsheets that provide useful information to the Petitioner, the Petitioner does not explain or document how the creation or use of these reports requires advanced knowledge of its processes and procedures. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Upon review, the Petitioner has not established that the Beneficiary's knowledge of its processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

While the Petitioner has not submitted probative evidence that the Beneficiary uses or possesses proprietary knowledge, we also note that possessing proprietary knowledge alone is not sufficient to demonstrate specialized knowledge. We note further that even if the Beneficiary's claimed specialized knowledge is proprietary, the Petitioner must also demonstrate that this proprietary knowledge is either "special" or "advanced" to satisfy the current standard, simply claiming that knowledge is proprietary will not satisfy the statutory standard. That is, the Petitioner must provide detailed and probative evidence to support its assertion that the Beneficiary's knowledge is advanced or uncommon in comparison to his colleagues within the organization or is uncommon or noteworthy within the industry. Here, the lack of specific comparison to the Beneficiary's colleagues and to other mortgage loan processors and supporting evidence demonstrating the Beneficiary's acquisition of the asserted knowledge leaves the record insufficient to establish his eligibility. While the Beneficiary may be a valuable employee, the Petitioner does not sufficiently address how the Beneficiary's work, training, or education elevates his knowledge to knowledge that is noteworthy or uncommon compared to the knowledge possessed by similarly qualified professionals in its industry or in its employ.

Based on the evidence presented, the Petitioner has not established that the Beneficiary has specialized knowledge and that he has been and will be employed in a capacity involving specialized knowledge.⁹ For this reason, the appeal will be dismissed.

⁹ Upon review of the totality of the record, the Petitioner consistently refers to the Beneficiary as holding a managerial position for the foreign entity and states on appeal that the proffered mortgage processor position also includes characteristics of a managerial position. However, the Petitioner's petition clearly states that it seeks to transfer the Beneficiary, a foreign employee with "specialized knowledge" to work temporarily in the United States in a specialized knowledge capacity. Further, as noted above, the evidence of record indicates that the Beneficiary held his claimed managerial position for less than one year due to the considerable amount of time he spent in the United States since his promotion to that position. Finally, the record contains insufficient evidence to support a claim that the Beneficiary was employed in a managerial capacity abroad, as it does not include evidence of the foreign entity's staffing levels or organizational structure to support its claim that the Beneficiary managed subordinate personnel.

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IV. QUALIFYING ORGANIZATION

Beyond the decision of the Director, the Petitioner here has also presented information that casts doubt on its status as a qualifying organization. The regulations define a qualifying organization as one doing business as an employer in the United States. *See* 8 C.F.R. § 214.2(l)(1)(ii)(2). “Doing business,” is defined as the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H). A “shell company” that does not conduct business in a regular and continuous manner is not a qualifying organization.

The Petitioner included a one-year agreement entered into on December 31, 2013, with [REDACTED] wherein the Petitioner agreed to provide mortgage processing back office services. Although the record includes eight invoices for each month beginning May 2015 to December 2015, there is no probative evidence in the record that the agreement was extended. The invoices are issued by the foreign entity to the Petitioner for mortgage processing and miscellaneous services at a location that is different from the Petitioner’s address. The record does not include evidence of the Petitioner’s office or any physical premises at its claimed current address. The Petitioner also refers to its website’s promotional materials as evidence that it “is a US HQ entity with a presence in India” and includes promotional information stating that [REDACTED] has formed a company, identified as [REDACTED] that processes loans for brokers and lending companies across the nation.¹⁰ We also observe that neither the 2013 IRS Form 1120 nor the 2014 IRS Form 1120 indicates that the Petitioner has paid salaries and wages or compensated officers.¹¹

This information raises questions regarding the Petitioner’s status as a qualifying organization. We note here that the Petitioner’s tax returns do not show that it paid rent and the record does not show that the Petitioner owns property. Here, although the foreign entity has issued invoices to the Petitioner, the invoices are addressed to a location different than the Petitioner’s claimed headquarters address in Delaware. We also note the discrepancies in the Petitioner’s number of claimed employees and the lack of probative evidence that the Petitioner actually employs individuals in the United States to perform loan processing services. The record does not include evidence of where the employees work. The Petitioner also acknowledges that it is a “US HQ entity” and submits information that a separate company, [REDACTED] is performing loan processing services for [REDACTED] the company that had hired the Petitioner for a one-year term, expiring December 31, 2014. While the Petitioner may have a minimal presence in the United States, it must establish that it is more than an agent or office of the qualifying organization. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term “doing business”).

¹⁰ The [REDACTED] website indicates that [REDACTED] is doing business as [REDACTED]. There is no evidence in the record that the Petitioner and Peoples Privo Processing are affiliated entities.

¹¹ The Petitioner does include a deduction for payroll taxes paid of \$141 in 2013, and of \$805 in 2014. However, the record does not include evidence of the Petitioner’s actual employees or their roles within the business. The Petitioner has stated that it employs either three or fifty employees in the United States.

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We acknowledge that the Petitioner provided copies of its Forms 1120 for the 2013 and 2014 years, showing the Petitioner had gross receipts and sales, these forms are not certified and the record includes no probative evidence that the Forms 1120 were filed with the IRS. It is also unclear if the Petitioner continues to be an active corporation. With the number of deficiencies and inconsistencies in the record regarding the Petitioner's business and business operations, we cannot find that it is a qualifying organization that is doing business in accordance with the regulations. For this additional reason, the petition cannot be approved.

V. 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 with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P- Corp.*, ID# 8842 (AAO Oct. 4, 2016)