U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K- P.A.

DATE: FEB. 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a certified public accounting firm, seeks to temporarily employ the Beneficiary as an "Assistant Manager (Level 3), Assurance and Advisory Services" 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 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.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director misapplied guidance set forth in a 2015 United States Citizenship and Immigration Services (USCIS) policy memorandum regarding the adjudication of L-1B petitions.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for 1 continuous year within the 3 years preceding the beneficiary's application for admission into the United States. 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.

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) requires that an individual L-1B petition filed on Form I-129, Petition for a Nonimmigrant Worker, be accompanied by evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, evidence that the beneficiary's prior education, training and employment qualifies him/her to perform the intended services in the United States, and a detailed description of the services to be performed in a specialized knowledge capacity in the United States.

II. EMPLOYMENT IN A SPECIALIZED KNOWLEDGE CAPACITY

The 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.

A. Evidence of Record

The Petitioner is a certified public accounting firm claiming 12 employees and gross income of over $2.6 million at the time of filing. In a supporting statement signed by [redacted] a partner, the Petitioner stated that it "is one of the leading international accounting firms for Generally Accepted Accounting Principles ('GAAP') conversions" and explained that its business model is based, in part, on assisting certain Indian companies with U.S. subsidiaries to comply with new Indian Accounting Standards (Ind-AS) with a mandatory compliance date of April 1, 2016. [redacted] stated that the Petitioner will provide its clients with qualified personnel who are trained in the use of its firm's proprietary accounting conversion tool, '[redacted] and who have an in-depth understanding of various types of GAAP conversions.

He further explained that the company uses an onsite and offshore delivery model, with back end work taking place in [redacted] and onsite teams working at client locations in the United States. The Petitioner stated that both offsite and onsite employees are "qualified in multiple jurisdictions in addition to being trained in [the Petitioner's] proprietary methodologies and processes." [redacted] stated that its "Ind-AS service" involves converting US GAAP to Ind-AS, providing GAAP analysis using the '[redacted] preparing financial statements within GAAP criteria, documenting audit evidence within Ind-AS parameters, and interacting with auditors to provide the

client with an analysis of the differences between the US GAAP, Indian GAAP, and Ind-AS standards and the effects of those differences on the client's financial statements.

In his letter, provided a brief background explaining India's implementation of Ind-AS as its new standard for financial reporting, noting that the change was made to converge Indian Accounting Standards and principles, currently based on GAAP standards, with the internationally-accepted International Financial Reporting Standards (IFRS). He explained that over 4250 Indian corporations were mandated to comply with the new rules beginning on April 1, 2016. also provided an explanation of how the Petitioner will use its tool, which is "powered by MicroSoft Excel" to input U.S. or Indian GAAP financial statements and other key financial data to produce Ind-AS Financial Statements.

emphasized that the foreign entity's employees, because of their experience with cross-border accounting issues, possess knowledge of U.S. and Indian accounting standards that "goes much deeper than that of peers at other companies" who do not deal with the specialized processes of accounting conversions. He explained that the Petitioner and its Indian affiliate have a team of 90 people working in various practice areas, including an Ind-AS conversion practice with 45 members (15 managers, 5 associates, and 25 interns). indicated that almost all of these employees are trained on the tool and have been with the firm for 1 to 10 years. He stated "[t]here is a distinction between regular employees and those that have acquired the specialized knowledge required to perform the Ind-AS job duties."

letter also included a graphical depiction of the "Ind-AS Specialized Team" identifying a total of 29, not 45, employees. The chart shows that 24 employees were trained and tested on Ind-AS, and 14 were selected for Ind-AS training in advanced modules which enables them to work at client locations using the tool.

Finally, addressed the Beneficiary's qualifications, noting that he has completed the Ind-AS training module, and "has gained specialized knowledge of the proprietary aspects of our international accounting operations and our established processes and methodologies."

