U.S. Department of Homeland Security
P.O. Box 10129
Laguna Niguel, CA 92607-1012

U.S. Citizenship and Immigration Services

TO:

Addressee's Name
Street Address
City, State ZIP

DATE:

Petition: Form I-129

File: Indicate File #

DECISION

Your Form I-129, Petition for a Nonimmigrant Worker, filed in behalf of Beneficiary's name has been denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 30 days of the date of this notice. Your appeal must be filed on Form I-290B. A fee of $630.00 is required, payable to U. S. Citizenship and Immigration Services with a check or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

DHS/USCIS
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the AAO.**

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.

Sincerely,

Kathy A. Baran

Kathy A. Baran
Director, California Service Center

Enclosure: Form I-290B
Form I-292

www.dhs.gov

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, with the United States Customs and Border Protection (CBP) in order to classify the beneficiary as an intra-company transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA" or "Act").

The only issue to be discussed is whether the petitioner has established that the beneficiary has been and will be employed in a position that involves specialized knowledge.

INA 101(a)(15)(L) and its implementing regulation at Title 8, Code of Federal Regulations ("8 C.F.R.") 214.2(l)(1)(ii) state:

> . . . an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge . . .

The regulations at 8 C.F.R. 214.2(l)(3), "Evidence for individual petitions," indicate 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.

INA 214(c)(2)(B) provides the framework for the specialized knowledge transferee:

> 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.

The regulations at 8 CFR 214.2(l)(1)(ii)(D) further define "specialized knowledge" thusly:

> Specialized knowledge means special knowledge possessed by an individual of the petitioning

> organizations 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. (Emphasis in original)

A "specialized knowledge professional" is further defined at 8 CFR 214.2(l)(1)(ii)(E) as:

> [A]n individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the immigration and Nationality Act.

In accordance with NAFTA regulations at 8 CFR 214.2(l)(17), a beneficiary has the option to present Form I-129 to a Class A POE requesting admission to the US as an L nonimmigrant worker, as in this case.. The beneficiary for this case was interviewed by a CBP officer. As a result of that interview, admission to the US was denied by CBP.

According to 8 CFR 214.2(l)(17)(iv), which states, in pertinent part:

> If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

The inspecting CBP officer forwarded the petition to the appropriate Service Center with a recommendation for denial and final action by the service center. In this case, the petition was forwarded to the California Service Center for final action.

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

On [DATE], during a documented interview with an inspection officer at the [CITY, STATE], Port of Entry OR Pre-Flight Inspection, the inspection officer noted that [Insert CBP analysis of why the petitioner/beneficiary failed to establish eligibility.]

Accordingly, you have not established that the beneficiary has been or will be employed primarily in a position that involves specialized knowledge.

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, with the United States Customs and Border Protection (CBP) in order to classify the beneficiary as an intra-company transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA" or "Act").

NO QUALYIFYING RELATIONSHIP (AFFILIATE)

The [first, second, third, next,only] issue to be discussed is whether the petitioner has established that it has an affiliate relationship with the foreign company.

When a petition is filed for this classification the petitioner must show a qualifying relationship with the beneficiary's foreign employer. The petitioner claims an affiliate relationship with the beneficiary's foreign employer.

> 8 C.F.R. 214.2(l)(1)(ii)(L) defines the term "affiliate" in the following manner:
>
> 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, or....

To establish eligibility as an affiliate, 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 per cent of outstanding stocks of the other entity or it may be de facto by reason of control of voting shares through partial ownership and by possession of proxy votes. Matter of Hughes, 18 I&N Dec. (Comm. 1982).

Matter of Hughes, states that the term "subsidiary" is a more specific form of affiliation in which the company so described is subordinate to the control of another. This decision goes on to state that, "In order to be deemed affiliates, companies should be bound to one another by substantial, but not necessarily majority ownership of shares. It was also pointed out that ownership of a relatively small concentration of stock, perhaps 10%, in conjunction with the dispersal of other stock among many minority investors may convey the right to appoint board of directors.

In accordance with NAFTA regulations at 8 CFR 214.2(l)(17), a beneficiary has the option to present Form I-129 to a Class A POE requesting admission to the US as an L nonimmigrant worker, as in this case. The beneficiary for this case was interviewed by a CBP officer. As a result of that interview, admission to the US was denied by CBP.

According to 8 CFR 214.2(l)(17)(iv), which states, in pertinent part:

> If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial

> shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

The inspecting CBP officer forwarded the petition to the appropriate Service Center with a recommendation for denial and final action by the service center. In this case, the petition was forwarded to the California Service Center for final action.

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

On [DATE], during a documented interview with an inspection officer at the [CITY, STATE], Port of Entry OR Pre-Flight Inspection, the inspection officer noted that [Insert CBP analysis of why the petitioner/beneficiary failed to establish eligibility.]

In this case, the evidence fails to support a finding that both organizations are owned and controlled by the same individual or by an identical group of individuals who each own a proportionate share of each organization. Furthermore, the evidence fails to show that an individual, or identical group of individuals has effective de jure or de facto control of both organizations.

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, with the United States Customs and Border Protection (CBP) in order to classify the beneficiary as an intra-company transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA" or "Act").

NO QUALIFYING RELATIONSHIP (PARENT/SUBSIDIARY)

The [first, second, third, next,only] issue to be discussed is whether the petitioner has established that they have a parent/subsidiary relationship with the foreign company.

The definition of "subsidiary," is stated in 8 C.F.R. 214.2(l)(ii)(K) as follows:

> 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. (Underlining added)

Ownership and control are the determinative factors for establishing a qualifying relationship between United States and foreign entities for purposes of "L-1" classification. Therefore, to establish the existence of such a relationship a petitioner must demonstrate ownership and control. Accordingly, to establish the existence of such a relationship a petitioner must demonstrate ownership and control.

In accordance with NAFTA regulations at 8 CFR 214.2(l)(17), a beneficiary has the option to present Form I-129 to a Class A POE requesting admission to the US as an L nonimmigrant worker, as in this case. The beneficiary for this case was interviewed by a CBP officer. As a result of that interview, admission to the US was denied by CBP.

According to 8 CFR 214.2(l)(17)(iv), which states, in pertinent part:

> If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

The inspecting CBP officer forwarded the petition to the appropriate Service Center with a recommendation for denial and final action by the service center. In this case, the petition was forwarded to the California Service Center for final action.

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

On [DATE], during a documented interview with an inspection officer at the [CITY, STATE], Port of Entry OR Pre-Flight Inspection, the inspection officer noted that [Insert CBP analysis of why the petitioner/beneficiary failed to establish eligibility.]

Insufficient evidence was submitted to demonstrate a qualifying parent/subsidiary relationship with the foreign company.

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, with the United States Customs and Border Protection (CBP) in order to classify the beneficiary as an intra-company transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA" or "Act").

NO QUALIFYING RELATIONSHIP (BRANCH)

The [first, second, third, next,only] issue to be discussed is whether the petitioner has established that they have a branch relationship with the foreign company.

The definition of "Branch" is stated in 8 C.F.R. 214.2(l)(ii)(J) as follows:

> "Branch" means an operating division or office of the same organization housed in a different location.

In accordance with NAFTA regulations at 8 CFR 214.2(l)(17), a beneficiary has the option to present Form I-129 to a Class A POE requesting admission to the US as an L nonimmigrant worker, as in this case. The beneficiary for this case was interviewed by a CBP officer. As a result of that interview, admission to the US was denied by CBP.

According to 8 CFR 214.2(l)(17)(iv), which states, in pertinent part:

> If a petition or certificate of eligibility submitted concurrently with an application for admission is lacking necessary supporting documentation or is otherwise deficient, the inspecting immigration officer shall return it to the applicant for admission in order to obtain the necessary documentation from the petitioner or for the deficiency to be overcome. The fee to file the petition will be remitted at such time as the documentary or other deficiency is overcome. If the petition or certificate of eligibility is clearly deniable, the immigration officer will accept the petition (with fee) and the petitioner shall be notified of the denial, the reasons for denial, and the right of appeal. If a formal denial order cannot be issued by the port of entry, the petition with a recommendation for denial shall be forwarded to the appropriate Service Center for final action. For the purposes of this provision, the appropriate Service Center will be the one within the same Service region as the location where the application for admission is made.

