



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

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

MATTER OF K- CORP.

DATE: OCT. 5, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a hair salon, seeks to extend the Beneficiary's temporary employment as its manager (hairstylist operations) 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.

The Director, Vermont Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary possesses specialized knowledge and that he was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by not giving deference to U.S. Citizenship and Immigration Services' (USCIS) prior determination that the Beneficiary is eligible for L-1B classification and did not consider the totality of the evidence in the record in determining that the Beneficiary is not qualified for the benefit sought.

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 an individual 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 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 Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that he was employed abroad and would be employed in the United States in a specialized knowledge capacity.

A. Evidence of Record

The Petitioner filed the Form I-129 on March 10, 2015. The Petitioner stated on the Form I-129 that operates a hair salon established in 1990, with five current employees in the United States and gross annual income of \$323,203 in 2014. The Petitioner's Japanese affiliate, which also operates a hair salon, employed the Beneficiary from June 2010 until his transfer to the United States in December 2012.

In a letter submitted in support of the petition, the Petitioner stated the Beneficiary will continue his employment as manager of hairstylist operations for its salon, and for its affiliate [REDACTED] which operates a salon in New Jersey. The Petitioner stated that both salons "are readily recognized throughout the region as experts in Japanese hair straightening, a styling specialty unique to Asian salons."

The Petitioner described the Beneficiary's duties as follows:

In the position of manager of [REDACTED] [the Beneficiary] provides training to all of our hairstylists in the various traditional and contemporary Japanese hairstyling techniques for our upscale clientele. These techniques include Nihongami, Shimada and Japanese [REDACTED] Straightening. As stated above, these specialty hairstyles are unique to Asian salons and require the use of special combs, supplies and products, such as a special wax called Bintsuke. Due to the facts that his skills and knowledge of Japanese hair styling techniques are not easily learned, and it is a practical impossibility to find persons with this skill set among the domestic job market, we believe that [the Beneficiary] was the most suitable person to fill the offered position. In carrying out the above duties, he is solely and ultimately responsible for our entire hairstyling operation with a particular emphasis in training our hairstylists in all traditional and contemporary Japanese hairstyling techniques for our upscale clientele.

The Petitioner explained that the Beneficiary "possesses a unique knowledge of Japanese hairstyling and our company's proprietary hairstyling procedures as well as the internal procedures of our overseas company." The Petitioner stated that the New York metropolitan area has "very few salons that perform Japanese hair styling."

The Petitioner's initial evidence also included a copy of a letter dated March 19, 2012, which the Petitioner had provided in support of the Beneficiary's previous L-1B petition. In that letter, the Petitioner explained that it sought to transfer the Beneficiary to replace [REDACTED] (the

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Petitioner's owner and "de facto Manager of [REDACTED]"), who at the time was planning a temporary relocation to [REDACTED] to manage the Petitioner's affiliate salon.

The Director issued a request for evidence (RFE). The Director instructed the Petitioner to provide evidence that the Beneficiary has specialized knowledge and evidence that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. The Director acknowledged the Petitioner's letter but determined that it did not substantively describe the Beneficiary's foreign or U.S. positions or his claimed specialized knowledge. Further, the Director questioned the Petitioner's continuing need for the Beneficiary to provide training to its U.S.-based stylists.

In response, the Petitioner objected to the issuance of the RFE, citing to two USCIS memoranda in support of its claim that the Director should have given deference to USCIS' previous determination that the Beneficiary is eligible for L-1B status.¹ The Petitioner emphasized that USCIS approved the initial petition after issuing an RFE in 2012 and emphasized that the Director's RFE in this matter did not identify any material error, change in circumstances, or new material information.

The Petitioner also asserted, "in addition to advanced technical skill and knowledge of the [REDACTED] Japanese hair straightening technique, the Japanese cultural component of that knowledge is relevant." In support of this claim that the Beneficiary's specialized knowledge is, in part, cultural, the Petitioner cited to *Fogo de Chao (Holdings) Inc. v. U.S. Dep't of Homeland Sec.*, 769 F.3d 1127 (D.C. Cir. 2014).

