U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-G-P-, LLC

DATE: JAN. 9, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sports construction and surfacing company, seeks to temporarily employ the Beneficiary as a lead installer 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 Petitioner has a qualifying relationship with the foreign entity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that it has presented sufficient evidence to establish that it has a qualifying affiliate relationship with the Beneficiary's foreign employer based on common majority ownership by the same three individuals.

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.
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> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
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> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
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> (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 based on a 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 the 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:
>
> *(1)* Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> . . . .
>
> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> (J) *Branch* means an operating division or office of the same organization housed in a different location.
>
> (L) *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.
>
> (M) *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 to Form I-129, the Petitioner stated that it is a "wholly owned subsidiary" of the Beneficiary's foreign employer, [redacted] located in El Salvador.

In its letter in support of the petition, the Petitioner described the ownership of each company as follows:

Shareholder	% shares	[The Petitioner] % shares
	20%	0
	20%	25%
	20%	25%
	20%	25%
	20%	0
	0	25%

The Petitioner explained:

> The regulations clearly state that a subsidiary qualifies if is in indirectly controlled by a parent company. Under the applicable analysis the majority ownership of in El Salvador is held by the same individuals who exercise control over [the Petitioner] in the United States; therefore, the foreign entity has indirect control over more than half of U.S. entity. More specifically, 75% of the U.S. entity is owned by the 60% shareholders of therefore, indirectly controls more than 50% of the U.S. entity . . . .

The Petitioner stated that, in the alternative, the two entities qualify as affiliates as they are "owned and controlled by the same group of individuals."

In response to a request for evidence (RFE), the Petitioner submitted additional evidence sufficient to document the stated ownership of each company, including its operating agreement and the foreign entity's articles of incorporation. The Petitioner again claimed that the two entities are affiliates as they are "owned by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity."

The Director denied the petition, concluding that the evidence of record did not establish that the Petitioner has a qualifying relationship with the foreign entity. In denying the petition, the Director observed that the ownership structures described in the record do not support a finding that the two entities are affiliates that are owned by the same group of individuals with each individual holding approximately the same proportion of ownership in each company. The Director noted that both companies are owned in part by individuals who have no ownership interest in the other entity.

On appeal, the Petitioner submits additional evidence and asserts that it has established that three shareholders commonly own and control both entities as follows:

Shareholder	**% shares**	**[Petitioner] % shares**
	20%	25%
	20%	25%
	20%	25%
Total	**60%**	**75%**

The Petitioner further states:

> [T]here is sufficient evidence to prove that the majority three common owners in both companies have approximate shares in each entity, that at least two of these common shareholders, [redacted] and [redacted] exercise actual control and enjoy vast authorities and powers in both entities, and that both companies are bound to one another by substantial AND majority ownership by the same group of individuals, which satisfy the meaning of "affiliate."

In addition, the Petitioner objects to the Director's finding that the evidence shows that "no one individual exerts control" over either the foreign or U.S. entities and that "any grouping" of two to three owners could control the entities. The Petitioner emphasizes that Section 3.3 of its operating agreement states: "At any meeting at which a quorum is present, a vote of not less than 7% of the total voting power of the Members shall constitute the act of the Company." The Petitioner asserts that this clause leads to a conclusion that "[t]he vote of the three controlling majority shareholders or at least two of them is required each time" in order for a company action to be taken.

The Petitioner further asserts that section 3.9 of the operating agreement establishes that [redacted] is the Petitioner's president and managing partner, giving him "vast authority to manage, direct, act and legally bind [the Petitioner] by signing most of its contracts with third partners."

Similarly, the Petitioner asserts that '[redacted] . . . possesses actual and de facto control over [redacted] as he is the foreign entity's deputy sole administrator and has a general power of attorney from the company's general assembly of shareholders which gives him power over the entity's assets, contracts, representation, bank accounts and loans, among other powers. The Petitioner emphasizes that [redacted] "is, at the same time, among the majority common shareholders of [the Petitioner] where no decision which can affect the company- directly or indirectly – can be taken without a majority vote of 75% of the voting powers of the members."

Finally, the Petitioner emphasizes the close ties between the two companies, noting that they employ the same business model, deal with the same products in El Salvador and in the United States, procure business for each other, and "have three majority common shareholders with approximate shares in each company and at least two of these common shareholders enjoy de facto control in running and managing both companies."