The inspecting CBP officer forwarded the petition to the appropriate Service Center with a recommendation for denial and final action by the service center. In this case, the petition was forwarded to the California Service Center for final action.

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

On [DATE], during a documented interview with an inspection officer at the [CITY, STATE], Port of Entry OR Pre-Flight Inspection, the inspection officer noted that [Insert CBP analysis of why the petitioner/beneficiary failed to establish eligibility.]

Insufficient evidence was submitted to demonstrate a qualifying branch relationship with the foreign company.

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Matter of Brantigan, 11 I. & N. Dec. 493. Here, that burden has not been met.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

U.S. Department of Homeland Security
P.O. Box 10129
Laguna Niguel, CA 92607-1012

U.S. Citizenship and Immigration Services

TO:

Addressee's Name
Street Address
City, State ZIP

DATE:

Petition: Form I-129

File: Indicate File #

DECISION

Your Form I-129, Petition for a Nonimmigrant Worker, filed in behalf of Beneficiary's name has been denied for the following reason(s):

See Attachment

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 30 days of the date of this notice. Your appeal must be filed on Form I-290B. A fee of $630.00 is required, payable to U. S. Citizenship and Immigration Services with a check or money order from a bank or other institution located in the United States. If no appeal is filed within the time allowed, this decision will be the final decision in this matter.

In support of your appeal, you may submit a brief or other written statement for consideration by the reviewing authority. You may, if necessary, request additional time to submit a brief. Any brief, written statement, or other evidence not filed with Form I-290B, or any request for additional time for the submission of a brief or other material must be sent directly to:

DHS/USCIS
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

Any request for additional time for the submission of a brief or other statement must be made directly to the Administrative Appeals Office (AAO), and must be accompanied by a written explanation for the need for additional time. An extension of time to file the appeal may not be granted. **The appeal may not be filed directly with the AAO.**

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.

Sincerely,

Kathy A. Baran

Kathy A. Baran
Director, California Service Center

Enclosure: Form I-290B
cc:

You filed Form I-129, Petition for a Nonimmigrant Worker on [Filing Date], with the United States Citizenship and Immigration Services ("USCIS") in order to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA").

You, [Petitioner's Name], an [Insert Type of Business listed in Part 5] entity, seek authorization to employ the beneficiary, [Name of Beneficiary], temporarily in the United States as a [US Position Title].

You state that the beneficiary has been employed abroad as an [Foreign Position Title] for your organization since [Start Date]. You now seek to transfer the beneficiary to the United States in L-1B status for a period of three years. You indicate that the beneficiary will be working primarily [CHOOSE: onsite at your location in [Location] in support of a project for the end-client, [End-Client Name]. OR onsite at your location in [Location]. OR offsite in [Location] in support of a project for the end-client, [End-Client Name].]

[OPTIONAL: If seeking an extension based on a blanket petition: The beneficiary has been employed as a [Position Title] by you in L-1 status since [Date]. The beneficiary was admitted to the United States pursuant to a blanket L-1 petition [Receipt number: WAC or EAC number] filed by [Blanket petitioner]. In matters relating to an extension of a nonimmigrant visa petition validity involving the same petitioner, beneficiaries, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, each nonimmigrant petition filing is a separate proceeding with a separate record and separate burden of proof. 8 CFR 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. 8 CFR 103.2(b)(16)(ii). The current petition is the first individual petition filed on behalf of the beneficiary with USCIS. Thus, USCIS must determine whether the beneficiary is eligible under each requirement for the requested classification.]

The [three] issues to be evaluated are related but distinct: (1) whether employment abroad was in a position that was managerial, executive, or involved specialized knowledge; (2) whether the beneficiary possesses specialized knowledge; and (3) whether the beneficiary's position in the United States involves specialized knowledge. All three of these criteria must be established in order for the L-1 petition to be approved. [OPTIONAL: If denial is also for "Off-Site" Employment Further, in the case of an L-1B petition, even if your establish that the position and beneficiary meet these three criteria, you must further establish by a preponderance of the evidence that the prospective employment is not in fact an arrangement to provide labor for hire for an unaffiliated employer in the United States.]

Upon initial filing, you submitted the following evidence:

- Your cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Counsel's cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's duties with the organization abroad;
- Copies of the beneficiary's personnel records;
- Copy of the foreign entity's organizational chart;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's training and experience with the organization abroad;

- A copy of the beneficiary's resume;
- A copy of the beneficiary's college degree and school transcripts;
- Copies of the beneficiary's training records;
- Copy of the United States entity's organizational chart; and
- Other [Describe in detail];

Subsequent to the filing of the petition, you were requested to provide additional documentation to establish eligibility for the classification sought. USCIS provided a list of suggested evidence you may submit to meet this requirement and advised you that any other evidence may also be submitted if you believed it would satisfy the request.

In response to that request, you submitted the following additional documentation:

- An additional cover letter describing the beneficiary's duties abroad, the beneficiary's knowledge, education, training, and employment, and the beneficiary's duties in the United States;
- Other [Describe in detail];

To establish eligibility for the nonimmigrant L-1 visa classification, the petition must meet the criteria outlined in INA 101(a)(15)(L) and 8 CFR 214.2(l)(1)(ii):

> . . . an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

Title 8, Code of Federal Regulations ("8 CFR") 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.

INA 214(c)(2)(B) provides the framework for the specialized knowledge transferee:

> 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.

The regulations at 8 CFR 214.2(l)(1)(ii)(D) further define "specialized knowledge" as follows:

> Specialized knowledge means special knowledge possessed by an individual of the petitioning organizations 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. (Emphasis in original)

To determine what specialized knowledge is, USCIS must first look to the language of section 214(c)(2)(B) itself and consider the plain meaning of the terms "special" and "advanced." According to Webster's New College Dictionary, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." Webster's New College Dictionary, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at higher level than others."

It is your burden to establish through the submission of probative evidence that the beneficiary possesses "special" or "advanced" knowledge. Therefore, you must articulate with specificity the nature of the claimed specialized knowledge, how such knowledge is necessary to perform the duties described in the petition, and how the beneficiary gained such knowledge. USCIS will consider this, and all other relevant evidence presented, in determining whether the beneficiary possesses the requisite specialized knowledge.

Has the Beneficiary Been Employed Abroad in a Position that was Managerial, Executive, or Involved Specialized Knowledge?

The first of the three issues to be discussed is whether the position abroad was managerial, executive, or involved specialized knowledge. In examining the beneficiary's position abroad, USCIS will look to your description of the beneficiary's job duties abroad and whether, based on the evidence you have provided, those duties in fact met the regulatory requirement that they be managerial, executive, or involved specialized knowledge.

Your [cover letter] dated [insert date], describes the beneficiary's duties abroad, in part, as follows:

- [If the list of duties abroad is 5 sentences or less, list all the duties. OR If the duties are more than 5 sentences, use the first two duties and add "..." and the last duty. Example: Develop and Test Applications. Identify solutions for critical problems...Discuss problem resolution with team members.]

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties abroad:

- [If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

[DUTIES] The descriptions of duties provided are similar and typical of a [Foreign Position Title] or related occupation working in the [insert occupation] field. The duties of the position described by you reflect the same or similar duties of [insert OOH Position Title] as listed in the Occupational Outlook Handbook (OOH), a publication of the United States Department of Labor. The OOH indicates that employees in the

same or similar position as the beneficiary perform the following duties: [insert duties from OOH]. From this comparison, it appears that the beneficiary performs the same or similar duties as other workers in a similar position in the field. As such, insufficient evidence was presented to establish that the position [Foreign Position Title], involves a special or advanced level of knowledge in the [insert occupation] field or related occupation.

Therefore, you have not established that the position abroad involved specialized knowledge.

[Use the following option if the petitioner is claiming it takes a certain amount of time (i.e. 1 year, 18 months, 2 years, etc.) to become proficient in the [products, policies, processes, methodologies, framework, projects], and that period of training/experience would not have allowed the beneficiary to have been employed in the purported specialized knowledge position for at least one year prior to coming to the U.S. (for blanket extensions) or prior to the submission of the instant petition.]