The Petitioner submitted a letter from the Beneficiary in which he outlined his duties in the U.S. duties as follows:

1. Supervising and training American employees on Japanese service, hairstyles, and treatments. (65%)
 - Supervising at [the Petitioner] every day, and once a month at [REDACTED]
 - Training hairstylists to become experts in Japanese hair straightening – a standout feature of the group's salons. This also includes training on traditional and contemporary Japanese haircuts and styling techniques, shiatsu scalp massage, and detail-oriented, Japanese-style customer service.
 - Overseeing staff to make sure company standards, policies and procedures are followed
 - Provide regular feedback to improve techniques and services

¹ See Memorandum from William R. Yates, Associate Director for Operations, HQOPRD 72/11.3, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity* (Apr. 23, 2004), <https://www.uscis.gov/laws/policy-memoranda>; USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Nov. 18, 2013), <https://www.uscis.gov/laws/policy-memoranda>.

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- Continued education on new products, their application, and hairstyles on trend
- 2. Researching and selecting hair products to sue and sell at the salon (10%)
- 3. Providing individual hair services to select clients (25%)

The Beneficiary stated that, in Japan, he spent 30% of his time supervising employees and managing the daily operations of the salon, 45% of his time training company personnel and providing continuing education in the latest Japanese hairstyling techniques, 10% of his time researching and selecting products, and 15% of his time providing hair services to clients. The Beneficiary emphasized that “[n]o other company employee has the experience with the organization or the skills to train and supervise the other hair stylists,” and that he is “the only employee fully acquainted with the internal procedures” of both entities.

The Petitioner also submitted a more detailed letter from its owner and president, [REDACTED]. In response to the Director’s observation that it was unclear why the Petitioner would require the Beneficiary to continue training its American employees, [REDACTED] stated that this training is primarily in the form of “continued supervised on-the job training with particular reference to the complex and risky Japanese hair straightening technique known as [REDACTED] straightening or thermal reconditioning.” He also noted that due to employee turnover, there is a continuing need for the Beneficiary’s services.

With respect to the Beneficiary’s specialized knowledge, [REDACTED] emphasized that the hair straightening technique it uses is “especially unique to highly skilled Asian salons.” He noted that the Beneficiary also provides training in Japanese contemporary hairstyles requiring a hair thinning technique that is uncommon in the United States, traditional Japanese hairstyles called Nihongami and Shimada, and “luxurious Japanese services like shiatsu scalp massages.”

[REDACTED] stated that the Beneficiary gained seven years of experience with these techniques in a Japanese cosmetology school and salon before being hired by the Petitioner’s Japanese affiliate in 2010, where he “attained special knowledge of the system, techniques, and services, and advanced knowledge of the processes and procedures for supervising and training other hairstylists.” He emphasized that the Petitioner uses these same techniques, services and supervision and training processes, and they are crucial because “more than 50%” of the U.S. clientele are Japanese or Japanese American.” [REDACTED] further stated that the techniques it uses are “not easily acquired without an understanding of the cultural background, aesthetic values, and targeted training,” noting that Japanese traditional hairstyles date back to the Edo period and are not commonly known even among Japanese stylists. With respect to contemporary styles, he noted that “most Asian clients request to reduce volume” and ask for cuts that are not commonly offered in American salons.

[REDACTED] explained that the Japanese hair straightening technique contains 17 steps, and, if done incorrectly, can damage the client’s hair and scalp. He noted that “the amount of damage is highly dependent on the stylist’s skills, training and experience as well as the type of product used,” and that many U.S. salons “refuse to provide Japanese hair straightening treatments because the skills are not easily attained, and when done incorrectly, the damage caused to the client’s hair and the salon’s

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reputation is not worth the risk.” [REDACTED] emphasized that the Petitioner is available to offer the straightening treatment because the Beneficiary is exceptionally skilled and trained and possesses advanced knowledge and the ability to train other stylists.