The Petitioner also submits a "Credential for Sole Administrator and Deputy Sole Administrator" indicating that [redacted] and [redacted] were elected by the foreign entity's General Assembly of Shareholders to the roles of Sole Administrator and Deputy Sole Administrator, respectively, on March 31, 2016. The referenced general power of attorney is also submitted in support of the appeal, and states that on May 13, 2016, [redacted] conferred his duties as sole administrator to [redacted]

B. Analysis

Upon review of the petition and the evidence of record, including the additional evidence submitted on appeal, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

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 International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 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 International*, 19 I&N Dec. at 595.

Although the Petitioner initially stated on the Form I-129 that it is a wholly-owned subsidiary of the foreign entity, the ownership arrangement described and documented in the record does not establish that the foreign entity directly or indirectly owns any interest in the petitioning company and the ownership structure described does not meet the definition of "subsidiary" at 8 C.F.R. § 214.2(l)(1)(ii)(K).

The Petitioner has not established, in the alternative that it has an affiliate relationship with the foreign entity. The Petitioner has documented that it has four individual owners and the foreign entity has five individual owners. There are three individuals who each own a minority interest in both companies, two individuals who own an interest in the foreign entity only, and one individual who owns an interest in the petitioning company only. We agree with the Director's conclusion that this ownership structure does not fall within the definition of "affiliate" at 8 C.F.R. § 214.2(l)(1)(ii)(L) because the entities are not owned and controlled by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity.

The Petitioner asserts that we should accept the combined minority ownership interests of [redacted] and [redacted] as evidence that this group of shareholders owns a majority interest in both the foreign entity U.S. entities. However, the regulations do not allow us to consider a combination of individual shareholders as a single entity, so that the group may claim majority ownership, unless the group members have been shown to be legally bound together as a unit within the company by voting agreements or proxies.

The Petitioner cites *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm'r 1981) on appeal stating that the Commissioner determined that common majority stock ownership in both companies is sufficient for the purposes of establishing a qualifying relationship. In the *Tessel* decision, the beneficiary solely owned 93% of the foreign entity and 60% of the petitioner, thereby establishing a "high percentage of common ownership and common management . . . ." The

decision further stated that "[w]here there is a high percentage of ownership and common management between two companies, either directly or indirectly or through a third entity, those companies are 'affiliated' within the meaning of that term as used in section 101(a)(15)(L) of the Act." *Id.* at 633. However, the facts in the present matter can be distinguished from *Matter of Tessel* as no one shareholder holds a majority interest in either corporation.

The Petitioner also cites one of our unpublished decisions, stating that "the AAO has recognized that where persons own different amounts of shares in parent and affiliate but vote in a majority block by agreement, the affiliate relationship would be approved because there is no danger in one group controlling the foreign entity and another the US entity." However, the facts of this matter can be distinguished from those in this non-precedent decision, as the Petitioner has neither stated nor provided evidence that and have any agreement to vote in a block regarding the affairs of either the Petitioner or the foreign entity. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS (U.S. Citizenship and Immigration Services) employees in the administration of the Act, unpublished decisions are not similarly binding.

To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "*de jure*" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "*de facto*" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

Here, the Petitioner has not submitted any evidence that would impact the voting of shares by the individual owners of either the U.S. or foreign companies to show "*de facto*" control by the three individual common shareholders. The Petitioner maintains that, based on the terms of its operating agreement, the votes of "at least two" of the common owners of both entities would be needed in order for the members of the company to take any action. While this may be true, the Petitioner claims common ownership and control by the same *three* individuals, and has not claimed that these three members have agreed to vote in concert.

Similarly, the foreign entity's articles of incorporation indicate that a General Assembly, while it may choose to entrust the company's administration to a Sole Administrator, maintains the authority to approve or disapprove the actions of the Sole Administrator. As the company has five shareholders, with each shareholder holding a 20% interest in the company, any one of and could join with the remaining two shareholders to reach a majority vote. Further, the articles of incorporation states that certain company actions require a decision to be made by the owners of no less than 75% of the outstanding shares.