[OPTIONAL]Furthermore, you indicate that it would take a minimum of 1.5 years of training and experience to be able to perform the purported specialized knowledge duties.

The beneficiary began working for the company abroad on [Date]. If it takes a minimum of 1.5 years to acquire the knowledge and skills necessary to perform the purported specialized knowledge duties, then the beneficiary would only have been able to start performing those duties in September of 2011.

The instant petition was filed on [date petition was filed] [OR: The beneficiary first arrived in the United States on [date of arrival]]. Therefore, the beneficiary had only been performing the duties that you contend are associated with specialized knowledge for seven months at the time of the filing of the instant petition [OR at the time he/she first arrived in the United States]. Consequently, according to the contentions you have made, the beneficiary has not been employed abroad for at least one continuous year in a position that involved the claimed specialized knowledge.

[CHOOSE ONE: You did not indicate that the position abroad was managerial or executive. In addition, the submitted evidence was insufficient to show that the position abroad was managerial or executive.

OR

INSERT analysis about managerial or executive positions.]

For the foregoing reasons, ou have not established that the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge.

Does the Beneficiary Possess Specialized Knowledge?

The second of the three issues to be discussed is whether the beneficiary possesses specialized knowledge. In examining the specialized knowledge of the beneficiary, USCIS will look to your description of the beneficiary's employment, experience, training, and education and determine based on the evidence you have provided, whether the beneficiary meets the statutory and regulatory requirement of possessing specialized knowledge.

In the cover letter dated [Date] you describe the beneficiary's employment, experience, training, and education as follows:

[Insert counsel/petitioner's description]

The description and/or documentation you submitted show the beneficiary has a wide range of skills, experience, and training with various [products, policies, processes, methodologies, framework, projects] including [insert names of products, policies, processes, methodologies, framework, projects]. However, USCIS cannot conclude based on the evidence submitted that the beneficiary has knowledge or experience in the field of [insert occupation] that is significantly different from that possessed by similarly employed workers in the same industry.

[EXPERIENCE] In order to support your services, the beneficiary gained experience and job-related training of your [products, policies, processes, methodologies, framework, projects] through employment and experience with your organization. The beneficiary along with others employed by your organization, like any other [Foreign Position Title], is responsible for the same or similar job duties. However, you have not demonstrated that the general knowledge of and familiarity with your organization's [products, policies, processes, methodologies, framework, projects] equates to specialized knowledge.

[TRAINING] The documentation submitted in regards to the beneficiary's training [did not list the length of each training course OR indicates each training course was completed in [Number] days or less.] Therefore, it appears that the knowledge of the subject matters listed on the training record is easily transferrable to other employees with the same or similar experience as that of the beneficiary. Moreover, the training received appears to be common in the [insert occupation] field.

[EDUCATION] Similarly, although you submitted copies of the beneficiary's formal education records, a bachelor's or higher degree is commonly required for an [Foreign Position Title] and related occupations and employers favor applicants who already have relevant skills and experience in the field CITE THE USDOL WEBSITE HERE. As this is a typical requirement for persons in the beneficiary's field, obtaining a bachelor's or master's degree in the [insert occupation] field, in and of itself, does not amount to "special" or "advanced" knowledge.

[PROPRIETARY KNOWLEDGE] Many employees can be said to possess unique skills or experience to some degree. Possession of knowledge of your company's [products, policies, processes, methodologies, framework, projects]and experience with your organization does not necessarily establish that such knowledge is something that others in the industry could not readily obtain with little or no disruption to your company's operations. Stating that other workers in the field may not have the same level of experience or training with your proprietary products, tools, and services, or with your client specific projects is not enough to establish the beneficiary as an employee possessing specialized knowledge.

Generalized knowledge of a company's [products, policies, processes, methodologies, framework, projects] is typically distinguishable from specialized knowledge of those same [products, policies, processes, methodologies, framework, projects]. Although the beneficiary in this case appears to have acquired knowledge of your [products, policies, processes, methodologies, framework, projects] while working for your company abroad, you have not adequately established how the beneficiary's knowledge rises to the level of special or advanced, as contemplated by the regulations.

A determination regarding the beneficiary's claimed specialized knowledge cannot be made if you do not, at a minimum, articulate with a high degree of specificity the nature of the beneficiary's knowledge; how such

knowledge is typically gained within the organization; and how and when the beneficiary gained such knowledge.

Furthermore, you have not adequately described how such knowledge is typically gained within the organization, other than claiming that the beneficiary is familiar, and has experience with your [products, policies, processes, methodologies, framework, projects].

Many companies will have developed their own [products, policies, processes, methodologies, framework, projects] that their employees are familiar with and use to perform the duties associated with their respective jobs; however, it cannot be concluded that the familiarity with these things alone equates to specialized knowledge as contemplated by the regulations. Otherwise, most employees at an organization would be considered to have specialized knowledge.

You also have not demonstrated how the beneficiary's education, training, and experience have resulted in specialized knowledge of your 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.

In this case, the documentation of the beneficiary's training and experience with your tools, processes, and methodologies with your foreign company is insufficient to establish the beneficiary as an individual with specialized knowledge. The evidence of record does not establish that the beneficiary, possesses a special or advanced level of knowledge in the [insert occupation] field or that the beneficiary has knowledge that is special or advanced compared to other similarly experienced [Foreign Position Title] or persons in a related occupation in the same field.

Based on the reasons discussed above, you have not established that the beneficiary possesses specialized knowledge.

Will the Beneficiary be Employed in the United States in a Capacity that Involves Specialized Knowledge?

The last of the related issues to be discussed is whether the U.S. position of "[US POSITION TITLE]" involves specialized knowledge.

[Choose: You described the duties of a [US Position Title] in the United States as being exactly the same as the beneficiary's duties performed abroad as an [Foreign Position Title]. Those duties as stated above were listed as: OR You described the duties of a [US Position Title] in the United States as follows:]

[Insert the primary description of duties]

[OPTIONAL] In the cover letter dated [Date] you provided the same description of duties as indicated in the original cover letter.

OR

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties in the U. S.:

[If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

You have explained that the beneficiary will use your [products, policies, processes, methodologies, framework, projects] to perform the tasks listed above; however, you have not adequately explained and evidenced how the use of your [products, policies, processes, methodologies, framework, projects] in the execution of the beneficiary's everyday job duties will involve specialized knowledge.

It appears that the beneficiary will perform the same or similar duties as other workers in similar positions in the field. Therefore, insufficient evidence was presented to show that the position [US Position Title], involves a special or advanced level of knowledge in the [insert occupation] field or related occupation.

You indicate that these duties could not be performed by the typical skilled worker, even one with an education and professional background similar to the beneficiary because the position involves knowledge of your [products, policies, processes, methodologies, framework, projects]. However, there is insufficient evidence on record to show that the [products, policies, processes, methodologies, framework, projects] pertaining to your organization are different from those applied by any [US Position Title] or similar position working in the same industry. In addition, an assertion that the beneficiary possesses knowledge of your products, tools and processes does not necessarily demonstrate specialized knowledge. While individual companies will develop [products, policies, processes, methodologies, framework, projects] tailored to their own needs, internal processes, and customer specifics, it has not been established that similarly employed persons in the field could not readily acquire such company-specific knowledge.

Indicating, as you have, that the beneficiary possesses knowledge proprietary to your organization is insufficient to show that the knowledge is either "special" or "advanced." As noted above, if such knowledge can be readily transferred to others employed in the field in an occupation similar to the beneficiary's with little or no disruption to the company's operations, then the knowledge necessary to perform the duties in question may not rise to the level of specialized knowledge.

Accordingly, the evidence of record is insufficient to establish that the U.S. position, [US Position Title], involves a special or advanced level of knowledge in the [insert occupation] field.

Viewed in its totality, the documentation submitted does not demonstrate by a preponderance of the evidence that the employment abroad was in a position that was managerial, executive, or involved specialized knowledge; that the beneficiary possesses specialized knowledge; and that the beneficiary's position in the United States involves specialized knowledge.