The Petitioner provided several articles which discuss trends in hair straightening. An article from [REDACTED] mentioned that “top stylists are ditching last year’s hot hair-straightening treatment,” noting “not only because big hair is back but because stylists have seen the [thermal reconditioning] process wreak havoc on clients’ locks.” The article mentions several celebrity hairdressers who recently opened new salons but have chosen not to offer the treatment.

The Petitioner submitted an [REDACTED] 2011 article, from [REDACTED] a website which focuses on Japanese culture in New York. The article discusses the results of a survey in which respondents provided favorable feedback on the technical skills, creativity, and chemical straightening techniques of Japanese hair stylists. The article highlights the thorough training undergone by Japanese stylists, which includes long hours of training, practice and strictly supervised exams, as well as skills needed for customer interaction, such as shiatsu massage. Finally, the article highlights Japanese stylists’ understanding of how to cut and style Asian hair textures, and praises the “Zen-like” atmosphere often found in Japanese salons.

Other articles included [REDACTED] from [REDACTED] which simply summarizes different temporary and permanent treatments available, including thermal reconditioning, and [REDACTED] from a website called [REDACTED]

[REDACTED] This article mentioned that the straightening process “became popular in the United States in New York City in the early 2000’s and is now available at salons across the country.” Finally, a different article from the same website notes, “some stylists have invested significant time, energy, and finance in seminars and classes” to learn how to perform a thermal reconditioning procedure and mentions that different systems require different amounts of training. It mentions that the two original systems from Japan are [REDACTED] and [REDACTED] and names eight others, including the [REDACTED] system the Petitioner uses.

Finally, the Petitioner submitted twenty customer reviews of its salon from [REDACTED]. The customers offered uniformly high praise for the hair services provided by the Beneficiary, the salon owner, and several other Japanese stylists.

The Director ultimately denied the petition, concluding that the Petitioner did not establish that the Beneficiary has specialized knowledge and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. In denying the petition, the Director determined that the record did not establish that the Beneficiary’s knowledge and skills are demonstrably different, distinct, or uncommon comparison to that generally found within the Petitioner’s industry, or that he possesses knowledge which is more advanced than that generally found within petitioning company. The Director further found that the record did not support the Petitioner’s contention that the Beneficiary would spend the majority of his time training U.S.

workers or that he performed primarily specialized knowledge duties while employed by the foreign entity.

On appeal, the Petitioner asserts that the Director did not specify the reason she did not give deference to the Beneficiary's prior classification as an L-1B specialized knowledge employee. Further, the Petitioner contends that the Director did not consider the Petitioner's explanation that its U.S. employees require continued on-the-job supervision in performing the "complex and risky Japanese hair straightening technique," or the fact that the Beneficiary will supervise stylists in two locations, including new hair stylists hired as a result of normal employee turnover.

B. Analysis

Upon review of the evidence of record, including the Petitioner's submission on appeal, the record does not establish that the Beneficiary possesses specialized knowledge or that he was 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 visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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

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

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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 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.

Here, the Petitioner states that the Beneficiary has special knowledge of traditional and contemporary Japanese hair styling techniques which includes a Japanese cultural component, and therefore it is a “practical impossibility to find a worker with these skills in the U.S. market.” The Petitioner also claims that the Beneficiary has advanced knowledge of the techniques it uses to train and supervise hairstylists as a result of having more than two years of prior experience with its affiliate hair salon in Japan.

Because “special knowledge” concerns knowledge of the petitioning organization’s products or services and its application in international markets, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

Here, the record does not support the Petitioner’s claim that the Beneficiary’s knowledge of Japanese hair styling techniques, particularly Japanese hair straightening methods, is distinct or uncommon in comparison to that possessed by other experienced stylists in the Petitioner’s industry. While this styling technique was developed in Japan, the Petitioner’s own evidence indicates that the process “is now available at salons across the country,” and that some of the companies that manufacture thermal reconditioning systems, at least ten of which are identified in one of the articles submitted, offer seminars, classes, and DVDs to instruct stylists in the technique. The evidence does not support a finding that an individual would need to seek out a Japanese or Asian salon or stylist in order to obtain this hair styling service or a finding that the skills needed to perform the Japanese straightening technique are uncommon in the Petitioner’s industry. While it may be true that the Petitioner’s employees are particularly well-trained and skilled in the technique, the technique is not specific to the Petitioner’s salon or to Japanese salons in general. In fact, the Petitioner specifically states that it uses the [REDACTED] system but has not identified any information particular to that system which would distinguish it from other straightening products, nor does it appear that this brand was one of the original Japanese systems mentioned in the submitted articles.