On appeal, the Petitioner suggests that alone exercises *de facto* control over the petitioning company based on his role as president and managing member, while exercises *de facto* control over the foreign entity based on a power of attorney granting him authority to perform duties as Sole Administrator. Even if this claim were supported in the record, it is

unclear how the existence of some common ownership, with actual control resting with two different individuals, would establish the claimed affiliate relationship between the two companies.

Nevertheless, as noted, the record establishes that the actions of the foreign entity's Sole Administrator are subject to the approval or disapproval of the company's General Assembly, and the record does not establish that the common shareholders have an agreement to vote in a block in meetings of the General Assembly. With respect to the U.S. entity, the Petitioner's operating agreement does not actually set forth the power of the president or managing member, but does clearly state that the company will be managed by its members. As noted, the votes of at least three members are required to move forward with any company action, and the Petitioner has not submitted evidence that [redacted] and [redacted] have any agreement to vote together in member meetings.

Based on the evidence submitted and the deficiencies discussed above, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer.

III. SPECIALIZED KNOWLEDGE

In addition to the ground for denial enumerated in the Director's decision, the Petitioner has not established that the Beneficiary has been or would be employed in a position that requires specialized knowledge, as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Evidence of Record

On the Form I-129, the Petitioner stated that [redacted] has employed the Beneficiary since May 2012. In the letter submitted in support of the petition, the Petitioner described the duties and requirements for the Beneficiary's proposed position of lead installer as follows:

> In this capacity, [the Beneficiary] will be responsible for leading the construction and installation of tennis courts, tracks, Sport Courts, and synthetic turf fields. This includes everything from foundation and drainage to finishing each field surface and installing specialized sport lighting. As [the Petitioner] focuses on installing highly specialized, unique products, we require an individual with technical intimacy of our business and clientele. Any external candidate would require approximately three to five years of training in the fundamentals of the products we use, the clients we serve, and the techniques required to professionally install each surface.
>
> [The Beneficiary] is extensively familiar with our products and has the expertise to implement state of the art solutions for clients in this sector. [The Beneficiary] will expand our market share as he is trained across different sports surfaces and can provide cost effective, high quality services to our clients. He will be responsible for overseeing junior installation crews and working with management . . . . He will be installing a proprietary drainage tile system that is not currently used in the U.S.

> Also, [the Beneficiary] is proficient in sewing turf seams as compared to our competitors who mostly glue seams. The result in [the Beneficiary's] advanced knowledge of sewing turf seams is a more cost effective and durable installation . . . .

The Petitioner explained that the Beneficiary has served as a "Master Installer" with the foreign entity since May 2012 and "has gained in depth knowledge of our clients, our product line, and gained superior skills in drainage and installation work related to different kinds of sports fields, arenas, and tracks." In addition, the Petitioner highlighted that, in addition to installation experience, the Beneficiary is experienced in construction of field bases and drainage systems, including a proprietary drainage system that is used only by the petitioning company in the United States. Finally, the Petitioner described the Beneficiary's training:

> [The Beneficiary] has undergone extensive hands on training in the products for which we have distribution rights in our geographic area. These include [redacted] artificial turf and [redacted] systems . . . . He has learned multiple unique techniques for different surfaces, including foundation and drainage. [The Beneficiary] has received extensive training in foundation, drainage, lighting track, and turf technology, including standard drainage base and tile drainage base. It would take [the foreign entity and the Petitioner] three to five years to develop and train an installer to a similar level of specialized knowledge that [the Beneficiary] possesses.

In response to an RFE, the Petitioner submitted a letter with additional information regarding its industry and the company's area of specialization. It explained that the "sports and construction industry is a specialty industry in and of itself" with some companies offering turnkey services (including base work, site work, and sports surfacing), and other companies offering typically one type of sports surfacing (specializing in turf, track, or tennis courts). The Petitioner noted that it offers turnkey solutions for all types of sport surfaces, and is also a general contractor able to perform base and site work, giving it a competitive advantage.

The Petitioner went on to explain that its installers are required to have advanced skill and knowledge in the following areas: turf base work, including multiple drainage systems; turf panel sewing; truck paver operation for mat type tracks; truck sprayer operation for spray type tracks; track full pour technologies for "poured in place" tracks; and tennis court installation for acrylic coat type courts.