Off-Site Work with an "Unaffiliated Employer"

The last issue to be evaluated in this case involves whether the beneficiary is eligible for employment at an unaffiliated employer's worksite.

The L-1 Visa Reform Act of 2004, effective June 06, 2005, states the following:

SEC. 412. NONIMMIGRANT L-1 VISA CATEGORY.

(a) IN GENERAL- Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if--
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.'.
>
> (b) APPLICABILITY- The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle [June 06, 2005], whether for initial, extended, or amended classification.

The first part of the issue to be discussed is whether the alien will be controlled and supervised principally by the unaffiliated employer.

[Insert analysis for first part of issue] [OPTIONAL: You did not provide any documentary evidence in regards to the control and supervision of the beneficiary on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether the beneficiary will principally controlled and supervised by you or the unaffiliated employer. OR [USCIS will not dispute your claim that the beneficiary will be supervised and controlled by you in order to establish the first requirement of the L-1 Visa Reform Act. Thus, according to your statements and supporting documentation, it appears that the beneficiary will be controlled and supervised principally by you.]

The second part of the issue to be discussed is whether the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

[Insert analysis in regards to the submitted documentation; what do the contracts/work orders/end-client letter say?]

According to the submitted documentation, the service you are providing is, essentially, labor for hire. No documentary evidence was presented to show that specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

OR

As stated above, you did not provide any documentary evidence in regards to the work to be performed on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

Accordingly, you have not established that the placement of the beneficiary at the worksite of the unaffiliated employer is not labor for hire.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with you the petitioner. Here, that burden has not been met.

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

You filed Form I-129, Petition for a Nonimmigrant Worker on [Filing Date], with the United States Citizenship and Immigration Services ("USCIS") in order to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA").

You, [Petitioner's Name], an [Insert Type of Business listed in Part 5] entity, seek authorization to employ the beneficiary, [Name of Beneficiary], temporarily in the United States as a [US Position Title].

You state that the beneficiary has been employed abroad as an [Foreign Position Title] for your organization since [Start Date]. You now seek to transfer the beneficiary to the United States in L-1B status for a period of three years. You indicate that the beneficiary will be working primarily [CHOOSE: onsite at your location in [Location] in support of a project for the end-client, [End-Client Name]. OR onsite at your location in [Location]. OR offsite in [Location] in support of a project for the end-client, [End-Client Name].]

[OPTIONAL: If seeking an extension based on a blanket petition: The beneficiary has been employed as a [Position Title] by you in L-1 status since [Date]. The beneficiary was admitted to the United States pursuant to a blanket L-1 petition [Receipt number: WAC or EAC number] filed by [Blanket petitioner]. In matters relating to an extension of a nonimmigrant visa petition validity involving the same petitioner, beneficiaries, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, each nonimmigrant petition filing is a separate proceeding with a separate record and separate burden of proof. 8 CFR 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. 8 CFR 103.2(b)(16)(ii). The current petition is the first individual petition filed on behalf of the beneficiary with USCIS. Thus, USCIS must determine whether the beneficiary is eligible under each requirement for the requested classification.]

The [three] issues to be evaluated are related but distinct: (1) whether employment abroad was in a position that was managerial, executive, or involved specialized knowledge; (2) whether the beneficiary possesses specialized knowledge; and (3) whether the beneficiary's position in the United States involves specialized knowledge. All three of these criteria must be established in order for the L-1 petition to be approved. [OPTIONAL: If denial is also for "Off-Site" Employment Further, in the case of an L-1B petition, even if you establish that the position and beneficiary meet these three criteria, you must further establish by a preponderance of the evidence that the prospective employment is not in fact an arrangement to provide labor for hire for an unaffiliated employer in the United States.]

Upon initial filing, you submitted the following evidence:

- Your cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Counsel's cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's duties with the organization abroad;
- Copies of the beneficiary's personnel records;
- Copy of the foreign entity's organizational chart;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's training and experience with the organization abroad;

- A copy of the beneficiary's resume;
- A copy of the beneficiary's college degree and school transcripts;
- Copies of the beneficiary's training records;
- Copy of the United States entity's organizational chart; and
- Other [Describe in detail];

Subsequent to the filing of the petition, you were requested to provide additional documentation to establish eligibility for the classification sought. USCIS provided a list of suggested evidence you may submit to meet this requirement and advised you that any other evidence may also be submitted if you believed it would satisfy the request.

In response to that request, you submitted the following additional documentation:

- An additional cover letter describing the beneficiary's duties abroad, the beneficiary's knowledge, education, training, and employment, and the beneficiary's duties in the United States;
- Other [Describe in detail];

To establish eligibility for the nonimmigrant L-1 visa classification, the petition must meet the criteria outlined in INA 101(a)(15)(L) and 8 CFR 214.2(l)(1)(ii):

> . . . an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

Title 8, Code of Federal Regulations ("8 CFR") 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.

INA 214(c)(2)(B) provides the framework for the specialized knowledge transferee:

> 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.

The regulations at 8 CFR 214.2(l)(1)(ii)(D) further define "specialized knowledge" as follows:

> Specialized knowledge means special knowledge possessed by an individual of the petitioning organizations 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. (Emphasis in original)

To determine what specialized knowledge is, USCIS must first look to the language of section 214(c)(2)(B) itself and consider the plain meaning of the terms "special" and "advanced." According to Webster's New College Dictionary, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." Webster's New College Dictionary, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at higher level than others."

It is your burden to establish through the submission of probative evidence that the beneficiary possesses "special" or "advanced" knowledge. Therefore, you must articulate with specificity the nature of the claimed specialized knowledge, how such knowledge is necessary to perform the duties described in the petition, and how the beneficiary gained such knowledge. USCIS will consider this, and all other relevant evidence presented, in determining whether the beneficiary possesses the requisite specialized knowledge.

Has the Beneficiary Been Employed Abroad in a Position that was Managerial, Executive, or Involved Specialized Knowledge?

The first of the three issues to be discussed is whether the position abroad was managerial, executive, or involved specialized knowledge. In examining the beneficiary's position abroad, USCIS will look to your description of the beneficiary's job duties abroad and whether, based on the evidence you have provided, those duties in fact met the regulatory requirement that they be managerial, executive, or involved specialized knowledge.

Your [cover letter] dated [insert date], describes the beneficiary's duties abroad, in part, as follows:

- [If the list of duties abroad is 5 sentences or less, list all the duties. OR If the duties are more than 5 sentences, use the first two duties and add "..." and the last duty. Example: Develop and Test Applications. Identify solutions for critical problems...Discuss problem resolution with team members.]

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties abroad:

- [If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

You have explained that the beneficiary used your [products, policies, processes, methodologies, framework, projects] to perform the tasks listed above. However, while it appears that the beneficiary has become competent in the use and application of your [products, policies, processes, methodologies, framework, projects], you have not adequately explained and provided evidence to show how this proficiency equates

to specialized knowledge as contemplated by the regulations. It appears that the beneficiary performed the same or similar duties as other workers in a similar position in the field.

Therefore, you have not established that the position abroad involved specialized knowledge.

[Use the following option if the petitioner is claiming it takes a certain amount of time (i.e. 1 year, 18 months, 2 years, etc.) to become proficient in the [products, policies, processes, methodologies, framework, projects], and that period of training/experience would not have allowed the beneficiary to have been employed in the purported specialized knowledge position for at least one year prior to coming to the U.S. (for blanket extensions) or prior to the submission of the instant petition.]

[OPTIONAL]Furthermore, you indicate that it would take a minimum of 1.5 years of training and experience to be able to perform the purported specialized knowledge duties.

The beneficiary began working for the company abroad on [Date]. If it takes a minimum of 1.5 years to acquire the knowledge and skills necessary to perform the purported specialized knowledge duties, then the beneficiary would only have been able to start performing those duties in September of 2011.

The instant petition was filed on [date petition was filed] [OR: The beneficiary first arrived in the United States on [date of arrival]]. Therefore, the beneficiary had only been performing the duties that you contend are associated with specialized knowledge for seven months at the time of the filing of the instant petition [OR at the time he/she first arrived in the United States]. Consequently, according to the contentions you have made, the beneficiary has not been employed abroad for at least one continuous year in a position that involved the claimed specialized knowledge.