The Petitioner further states that the Beneficiary has knowledge of contemporary Japanese hair cutting and styling techniques that are particular to the characteristics of Asian hair, as well as knowledge of traditional Japanese hairstyles that involve special equipment and are not commonly known even by native Japanese stylists. The Petitioner has not corroborated these claims with supporting evidence showing how the cutting and styling techniques sought by Asian clients are so uncommon or distinct that an experienced and trained hair stylist could not readily learn them.

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While the Petitioner distinguishes between “Asian” and “American” hair, it is reasonable to believe that an experienced stylist working in a large metropolitan area such as New York would have experience with a diverse population of clientele.

Further, while the Petitioner focuses on the “practical impossibility” for finding a stylist who possesses the Beneficiary’s skills in the United States, the Petitioner is also required to establish that the Beneficiary’s foreign employment involved specialized knowledge. 8 C.F.R § 214.2(l)(3)(iv). The Petitioner has not claimed that the Beneficiary has knowledge of Japanese hair cutting and straightening techniques that is different or uncommon from that typically found among salons in Japan. The Petitioner made a passing reference to “proprietary techniques” but also states that it uses a branded straightening system produced by a third party [REDACTED]

We acknowledge the Petitioner’s claim that the Beneficiary possesses knowledge of traditional Japanese hairstyles that is uncommon even among Japanese stylists; however, the record does not provide a description of these styles, the techniques used, or the amount of training required to learn the techniques, nor does it explain when or how the Beneficiary acquired skills in these techniques. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The Petitioner also claims a cultural component to the Beneficiary’s knowledge and skills and states that this component contributes to his possession of knowledge that can be considered different or uncommon and therefore, special. Specifically, the Petitioner asserts that the techniques used in its salon are “not easily acquired without an understanding of the cultural background, aesthetic values, and targeted training.”

If a petitioner claims that specialized knowledge is derived in whole or part through cultural background or traditions, we will consider evidence of the knowledge and skills gained through those cultural experiences. However, cultural knowledge alone may not be sufficient in and of itself to demonstrate specialized knowledge in a given petition. As with any type of claimed specialized knowledge, it is the weight and type of evidence presented that establishes whether the Petitioner has met its burden and established that a position requires, and a Beneficiary possesses, the requisite specialized knowledge. Here, the Petitioner’s claim that the Beneficiary possesses relevant cultural knowledge is not articulated in any detail, nor is it supported by sufficient supporting evidence. The Petitioner mentions Japanese “aesthetic values,” and submits an article which addresses the results of an informal survey of Japanese salons in New York and notes that there is a certain level of technical precision, a customer service standard, and an atmosphere that differs from other salons. The Petitioner, does not, however, provide information regarding the shiatsu massage techniques that are claimed to be part of Japanese service standard, or provide any information as to how the Beneficiary’s cultural background translates to tangible knowledge or skills that contribute to his specialized knowledge and could not be easily imparted to another experienced stylist.

Further, even if the Petitioner did establish that this Japanese aesthetic and cultural knowledge could contribute to his employment in a specialized knowledge capacity in the United States, the Petitioner

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has not claimed that such cultural knowledge would distinguish the Beneficiary's knowledge as distinct or uncommon among similarly employed workers in Japan, such that we could conclude that his foreign position involved specialized knowledge.

For the foregoing reasons, the evidence does not establish the Beneficiary possesses special knowledge.