The Petitioner stated that "to develop an advanced knowledge of all of the above listed technologies requires a minimum of five years to learn and approximately seven years [to] master." Further, the Petitioner explained that knowledge of all of these technologies is uncommon in the industry due to a tendency towards specialization in the U.S. market, as some businesses will choose to specialize in one type of surface and rely on third party suppliers for projects involving multiple surfaces.

With respect to the surfacing products themselves, the Petitioner stated that it and the foreign entity "have exclusive distribution rights to use products from several distributors including [redacted]

by and and that "the only way to gain experience working with these products is to work for [a company] authorized to distribute them."

The Petitioner submitted copies of its distribution agreements, product information from its suppliers, as well as endorsement letters from and confirming that the Petitioner and foreign entity are authorized dealers/distributors of their products, and that the Beneficiary is a trained installer. The manufacturers' representatives noted that their companies provide continued training and technical assistance to their distributors and their installers.

The Petitioner submitted evidence that the Beneficiary was among the foreign entity's personnel selected to work on a company project in Finally, the Petitioner emphasized that the Beneficiary possess all of the characteristics of an L-1B specialized knowledge according to the latest USCIS policy guidance on this visa classification.[1] Specifically, the Petitioner stated that "the highly technical nature related to the installation of these products, products for which the company has exclusive distribution rights, establishes that the only way to have gained experience working on these surfaces is by working with the company abroad."

B. Analysis

Upon review of the evidence of record, including the Petitioner's response to the Director's RFE, we find the Petitioner has not established by a preponderance of the evidence 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 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

[1] The Petitioner cited to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

involved, and the nature of the beneficiary's knowledge. A 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 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 third-party manufacturers' turf, track, and court surfacing products, as well as knowledge of a proprietary drainage system. The Petitioner also claims that the Beneficiary has advanced knowledge of the processes and techniques it uses to plan and install these products for its customers.

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 the third-party turf, track, and court surfacing products it distributes and installs is distinct or uncommon in comparison to that possessed by other installers in the sports construction and installation industry. The Petitioner relies, in part, on the fact that it is a turnkey solution provider with both general contracting and surfacing installation capabilities, which allow it to offer complete surfacing solution without using contractors to perform construction or installation services. However, it acknowledges that this "turnkey" approach is one of the "main categories" of business models in the sports construction industry. While some companies may offer installation services for fewer types of surfaces, there is insufficient evidence to support the Petitioner's claim that the combination of experience with general contracting techniques used in the industry and different third-party surfacing products constitutes "special knowledge" of the Petitioner's products as defined in the statute and regulations.

The Petitioner refers to an advanced "turf sewing" technique used by the Beneficiary but has not claimed or documented that it was developed in house or provided information regarding the length of training involved in learning the technique. In addition, the Petitioner mentioned that the Beneficiary has knowledge of a "proprietary" drainage system, but again did not submit any information to document this system, evidence that it developed the system in-house, or evidence to show the amount and type of training needed to learn these installation techniques. As stated above, 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. The evidence does not adequately support the Petitioner's claims regarding the Beneficiary's company-specific or proprietary knowledge.

Further, the Petitioner suggests that the knowledge required to install the third-party surfacing products it distributes and installs must be learned within the Petitioner's group of companies due to its exclusive distribution agreements with the manufacturers. However, the record does not establish that the Petitioner exclusively distributes and installs any of these products in the United States; rather, the record shows that it has distribution rights in a limited territory of three to four U.S. states. The record therefore does not support the Petitioner's claim that work experience with the foreign entity is the only way to learn the installation techniques for these primarily U.S.-manufactured products. Rather, the letters from the manufacturers indicate that the manufacturers themselves provide training to their distributors and their distributors' installers.

We also acknowledge the Petitioner's claim that the sports construction and surfacing industry itself is a niche industry within the larger construction industry. However, again, the Petitioner has not submitted evidence to support a claim that the knowledge required for the lead installer position is truly different or uncommon. 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. In addition, the Petitioner must describe how such knowledge is typically gained within the organization, and explain how and when the Beneficiary gained such knowledge.