[CHOOSE ONE: You did not indicate that the position abroad was managerial or executive. In addition, the submitted evidence was insufficient to show that the position abroad was managerial or executive.

OR

INSERT analysis about managerial or executive positions.]

For the foregoing reasons, you have not established that the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge.

Does the Beneficiary Possess Specialized Knowledge?

The second of the three issues to be discussed is whether the beneficiary possesses specialized knowledge. In examining the specialized knowledge of the beneficiary, USCIS will look to your description of the beneficiary's employment, experience, training, and education and determine, based on the evidence you have provided, whether the beneficiary meets the statutory and regulatory requirement of possessing specialized knowledge.

In the cover letter dated [Date] you describe the beneficiary's employment, experience, training, and education as follows:

[Insert counsel/petitioner's description]

The description and/or documentation you submitted show the beneficiary has a wide range of skills, experience, and training with various [products, policies, processes, methodologies, framework, projects] including [insert names of products, policies, processes, methodologies, framework, projects]. However, USCIS cannot conclude based on the evidence submitted that the beneficiary has knowledge or experience in the field of [insert occupation] that is significantly different from that possessed by similarly employed workers in the same industry.

[EXPERIENCE] In order to support your services, the beneficiary gained experience and job-related training of your [products, policies, processes, methodologies, framework, projects] through employment and experience with your organization. The beneficiary along with others employed by your organization, like any other [Foreign Position Title], is responsible for the same or similar job duties. However, you have not demonstrated that the general knowledge of and familiarity with your organization's [products, policies, processes, methodologies, framework, projects] equates to specialized knowledge.

[TRAINING] The documentation submitted in regards to the beneficiary's training [did not list the length of each training course OR indicates each training course was completed in [Number] days or less.] Therefore, it appears that the knowledge of the subject matters listed on the training record is easily transferrable to other employees with the same or similar experience as that of the beneficiary. Moreover, the training received appears to be common in the [insert occupation] field.

[EDUCATION] Similarly, although you submitted copies of the beneficiary's formal education records, a bachelor's or higher degree is commonly required for an [Foreign Position Title] and related occupations and employers favor applicants who already have relevant skills and experience in the field CITE THE USDOL WEBSITE HERE. As this is a typical requirement for persons in the beneficiary's field, obtaining a bachelor's or master's degree in the [insert occupation] field, in and of itself, does not amount to "special" or "advanced" knowledge.

[PROPRIETARY KNOWLEDGE] Many employees can be said to possess unique skills or experience to some degree. Possession of knowledge of your company's [products, policies, processes, methodologies, framework, projects] and experience with your organization does not necessarily establish that such knowledge is something that others in the industry could not readily obtain with little or no disruption to your company's operations. Stating that other workers in the field may not have the same level of experience or training with your proprietary products, tools, and services, or with your client specific projects is not enough to establish the beneficiary as an employee possessing specialized knowledge.

Generalized knowledge of a company's [products, policies, processes, methodologies, framework, projects] is typically distinguishable from specialized knowledge of those same [products, policies, processes, methodologies, framework, projects]. Although the beneficiary in this case appears to have acquired knowledge of your [products, policies, processes, methodologies, framework, projects] while working for your company abroad, you have not adequately established how the beneficiary's knowledge rises to the level of special or advanced, as contemplated by the regulations.

A determination regarding the beneficiary's claimed specialized knowledge cannot be made if you do not, at a minimum, articulate with a high degree of specificity the nature of the beneficiary's knowledge; how such knowledge is typically gained within the organization; and how and when the beneficiary gained such knowledge.

Furthermore, you have not adequately described how such knowledge is typically gained within the organization, other than claiming that the beneficiary is familiar, and has experience with your [products, policies, processes, methodologies, framework, projects].

Many companies will have developed their own [products, policies, processes, methodologies, framework, projects] that their employees are familiar with and use to perform the duties associated with their respective jobs; however, it cannot be concluded that the familiarity with these things alone equates to specialized knowledge as contemplated by the regulations. Otherwise, most employees at an organization would be considered to have specialized knowledge.

You also have not demonstrated how the beneficiary's education, training, and experience have resulted in specialized knowledge of your 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.

In this case, the documentation of the beneficiary's training and experience with your tools, processes, and methodologies with your foreign company is insufficient to establish the beneficiary as an individual with specialized knowledge. The evidence of record does not establish that the beneficiary, possesses a special or advanced level of knowledge in the [insert occupation] field or that the beneficiary has knowledge that is special or advanced compared to other similarly experienced [Foreign Position Title] or persons in a related occupation in the same field.

Based on the reasons discussed above, you have not established that the beneficiary possesses specialized knowledge.

Will the Beneficiary be Employed in the United States in a Capacity that Involves Specialized Knowledge?

The last of the related issues to be discussed is whether the U.S. position of "[US POSITION TITLE]" involves specialized knowledge.

[Choose: You described the duties of a [US Position Title] in the United States as being exactly the same as the beneficiary's duties performed abroad as an [Foreign Position Title]. Those duties as stated above were listed as: OR You described the duties of a [US Position Title] in the United States as follows:]

> [Insert the primary description of duties]

[OPTIONAL] In the cover letter dated [Date] you provided the same description of duties as indicated in the original cover letter.

OR

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties in the U. S.:

> [If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

You have explained that the beneficiary will use your [products, policies, processes, methodologies, framework, projects] to perform the tasks listed above; however, you have not adequately explained and evidenced how the use of your [products, policies, processes, methodologies, framework, projects]in the execution of the beneficiary's everyday job duties will involve specialized knowledge.

It appears that the beneficiary will perform the same or similar duties as other workers in similar positions in the field. Therefore, insufficient evidence was presented to show that the position [US Position Title], involves a special or advanced level of knowledge in the [insert occupation] field or related occupation.

You indicate that these duties could not be performed by the typical skilled worker, even one with an education and professional background similar to the beneficiary because the position involves knowledge of your [products, policies, processes, methodologies, framework, projects]. However, there is insufficient evidence on record to show that the [products, policies, processes, methodologies, framework, projects] pertaining to your organization are different from those applied by any [US Position Title] or similar position working in the same industry. In addition, an assertion that the beneficiary possesses knowledge of your products, tools and processes does not necessarily demonstrate specialized knowledge. While individual companies will develop [products, policies, processes, methodologies, framework, projects] tailored to their own needs, internal processes, and customer specifics, it has not been established that similarly employed persons in the field could not readily acquire such company-specific knowledge.

Indicating, as you have, that the beneficiary possesses knowledge proprietary to your organization is insufficient to show that the knowledge is either "special" or "advanced." As noted above, if such knowledge can be readily transferred to others employed in the field in an occupation similar to the beneficiary's with little or no disruption to the company's operations, then the knowledge necessary to perform the duties in question may not rise to the level of specialized knowledge.

Accordingly, the evidence of record is insufficient to establish that the U.S. position, [US Position Title], involves a special or advanced level of knowledge in the [insert occupation] field.

Viewed in its totality, the documentation submitted does not demonstrate by a preponderance of the evidence that the employment abroad was in a position that was managerial, executive, or involved specialized knowledge; that the beneficiary possesses specialized knowledge; and that the beneficiary's position in the United States involves specialized knowledge.

Off-Site Work with an "Unaffiliated Employer"

The last issue to be evaluated in this case involves whether the beneficiary is eligible for employment at an unaffiliated employer's worksite.

The L-1 Visa Reform Act of 2004, effective June 06, 2005, states the following:

SEC. 412. NONIMMIGRANT L-1 VISA CATEGORY.

> (a) IN GENERAL- Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if--
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.'.
>
> (b) APPLICABILITY- The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle [June 06, 2005], whether for initial, extended, or amended classification.

The first part of the issue to be discussed is whether the alien will be controlled and supervised principally by the unaffiliated employer.