The Petitioner provided an employment letter from the Beneficiary's foreign employer. The letter stated that the Beneficiary is employed in the position of "Assistant Manager – Level 3"and has worked for the foreign entity since February 2012.[1] It included a list of Beneficiary's job duties, which include: planning and developing audit programs based on a risk assessment of the client's accounting system; performing preliminary analytical procedures on client's financial documents; preparing financial statements and accounting information and reports for senior staff; finalizing and consolidating accounts according to U.S. GAAP; converting financial statements from U.S. GAAP

[1] On the L Classification Supplement to Form I-129, the Petitioner stated that the Beneficiary commenced employment with the foreign entity in August 2008, and the Petitioner stated in its letter that he joined the foreign entity as an intern at this time. The Petitioner also submitted copies of the Beneficiary's pay statements, which indicate his "Date of joining" as May 17, 2013.

to IndAS using [redacted] software module; ensuring compliance with Indian Companies Act reporting requirements for Indian GAAP assignments; preparing communications for review by management; ensuring compliance with laws and regulations affecting the client's business; and preparing audit work papers and memos, including findings and recommendations for improvement in internal controls.

The Petitioner also provided the Beneficiary's education credentials, including a certificate from [redacted] showing that the Beneficiary passed the final examination in November 2014 and the Beneficiary's bachelor of commerce degree awarded in January 2012 from the [redacted]

The Director reviewed the Petitioner's submissions and issued a request for evidence (RFE). The Director instructed the Petitioner to provide, in part, letters from the U.S. and foreign entities describing the Beneficiary's specialized knowledge job duties, explaining how the Beneficiary's knowledge is special or advanced, how the required knowledge compares to others within the same employer and within the same industry, and what is the minimum time and training required to obtain such knowledge.

In response to the RFE, the Petitioner provided a statement from [redacted] the Beneficiary's supervisor abroad, representing the Petitioner's foreign affiliate. [redacted] explained that the Petitioner and its affiliate fall into a unique group of accounting firms that have the ability to perform audits for Indian companies and their U.S. subsidiary counterparts. She claimed that immediately following the promulgation of a new rule on February 16, 2015, which mandated that all multinational companies in India with a minimum net worth of $80 million would be subject to Ind-AS, the foreign entity developed a business model targeting those clients who would be required to comply with the mandate.

[redacted] stated that the accounting firm created a new business model, which included training "an 'elite' short list of qualified professionals" on the [redacted] and its application to ensure Ind-AS compliance, claiming that specialized knowledge would be required in order to achieve this goal. She further claimed that the Beneficiary gained specialized knowledge abroad when he learned to use the foreign entity's proprietary [redacted] accounting conversion software tool. In addition, [redacted] noted that the "Beneficiary also gained knowledge of the complexities of our international auditing operations and our established processes and methodologies." She listed the third-party audit tools the company uses, claiming that such use is part of the accounting firm's "processes and methodologies," and added that the auditing task requires an in-depth understanding of the client company, which the Beneficiary is claimed to possess and which he is claimed to have used to direct an audit team and develop specific audit programs to suit individual client needs.

[redacted] also stated that the Beneficiary completed a 2-day Continuing Professional Education (CPE) course on the Ind-AS mandate and passed an exam on Ind-AS after attending a 3-day training session on the subject. She asserted that the duration of these courses is irrelevant and focused on the Beneficiary's "capacity to grasp and implement a very complex set of international accounting

rules based on a foundational understanding of the field of accounting and auditing." stated that "[m]ost of the team members selected have at least 8-12 years of foundational experience followed by at least 20 hours of continuing professional training in this niche area."

The Petitioner's response also included supporting evidence, including an user guide, a training manual on Ind-AS conversion outlining differences between Ind-AS and other types of accounting standards, evidence of the Beneficiary's completion of the company's 3-day (9 hour) Ind-AS training, the Beneficiary's post-training exam results, and evidence of the Beneficiary's completion of a 2-day (12 hour) CPE course provided by the In addition, the Petitioner provided its own statement in which it claimed that its employees use methodologies that are specific to its organization in order to "execut[e] time sensitive engagements." The Petitioner expressed the urgency of having its employees learn the Ind-AS accounting system "in a short span of time" so that they can focus on the new system's practical applicability and compliance aspects and identify key differences between Ind-AS and the Indian and U.S. GAAPs. The Petitioner indicated that the Beneficiary allocated 45 hours to reading about the new accounting system, 35 hours preparing an analysis and technical memorandum on the system, 8 hours reviewing the analysis and memo, and 12 hours on "[i]nternal discussions," for a total of 100 hours.