Here, the Petitioner merely describes the Beneficiary as a "trained installer." It initially stated that it would take three to five years to train someone to his level, and later stated that it takes five years to learn the skills and knowledge he possesses and seven years to master them. At the time of filing, the Beneficiary had been employed by the foreign entity for three years and nine months, and based on the Petitioner's own claims, is well short of the five years of training or experience needed to learn the needed skills. It did not provide the details of his specific education and prior employment history, describe or document when he received specific training during his period of employment abroad, identify the training courses he has completed or otherwise explain or document how and when he gained such knowledge. In fact, the Petitioner stated that he has held the title "Master Installer" since the foreign entity hired him in 2012 and has not provided any description of his training or progressive work experience with the foreign entity. Therefore, we cannot evaluate the Petitioner's claims that it actually takes three, five, or seven years of training and experience to learn to install the products the Petitioner and foreign entity distribute.

As noted, it appears that the manufacturers actually provide the product training to their authorized dealers and installers, but the Petitioner has not provided evidence of the amount or type of training they typically provide and, again, relies on a general claim that the Beneficiary received training during his tenure with the foreign entity. The evidence indicates that these manufacturers offer the same training to other U.S. dealers and installers, as the Petitioner operates in a limited geographic territory of a few states. Further, we find it reasonable to believe that the Petitioner's suppliers are not the only companies that offer sports surfacing products and we cannot determine if other installers working in the sports surfacing industry, or even general contractors, could readily learn

the techniques needed to set up and install these types of products. The Petitioner indicated that some companies in its field hire contractors on a project basis if the project requires installation skills they lack. In other words, the Petitioner concedes that there are contractors who specialize in these types of sports surfacing installations.

Overall, for the reasons discussed, the Petitioner's claims that the Beneficiary's knowledge of its products and techniques is special knowledge are not supported by sufficient evidence. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. *See 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)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Here, while evidence submitted confirms that the Beneficiary is skilled and well-versed in the installation of the third-party products offered by the Petitioner and foreign entity, the evidence submitted to support its claims that his knowledge and skills qualify as "special" knowledge within the industry is insufficient. Based on the evidence submitted, we cannot evaluate whether this knowledge is truly distinct or uncommon or whether it could be easily imparted to another person in the Beneficiary's profession. For the foregoing reasons, the evidence does not establish the Beneficiary possesses special knowledge.

The Petitioner also claims that the Beneficiary's "Master Installer" role and his experience with its claimed foreign parent company have resulted in his acquisition of 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 is a master installer with the advanced knowledge needed to implement solutions for its clients and, because he is trained across different sports surfaces, he can provide cost-effective services to clients. The Petitioner also emphasizes that he will be "overseeing junior installation crews and working with management." However, the record does not include information regarding the other employees working for the U.S. and foreign entities, such as their training, professional backgrounds, duties, and length of experience with the respective entities. Again, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. We cannot determine that the Beneficiary's knowledge is advanced in relation to the Petitioner's or foreign entity's other employees if we have no evidence regarding those employees' relative knowledge and experience.

In fact, the Petitioner has not provided any information regarding the staffing of the U.S. or foreign companies, other than noting that the Petitioner has five employees. If the Petitioner has been

operating in the United States for four to five years, as claimed, it is reasonable to believe that it actually employs qualified installers who are able to deliver the company's turnkey solutions. Or, alternatively, it may be able to fulfill its obligations to customers by using contractors who have no experience with the foreign entity. As noted, the companies that supply the surfacing products are primarily U.S.-based entities who provide training to their distributors; it is unclear why the Petitioner cannot train its employees in the United States or why the offered position would require advanced knowledge that can only be gained abroad, as claimed by the Petitioner.

While we do not question the owners' business decision to transfer the Beneficiary to the United States, we cannot determine based on the evidence submitted that his knowledge is advanced in comparison to the Petitioner's and foreign entity's workers; the length of his tenure alone is not sufficient to establish his advanced knowledge. 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 El Salvador. 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.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses the characteristics of a worker with qualifying specialized knowledge as set forth in USCIS Policy Memorandum PM-601-011, *supra*, at 8. 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 would 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. *Id.* The memorandum highlights that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13.

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. For this additional reason, the petition cannot be approved.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Here that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-G-P-, LLC*, ID# 150983 (AAO Jan. 9, 2017)