[Insert analysis for first part of issue] [OPTIONAL: You did not provide any documentary evidence in regards to the control and supervision of the beneficiary on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether the beneficiary will principally controlled and supervised by you or the unaffiliated employer. OR [USCIS will not dispute your claim that the beneficiary will be supervised and controlled by you in order to establish the first requirement of the L-1 Visa Reform Act. Thus, according to your statements and supporting documentation, it appears that the beneficiary will be controlled and supervised principally by you.]

The second part of the issue to be discussed is whether the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

[Insert analysis in regards to the submitted documentation; what do the contracts/work orders/end-client letter say?]

According to the submitted documentation, the service you are providing is, essentially, labor for hire. No documentary evidence was presented to show that specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

OR

As stated above, you did not provide any documentary evidence in regards to the work to be performed on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

Accordingly, you have not established that the placement of the beneficiary at the worksite of the unaffiliated

employer is not labor for hire.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with you the petitioner. Here, that burden has not been met.

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

NO QUALYIFYING RELATIONSHIP (AFFILIATE)

The [first, second, third, next,only] issue to be discussed is whether you have a qualifying relationship with the foreign company.

When a petition is filed for this classification you must show a qualifying relationship with the beneficiary's foreign employer. You indicate that you have an affiliate relationship with the beneficiary's foreign employer.

> 8 CFR 214.2(l)(1)(ii)(L) defines the term "affiliate" in the following manner:
>
> 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, or....

To establish eligibility as an affiliate, 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 per cent of outstanding stocks of the other entity or it may be de facto by reason of control of voting shares through partial ownership and by possession of proxy votes.

You submitted the following evidence to establish ownership of the U.S. Company, NAME OF FOREIGN CO:
(list stock certificates, memberships, etc)

You state the foreign company, NAME OF FOREIGN CO, is owned as follows:
(LIST STOCK CERTIFICATES, MEMBERSHIPS, ETC)

If the Service were to compare this document to the stock certificates and stock ledger submitted as evidence, you would not be an affiliate of the foreign company because the majority ownership is not consistent. The majority owner of the foreign company is NAME (or) The companies are not owned by the identical group of individuals who each own an proportionate share of each organization.

In this case, the evidence was insufficient to show that both organizations are owned and controlled by the same individual or by an identical group of individuals who each own an proportionate share of each organization. Furthermore, the evidence was also insufficient to show that an individual, or identical group of individuals has effective de jure or de facto control of both organizations.

As such, the beneficiary is ineligible for classification as an Intracompany Transferee. Therefore, the petition is denied.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

NO QUALIFYING RELATIONSHIP (BRANCH)

The [first, second, third, next, only] issue to be discussed is whether you have established that you have a qualifying relationship with the foreign company.

The definition of "Branch" is stated in 8 CFR 214.2(l)(ii)(J) as follows:

> "Branch" means an operating division or office of the same organization housed in a different location.

CHOOSE ONE: You indicate that you are a branch of the foreign company, [NAME]. OR You indicate that the foreign company, [NAME], is a branch of your office in the United States.

You submitted the following documentation in regards to this issue:

[INSERT ANALYSIS]

Therefore, insufficient evidence was submitted to demonstrate a qualifying branch relationship with the foreign company.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as an [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

NO QUALIFYING RELATIONSHIP (PARENT/SUBSIDIARY)

The [first, second, third, next, only] issue to be discussed is whether you have established that you have a qualifying relationship with the foreign company.

The definition of "subsidiary," is stated in 8 CFR 214.2(l)(ii)(K) as follows:

> 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.

Ownership and control are the determinative factors for establishing a qualifying relationship between United States and foreign entities for purposes of "L-1" classification. Accordingly, to establish the existence of such a relationship a petitioner must demonstrate ownership and control.

You indicate that you are the parent company OR a subsidiary of the foreign company, [FOREIGN COMPANY NAME].

You submitted the following evidence in regards to this issue:

> Articles of Incorporation [DATED], indicating [COMPANY NAME] authorized [NUMBER] shares.
>
> Minutes of the meeting [DATED] showing [COMPANY NAME] sold [NUMBER] shares to [NAME] for $0000.
>
> Stock Certificates
> (list all stocks – who they were issued to, date they were issued, number of shares issued)
>
> Stock Ledger
> (list information if different from stock; otherwise you can put – matches stock certificates above)
>
> A wire transfer receipt showing [NAME] as the originator of funds to [COMPANY NAME], on [DATE] for the total amount of $0000.

EXAMPLES of how to analyze evidence:

You submitted stock certificate number one showing that [COMPANY NAME] sold 80,000 shares of stock to [NAME OF STOCK OWNER]. You also submitted a stock subscription agreement showing that in addition to the 80,000 shares of stock, [COMPANY NAME] also sold 10,000 shares of stock to [NAME] and 10,000 shares of stock to [NAME]. The agreement was signed on January 28, 1999.

You submitted a copy of your [YEAR] U.S. Corporation Income Tax Return showing at Schedule L, Line 22 that you began the year with $1,000 in capital stock and ended the year with $1,000 in capital stock.

This contradicts the information on the minutes of meeting which says that the par value of the stock is $.01. If you had sold 1,008 shares of stock, the correct capital investment should be $10.08; however, your tax record shows that you have sold a total of $1,000 in capital stock. As such, there is $989.92 in common stock issued and not accounted for. The USCIS cannot determine who actually owns the U.S. company.

The documentary evidence does not support your explanation of the U.S. company's past and present ownership structure. The record contains stock certificate number ____ that was issued in [MONTH/YEAR] to [FOREIGN COMPANY NAME] for [# OF SHARES] shares of the U.S. company's stock. There is no documentary evidence that, at the time this certificate was issued, you received a capital contribution from [FOREIGN COMPANY NAME] for these [# OF SHARES] shares. You also submitted copies of loan agreements to show payment for the shares of stock sold to the foreign company; however, as stated above the originator of funds must be the owner of the shares of stock.

Therefore, insufficient evidence was submitted to demonstrate a qualifying relationship with the foreign company.

As such, the beneficiary is ineligible for classification as an Intra-company Transferee. Therefore, the petition is denied.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

PHYSICAL PREMISES

The [first, second, third, next, only] issue to be evaluated is whether you have secured sufficient physical premises to house the new office.

8 CFR 214.2(l)(3)(v) and 8 CFR 214.2(l)(3)(vi) state that if a petition indicates that the beneficiary is coming to the United States as to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

Upon initial filing, you provided the following evidence in regards to this issue:

[Insert list of evidence]

Subsequent to the filing of the petition, USCIS requested that you provide additional documentation to establish that you have secured sufficient physical premises to house the new office. USCIS informed you at that time that the evidence was insufficient because:

[Insert reason from your RFE]

USCIS provided a list of suggested evidence you could submit to meet this requirement and advised you that any other evidence could also be submitted if you believed it would satisfy the request.

On [Date], you responded to that request with the following documentation:

[Insert list of evidence]

[Explain why initial evidence and newly submitted evidence was insufficient]

CONCLUSION:

Considered in its totality, the evidence of record is insufficient to establish that you have secured sufficient physical premises to house the new office.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Here, that burden has not been met.

One Issue Denial

Consequently, the petition is denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L-1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

DOING BUSINESS IN THE UNITED STATES

The [first, second, third, next, only] issue to be evaluated in this case is whether your U.S. organization is doing business in accordance with the regulations.

8 CFR 214.2(l)(3)(i) mandates that an individual petition for intracompany transferee be accompanied by the following:

> 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.

8 CFR 214.2(l)(1)(ii)(G) provides, in part:

> Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

8 CFR 214.2(l)(1)(ii)(H) states:

> Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

Upon initial filing, you provided the following evidence in regards to this issue:

> [Insert list of evidence]

Subsequent to the filing of the petition, USCIS requested that you provide additional documentation to establish that your organization is doing business in the United States. USCIS informed you at that time that the evidence initially submitted was insufficient because:

[Insert reason from your RFE]

USCIS provided a list of suggested evidence you could submit to meet this requirement and advised you that any other evidence could also be submitted if you believed it would satisfy the request.