The Petitioner also reiterated information previously provided by its foreign affiliate and provided a percentage breakdown of the job duties the Beneficiary would perform in the United States. Specifically, the Petitioner stated that the Beneficiary would allocate 65% of his time to Ind-AS conversion, which would involve conducting analysis of Ind-AS, Indian GAAP, and U.S. GAAP standards and preparing "the comparative framework for differences" among the three. The Petitioner indicated that the Beneficiary would use the tool for the analysis portion or the conversion; he would record and summarize the work done for the conversion; and he would communicate those results to the client. The Petitioner stated that the Beneficiary would allocate 25% of his time to "US GAAP Assurance Services," and the remaining 10% of the his time on managing and coordinating, which would involve "[e]nsuring timely completion of assurance engagements"; "[p]reparing billing statements"; and "[m]entoring and developing team members."

The Petitioner provided a list of 21 client companies the Beneficiary is expected to work with in the United States, and a list of his 28 previous client assignments. The Petitioner further claimed that the Beneficiary has the "requisite proprietary training and knowledge of our accounting and GAAP conversion methodologies," and stated that "[t]he core advanced level knowledge required for the position has been accumulated in this resource in a very short span of time . . . ." The Petitioner explained that the Beneficiary attained an advanced level of knowledge through on-the-job experience with the foreign employer, its proprietary tool, and its internal Ind-AS training.

In denying the petition, the Director found that the Petitioner did not provide sufficient evidence to establish that the Beneficiary's knowledge of the foreign entity's processes and procedures is advanced in comparison to other company employees or that it can be differentiated from that held

by similarly placed employees at other companies. The Director further pointed out that the Beneficiary's knowledge must be distinguished and noteworthy in order to qualify as "special knowledge." She found, however, that the Petitioner has not established that the Beneficiary possesses knowledge that could not be easily imparted to others within the Petitioner's organization or within the industry.

On appeal, the Petitioner disputes the Director's conclusion, asserting that the Beneficiary's knowledge of the company's proprietary tool as well as individual clients' confidential accounting procedures and tax treatments, requires a detailed understanding of the clients' respective businesses and can only be gained through experience with processes and procedures that are specific to individual clients and not common throughout the industry or shared throughout the Petitioner's organization. The Petitioner further contends that the Director's decision constitutes a misapplication of USCIS' 2015 L-1B policy memorandum.

B. Analysis

Upon review, we agree with the Director's decision. The record does not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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 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.

In the present matter, the Petitioner's claims are based on the first and second prongs of the statutory definition, asserting that the Beneficiary has both special knowledge of the company's services and their application in international markets and that he has an advanced level of knowledge of the company's processes and procedures.

A. Special Knowledge

Because "special knowledge" concerns knowledge of the employing 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 held by similarly employed workers in the particular industry.

Here, the Petitioner asserts that its firm has the unique ability to ensure Ind-AS compliance for multinational Indian clients with U.S. subsidiaries. It claims that it has this ability is a result of employees like the Beneficiary who have an understanding of firm's proprietary tools and knowledge of new Ind-AS accounting standard, which applies to a subset of multinational Indian corporations. The Petitioner indicates that the Beneficiary's specialized knowledge is comprised of four key components – his knowledge of the proprietary tool, Ind-AS conversions, the firm's multinational capabilities, and his client-specific knowledge.

Although the Petitioner stressed the importance of its proprietary tool, the and the Beneficiary's knowledge in the use of this tool to convert the employer's clients' financial statements from the Indian or U.S. GAAP standard to the new Indian Ind-AS standard, the Petitioner has not established that the Beneficiary's knowledge of is either distinct or uncommon as compared to similarly employed workers within the industry. The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. However, a petitioner might satisfy the current standard based on a beneficiary's proprietary knowledge, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The Petitioner submitted a training manual for its Microsoft Excel-based tool, but did not offer information about the amount or type of training required for its employees to use the tool, or any evidence that the Beneficiary himself received formal classroom or on-the-job training in its use. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Without this information, we cannot determine that the knowledge needed to use the tool could not be readily transferred to an experienced auditor in a short period of time. Further, the Petitioner has not claimed that the use of

such conversion tools is uncommon within the industry or that other entities do not have similar conversion capabilities.