The Petitioner also claims that the Beneficiary's supervisory role and his experience with the company's Japanese salon have equipped him with advanced knowledge of the Petitioner's processes and procedures. Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge of or expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

The Petitioner states that the Beneficiary "possesses advanced knowledge in the process for which the stylists are trained and supervised" in the U.S. and Japanese salons. While the Petitioner's owner states that all three of his salons use the same processes for training and supervising hairstylists and are otherwise operated in a similar manner, he did not further explain or define these processes. Further, the record does not include information regarding the other employees working for the U.S. and foreign entities, such as their training, professional background, and length of experience with the respective salons. 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 (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We cannot determine that the Beneficiary's knowledge is advanced in relation to the Petitioner's other employees if we have no evidence regarding those employees' relative knowledge and experience.

The Petitioner relies in part on the Beneficiary's role as a supervisor and trainer in support of its claim that his knowledge of its processes is advanced. However, the evidence shows that the foreign entity was established in 1997 and that it hired the Beneficiary as its manager of hairstylist operations in June 2010 based on his formal training and years of experience working at another Japanese salon. The Petitioner did not state that he underwent any training in company processes upon being hired to manage the foreign entity, and we cannot determine that his knowledge was advanced compared to the salon's existing employees simply because he held the position of manager.

We note that the Petitioner's 2012 support letter indicates that the Beneficiary was being transferred to the United States to replace the Petitioner's owner and "de facto" manager of hairstylist operations, who at the time intended to temporarily relocate to oversee the Japanese salon. At the time, the Petitioner had been established in the United States for 22 years and more likely than not had staff who were trained in the company's techniques and customer service standards. While we do not question the owner's business decision to transfer the Beneficiary, we cannot determine based

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on the evidence submitted that his knowledge was advanced compared to that of the U.S. salon's existing employees. The Petitioner submitted customer reviews, including one from a customer who states that she has seen [REDACTED] for her haircuts at the Petitioner's salon for "probably over a decade." The Petitioner also submitted reviews from customers who state they received services from the Petitioner's owner, despite the claim that he was relocating to Japan and needed the Beneficiary to take over his role for the U.S. salons.

For these reasons, the evidence is insufficient to establish that the Beneficiary's expertise in the organization's processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the Petitioner's operations, either in the United States or in Japan. The Petitioner's claims are not supported by evidence setting the Beneficiary's knowledge of company processes apart from the elementary or basic knowledge possessed by others.

We do not doubt that the Beneficiary is a highly skilled employee who is well-qualified for the offered position. However, for the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he has been employed abroad and will be employed in a specialized knowledge capacity with the Petitioner in the United States. *See* Section 214(c)(2)(B) of the Act.

III. PRIOR APPROVAL

The Petitioner asserts that the Director wrongfully denied the instant request for an extension of the validity of a previously approved petition, contrary to USCIS policy, by not citing to a material error in the prior adjudication, a material change in circumstances, or new material information that affected the outcome of this case. The Petitioner also asserts that a determination that a given Beneficiary has specialized knowledge is a "subjective" determination, which, as a matter of USCIS policy, should not be questioned in future adjudications involving the same parties.

First, we disagree with the Petitioner's assertion that USCIS' prior determination that the Beneficiary has specialized knowledge was a "subjective determination." Both the statute and regulations define the term "specialized knowledge." Determining whether a given beneficiary has specialized knowledge depends on the facts of the individual case and the totality of evidence in a record of proceeding, and USCIS adjudications are guided by those legal definitions and USCIS policy for the L-1B visa classification.

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of

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proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the Director reviewed the record of proceeding and concluded that the evidence did not establish that the Petitioner was eligible for an extension of the nonimmigrant visa petition's validity. In both the RFE and the final denial, the Director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous petition was approved based on the same minimal evidence of the Beneficiary's eligibility, the approval would constitute error on the part of the Director.² We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 597.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above reasons. 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. § 136; *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- Corp.*, ID# 24208 (AAO Oct. 5, 2016)

² We acknowledge that the record contains the Petitioner's March 2012 letter submitted in support of the Beneficiary's prior L-1B petition and a copy of the RFE that the Director issued in that matter. We do not have copies of any other documentation submitted with the prior petition.