On [Date], you responded to that request with the following documentation:

[Insert list of evidence]

[Explain why initial evidence and newly submitted evidence was insufficient]

CONCLUSION:

Viewed in its totality, the evidence of record is insufficient to establish that your organization is engaged in the regular, systematic, and continuous provision of goods and/or services in the United States. As a result, it does not appear your U.S. organization is doing business in accordance with the regulations.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Here, that burden has not been met.

One Issue Denial

Consequently, the petition is denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

You have filed Form I-129, Petition for a Nonimmigrant Worker on behalf of [insert name of beneficiary], ("beneficiary") on [date petition was filed] in order to classify the beneficiary as an intracompany transferee with a concurrent request for [CHOOSE: consulate notification....change of status...extension of stay.]

Your organization, [Insert name of petitioner], seeks to employ the beneficiary as [Insert job title].

[OPTIONAL: for extensions only] The beneficiary has been employed as a [Insert job title] for your organization in L-1 status since [Insert date L classification commenced]. Your organization now seeks to extend the beneficiary's status for an additional [Insert number of years requested].

DOING BUSINESS ABROAD

The [first, second, third, next, only] issue to be evaluated in this case is whether your foreign organization has been doing business in accordance with the regulations.

8 CFR 214.2(l)(3)(i) mandates that an individual petition for intracompany transferee be accompanied by the following:

> 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.

8 CFR 214.2(l)(1)(ii)(G) provides, in part:

> Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

8 CFR 214.2(l)(1)(ii)(H) states:

> Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

Upon initial filing, you provided the following evidence in regards to this issue:

> [Insert list of evidence]

Subsequent to the filing of the petition, USCIS requested that you provide additional documentation to establish that your foreign organization was doing business abroad. USCIS informed you at that time that the evidence initially submitted was insufficient because:

[Insert reason from your RFE]

USCIS provided a list of suggested evidence you could submit to meet this requirement and advised you that any other evidence could also be submitted if you believed it would satisfy the request.

On [Date], you responded to that request with the following documentation:

[Insert list of evidence]

[Explain why initial evidence and newly submitted evidence was insufficient]

CONCLUSION:

Considered in its totality, the evidence of record is insufficient to establish that your foreign organization has been engaged in the regular, systematic, and continuous provision of goods and/or services abroad. As a result, it does not appear your foreign organization has been doing business in accordance with the regulations.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with the petitioner. Here, that burden has not been met.

One Issue Denial

Consequently, the petition is denied for the above stated reason.

Multiple Issue Denial

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

You filed Form I-129, Petition for a Nonimmigrant Worker on [Filing Date], with the United States Citizenship and Immigration Services ("USCIS") in order to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("INA").

You, [Petitioner's Name], an [Insert Type of Business listed in Part 5] entity, seek authorization to employ the beneficiary, [Name of Beneficiary], temporarily in the United States as a [US Position Title].

You state that the beneficiary has been employed abroad as an [Foreign Position Title] for your organization since [Start Date]. You now seek to transfer the beneficiary to the United States in L-1B status for a period of three years. You indicate that the beneficiary will be working primarily [CHOOSE: onsite at your location in [Location] in support of a project for the end-client, [End-Client Name]. OR onsite at your location in [Location]. OR offsite in [Location] in support of a project for the end-client, [End-Client Name].]

[OPTIONAL: If seeking an extension based on a blanket petition: The beneficiary has been employed as a [Position Title] by you in L-1 status since [Date]. The beneficiary was admitted to the United States pursuant to a blanket L-1 petition [Receipt number: WAC or EAC number] filed by [Blanket petitioner]. In matters relating to an extension of a nonimmigrant visa petition validity involving the same petitioner, beneficiaries, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, each nonimmigrant petition filing is a separate proceeding with a separate record and separate burden of proof. 8 CFR 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. 8 CFR 103.2(b)(16)(ii). The current petition is the first individual petition filed on behalf of the beneficiary with USCIS. Thus, USCIS must determine whether the beneficiary is eligible under each requirement for the requested classification.]

The [three] issues to be evaluated are related but distinct: (1) whether employment abroad was in a position that was managerial, executive, or involved specialized knowledge; (2) whether the beneficiary possesses specialized knowledge; and (3) whether the beneficiary's position in the United States involves specialized knowledge. All three of these criteria must be established in order for the L-1 petition to be approved. [OPTIONAL: If denial is also for "Off-Site" Employment Further, in the case of an L-1B petition, even if your establish that the position and beneficiary meet these three criteria, you must further establish by a preponderance of the evidence that the prospective employment is not in fact an arrangement to provide labor for hire for an unaffiliated employer in the United States.]

Upon initial filing, you submitted the following evidence:

- Your cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Counsel's cover letter describing the beneficiary's duties abroad; the beneficiary's knowledge, education, training, and employment; the beneficiary's duties in the United States; and the beneficiary's project in the United States;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's duties with the organization abroad;
- Copies of the beneficiary's personnel records;
- Copy of the foreign entity's organizational chart;
- Letter from the beneficiary's supervisor(s) describing the beneficiary's training and experience with the organization abroad;

- A copy of the beneficiary's resume;
- A copy of the beneficiary's college degree and school transcripts;
- Copies of the beneficiary's training records;
- Copy of the United States entity's organizational chart; and
- Other [Describe in detail];

Subsequent to the filing of the petition, you were requested to provide additional documentation to establish eligibility for the classification sought. USCIS provided a list of suggested evidence you may submit to meet this requirement and advised you that any other evidence may also be submitted if you believed it would satisfy the request.

In response to that request, you submitted the following additional documentation:

- An additional cover letter describing the beneficiary's duties abroad, the beneficiary's knowledge, education, training, and employment, and the beneficiary's duties in the United States;
- Other [Describe in detail];

To establish eligibility for the nonimmigrant L-1 visa classification, the petition must meet the criteria outlined in INA 101(a)(15)(L) and 8 CFR 214.2(l)(1)(ii):

> . . . an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

Title 8, Code of Federal Regulations ("8 CFR") 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.

INA 214(c)(2)(B) provides the framework for the specialized knowledge transferee:

> 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.

The regulations at 8 CFR 214.2(l)(1)(ii)(D) further define "specialized knowledge" as follows:

> Specialized knowledge means special knowledge possessed by an individual of the petitioning organization 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. (Emphasis in original)

To determine what specialized knowledge is, USCIS must first look to the language of section 214(c)(2)(B) itself and consider the plain meaning of the terms "special" and "advanced." According to Webster's New College Dictionary, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." Webster's New College Dictionary, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at higher level than others."

It is your burden to establish through the submission of probative evidence that the beneficiary possesses "special" or "advanced" knowledge. Therefore, you must articulate with specificity the nature of the claimed specialized knowledge, how such knowledge is necessary to perform the duties described in the petition, and how the beneficiary gained such knowledge. USCIS will consider this, and all other relevant evidence presented, in determining whether the beneficiary possesses the requisite specialized knowledge.

Has the Beneficiary Been Employed Abroad in a Position that was Managerial, Executive, or Involved Specialized Knowledge?

The first of the three issues to be discussed is whether the position abroad was managerial, executive, or involved specialized knowledge. In examining the beneficiary's position abroad, USCIS will look to your description of the beneficiary's job duties abroad and whether, based on the evidence you have provided, those duties in fact met the regulatory requirement that they be managerial, executive, or involved specialized knowledge.

Your [cover letter] dated [insert date], describes the beneficiary's duties abroad, in part, as follows:

- [If the list of duties abroad is 5 sentences or less, list all the duties. OR If the duties are more than 5 sentence , u e the first two dutie and add "..." and the last duty. Example: Develop and Test Applications. Identify solutions for critical problems...Discuss problem resolution with team members.]

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties abroad:

- [If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

[DUTIES] The descriptions of duties provided are similar and typical of a [Foreign Position Title] or related occupation working in the [insert occupation] field. The duties of the position described by you reflect the same or similar duties of [insert OOH Position Title] as listed in the Occupational Outlook Handbook (OOH), a publication of the United States Department of Labor. The OOH indicates that employees in the

same or similar position as the beneficiary perform the following duties: [insert duties from OOH]. From this comparison, it appears that the beneficiary performs the same or similar duties as other workers in a similar position in the field. As such, insufficient evidence was presented to establish that the position [Foreign Position Title], involves a special or advanced level of knowledge in the [insert occupation] field or related occupation.