The Petitioner also stressed the importance of the Beneficiary's Ind-AS training, which it claimed was necessary to ensure Ind-AS compliance for its Indian clients with U.S. counterparts. The Beneficiary completed a 2-day CPE course on the Ind-AS mandate and passed an exam on Ind-AS after attending the corresponding 3-day training session offered by the foreign employer. However, there is no evidence to show that the knowledge gained during these courses was specialized or advanced as compared to others within the same employer or with respect to others similarly employed within the industry.

Further, by the Petitioner's own admission, the knowledge of Ind-AS that the Beneficiary acquired during the 2-day CPE course and the 3-day company training, took place within "a very short span of time." The record shows that the Beneficiary's total formal training time was 21 hours, while the Petitioner states he spent another 100 hours focused on learning Ind-AS, more than half of which was spent reading the new law and discussing it internally. While the Petitioner seems to contend that acquiring such knowledge within a short timeframe somehow supports the notion that the Beneficiary's knowledge is specialized, it is unclear why, if knowledge of Ind-AS can be acquired through two brief training courses, it cannot be easily transferred to someone who is similarly employed within the industry or to someone whom the Petitioner currently employs in the United States. The very existence of a CPE course on the Ind-AS mandate indicates that the course was made available to individuals other than just those employed by the foreign entity, which is reasonable given that such compliance is mandatory for all multinational firms who fit specific criteria, not just to clients of the foreign entity.

Moreover, the very fact that the Beneficiary took the CPE course and the Ind-AS training in October 2015 and January 2016, respectively, indicates that even if knowledge of Ind-AS and the conversion process were sufficient to deem the Beneficiary's position abroad as specialized, the Beneficiary would not have had the requisite 1 year of employment in a specialized knowledge capacity given that both training sessions took place less than 1 year prior to the date the instant petition was filed. Regardless, the Petitioner did not provide sufficient evidence to demonstrate that knowledge of the Ind-AS mandate contributes to the Beneficiary having specialized knowledge.

In addition, the Petitioner claims that the Beneficiary has "knowledge of the complexities of our international auditing operations and our established processes and methodologies." However, this claim is largely unsupported, as the Petitioner does not specifically identify any of its processes or methodologies or provide a discussion of any distinguishing characteristics to separate its processes and methodologies as uncommon or noteworthy when compared to those used industry-wide. While the Petitioner partly relies on the Beneficiary's on-the-job training to support the claim that his knowledge is specialized, the Petitioner does not provide evidence, such as the Beneficiary's detailed résumé or other supporting documentation, to show when or how the Beneficiary gained the knowledge or what progressive experience the Beneficiary had that led up to his acquisition of the claimed specialized knowledge. Rather, the Petitioner places great emphasis on its proprietary

software conversion tool and claims that the Beneficiary's knowledge "goes much deeper than that of peers at other accounting firms . . . who may not be as familiar with the more specialized processes of accounting conversion for Indian multinationals." The Petitioner has also claimed "there are very few Indian [a]ccounting [f]irms with the capacity to audit books of the U.S. [s]ubsidiaries of their Indian [c]lients."

However, the Petitioner does not claim or provide evidence to establish that knowledge of Ind-AS conversion is uncommon among international accounting firms, nor has it supported its claims that few firms are able to perform audits of U.S. companies. As stated above, the Ind-AS mandate applies to all entities that fit a specific set of criteria. There is no indication that the Petitioner's clients are the only ones to whom the Ind-AS standard applies. It therefore stands to reason that any accounting firm whose clients, like those of the Petitioner, fit the same criteria must also have employees who possess similar knowledge of Ind-AS conversion as that possessed by the Beneficiary and the foreign entity's other employees. The Petitioner has not established that knowledge of the company's processes or cross-border capabilities qualifies as special knowledge.

Further, while the Petitioner lists various auditing tools the Beneficiary uses in the course of his work and states that the Beneficiary "had developed specific audit programs that suit the risk profile of the Indian multinational auditee clients," the Petitioner does not establish that the use of the listed tools to develop "specific audit programs" to fit client needs is somehow distinct or uncommon throughout the accounting industry. On appeal, the Petitioner particularly emphasizes the Beneficiary's client-specific knowledge as a source of specialized knowledge. However, a comparison of the list of 21 client companies that the Beneficiary is expected to work with in the United States with the list of 28 companies that the Beneficiary worked with during the course of his previous assignments shows that only six entities are common to both lists, thereby indicating that approximately 71% of the U.S. clients assigned to the Beneficiary in his proposed position would not be companies with which the Beneficiary has worked in the past. Thus, given that most of the subject companies that would be part of the Beneficiary's proposed assignment in the United States would be new to the Beneficiary, the Petitioner has not supported its claim that the Beneficiary has in-depth client-specific knowledge that is required for him to successfully carry out his assigned job duties.

B. Advanced Knowledge

Next, we will address the Petitioner's claim that the Beneficiary has advanced knowledge. 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.

In the present matter, the Petitioner focuses on its process for converting its clients' financial statements from GAAP standards to the new Ind-AS standard. The Petitioner claims that its capability to successfully meet its clients' conversion needs is due in large part to its "elite" team of employees, which includes the Beneficiary. The Petitioner also provided a diagram in its initial supporting statement indicating that of its 29 employees who work on Ind-AS, only 14 were selected for training in Ind-AS advanced modules, completion of which is required to work at a client site using the tool. However, the Petitioner did not define or document these advanced modules or specify what criteria an employee must meet in order to qualify for the selection. In fact, the Petitioner does not expressly state that the Beneficiary was among those selected for the advanced training or provide evidence of his completion of such training. We further note that in the same supporting statement, the Petitioner stated that of its "team of over 90 people" 45 people, rather than 29, are involved in the Ind-AS conversion practice. As indicated earlier in this decision, the "45 members" includes 15 managers, 5 associates, and 25 interns. The Petitioner does not provide evidence to reconcile these two seemingly inconsistent claims regarding the size and makeup of its Ind-AS team with independent, objective evidence pointing to where the truth lies. *See, Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, in reviewing the organizational chart that the Petitioner provided in response to the RFE and in the appeal brief, we note that the Petitioner listed ten individuals that comprise the group of employees who are part of an Ind-AS conversion practice team. One of the firm's partners, who specializes in audit and assurance, is depicted as head of the group, followed by the practice director, who signed the foreign entity's RFE response statement. The remainder of the group is comprised of two managers, four assistant managers (including the Beneficiary), and two interns. The Petitioner did not clarify how, if at all, the knowledge of Ind-AS and/or the differs among members of this conversion practice team. For this reason as well, it is unclear whether the Beneficiary's knowledge is more developed or further along than that of those employees whose respective positions within the team's organizational hierarchy are below that of the Beneficiary. While the Petitioner places great emphasis on the Beneficiary's high rank with respect to others who took the post Ind-AS training exam, pointing out that the Beneficiary achieved the highest score, the Petitioner does not explain how this achievement elevates the Beneficiary's knowledge to an advanced level. In general, the evidence of record does not establish that the Beneficiary has knowledge of specific processes and procedures that is not commonly found in the relevant industry and is greatly developed or further along in progress, complexity and understanding as compared to employees within the Petitioner's accounting firm.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses various characteristics of a worker with qualifying specialized knowledge as set forth in USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.. However, for the reasons discussed above, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the Beneficiary may be filling a role that may be beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his specialized knowledge. As noted in the memorandum, the "characteristics" listed by the Petitioner are only

"factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized" and such factors must be supported by evidence. *Supra* at 8. The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Supra* at 13. Here, for the reasons discussed above, the Petitioner's evidence is insufficient to establish that the Beneficiary possesses knowledge that is either special or advanced.

Accordingly, we find the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he was and will be employed in a specialized knowledge capacity. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 136. Here the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K- P.A.*, ID# 220125 (AAO Feb. 27, 2017)