Therefore, you have not established that the position abroad involved specialized knowledge.

[Use the following option if the petitioner is claiming it takes a certain amount of time (i.e. 1 year, 18 months, 2 years, etc.) to become proficient in the [products, policies, processes, methodologies, framework, projects], and that period of training/experience would not have allowed the beneficiary to have been employed in the purported specialized knowledge position for at least one year prior to coming to the U.S. (for blanket extensions) or prior to the submission of the instant petition.]

[OPTIONAL]Furthermore, you indicate that it would take a minimum of 1.5 years of training and experience to be able to perform the purported specialized knowledge duties.

The beneficiary began working for the company abroad on [Date]. If it takes a minimum of 1.5 years to acquire the knowledge and skills necessary to perform the purported specialized knowledge duties, then the beneficiary would only have been able to start performing those duties in September of 2011.

The instant petition was filed on [date petition was filed] [OR: The beneficiary first arrived in the United States on [date of arrival]]. Therefore, the beneficiary had only been performing the duties that you contend are associated with specialized knowledge for seven months at the time of the filing of the instant petition [OR at the time he/she first arrived in the United States]. Consequently, according to the contentions you have made, the beneficiary has not been employed abroad for at least one continuous year in a position that involved the claimed specialized knowledge.

[CHOOSE ONE: You did not indicate that the position abroad was managerial or executive. In addition, the submitted evidence was insufficient to show that the position abroad was managerial or executive.

OR

INSERT analysis about managerial or executive positions.]

For the foregoing reasons, you have not established that the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge.

Does the Beneficiary Possess Specialized Knowledge?

The second of the three issues to be discussed is whether the beneficiary possesses specialized knowledge. In examining the specialized knowledge of the beneficiary, USCIS will look to your description of the beneficiary's employment, experience, training, and education and determine based on the evidence you have provided, whether the beneficiary meets the statutory and regulatory requirement of possessing specialized knowledge.

In the cover letter dated [Date] you describe the beneficiary's employment, experience, training, and education as follows:

[Insert counsel/petitioner's description]

The description and/or documentation you submitted show the beneficiary has a wide range of skills, experience, and training with various [products, policies, processes, methodologies, framework, projects] including [insert names of products, policies, processes, methodologies, framework, projects]. However, USCIS cannot conclude based on the evidence submitted that the beneficiary has knowledge or experience in the field of [insert occupation] that is significantly different from that possessed by similarly employed workers in the same industry.

[EXPERIENCE] In order to support your services, the beneficiary gained experience and job-related training of your [products, policies, processes, methodologies, framework, projects] through employment and experience with your organization. The beneficiary along with others employed by your organization, like any other [Foreign Position Title], is responsible for the same or similar job duties. However, you have not demonstrated that the general knowledge of and familiarity with your organization's [products, policies, processes, methodologies, framework, projects] equates to specialized knowledge.

[TRAINING] The documentation submitted in regards to the beneficiary's training [did not list the length of each training course OR indicates each training course was completed in [Number] days or less.] Therefore, it appears that the knowledge of the subject matters listed on the training record is easily transferrable to other employees with the ame or similar experience as that of the beneficiary. Moreover, the training received appears to be common in the [insert occupation] field.

[EDUCATION] Similarly, although you submitted copies of the beneficiary's formal education records, a bachelor's or higher degree is commonly required for an [Foreign Position Title] and related occupations and employers favor applicants who already have relevant skills and experience in the field CITE THE USDOL WEBSITE HERE. As this is a typical requirement for persons in the beneficiary's field, obtaining a bachelor's or master's degree in the [insert occupation] field, in and of itself, does not amount to "special" or "advanced" knowledge.

[PROPRIETARY KNOWLEDGE] Many employees can be said to possess unique skills or experience to some degree. Possession of knowledge of your company's [products, policies, processes, methodologies, framework, projects]and experience with your organization does not necessarily establish that such knowledge is something that others in the industry could not readily obtain with little or no disruption to your company's operations. Stating that other workers in the field may not have the same level of experience or training with your proprietary products, tools, and services, or with your client specific projects is not enough to establish the beneficiary as an employee possessing specialized knowledge.

Generalized knowledge of a company's [products, policies, processes, methodologies, framework, projects] is typically distinguishable from specialized knowledge of those same [products, policies, processes, methodologies, framework, projects]. Although the beneficiary in this case appears to have acquired knowledge of your [products, policies, processes, methodologies, framework, projects] while working for your company abroad, you have not adequately established how the beneficiary's knowledge rises to the level of special or advanced, as contemplated by the regulations.

A determination regarding the beneficiary's claimed specialized knowledge cannot be made if you do not, at a minimum, articulate with a high degree of specificity the nature of the beneficiary's knowledge; how such

knowledge is typically gained within the organization; and how and when the beneficiary gained such knowledge.

Furthermore, you have not adequately described how such knowledge is typically gained within the organization, other than claiming that the beneficiary is familiar, and has experience with your [products, policies, processes, methodologies, framework, projects].

Many companies will have developed their own [products, policies, processes, methodologies, framework, projects] that their employees are familiar with and use to perform the duties associated with their respective jobs; however, it cannot be concluded that the familiarity with these things alone equates to specialized knowledge as contemplated by the regulations. Otherwise, most employees at an organization would be considered to have specialized knowledge.

You also have not demonstrated how the beneficiary's education, training, and experience have resulted in specialized knowledge of your 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.

In this case, the documentation of the beneficiary's training and experience with your tools, processes, and methodologies with your foreign company is insufficient to establish the beneficiary as an individual with specialized knowledge. The evidence of record does not establish that the beneficiary, possesses a special or advanced level of knowledge in the [insert occupation] field or that the beneficiary has knowledge that is special or advanced compared to other similarly experienced [Foreign Position Title] or persons in a related occupation in the same field.

Based on the reasons discussed above, you have not established that the beneficiary possesses specialized knowledge.

Will the Beneficiary be Employed in the United States in a Capacity that Involves Specialized Knowledge?

The last of the related issues to be discussed is whether the U.S. position of "[US POSITION TITLE]" involves specialized knowledge.

[Choose: You described the duties of a [US Position Title] in the United States as being exactly the same as the beneficiary's duties performed abroad as an [Foreign Position Title]. Those duties as stated above were listed as: OR You described the duties of a [US Position Title] in the United States as follows:]

[Insert the primary description of duties]

[OPTIONAL] In the cover letter dated [Date] you provided the same description of duties as indicated in the original cover letter.

OR

[OPTIONAL]Your additional [cover letter] dated [Date] states the following in regards to the beneficiary's duties in the U. S.:

[If a "breakdown" of duties was provided indicating the percentage of time performing those duties list the beneficiary's primary duties abroad in the manner indicated above]

You have explained that the beneficiary will use your [products, policies, processes, methodologies, framework, projects] to perform the tasks listed above; however, you have not adequately explained and evidenced how the use of your [products, policies, processes, methodologies, framework, projects] in the execution of the beneficiary's everyday job duties will involve specialized knowledge.

It appears that the beneficiary will perform the same or similar duties as other workers in similar positions in the field. Therefore, insufficient evidence was presented to show that the position [US Position Title], involves a special or advanced level of knowledge in the [insert occupation] field or related occupation.

You indicate that these duties could not be performed by the typical skilled worker, even one with an education and professional background similar to the beneficiary because the position involves knowledge of your [products, policies, processes, methodologies, framework, projects]. However, there is insufficient evidence on record to show that the [products, policies, processes, methodologies, framework, projects] pertaining to your organization are different from those applied by any [US Position Title] or similar position working in the same industry. In addition, an assertion that the beneficiary possesses knowledge of your products, tools and processes does not necessarily demonstrate specialized knowledge. While individual companies will develop [products, policies, processes, methodologies, framework, projects] tailored to their own needs, internal processes, and customer specifics, it has not been established that similarly employed persons in the field could not readily acquire such company-specific knowledge.

Indicating, as you have, that the beneficiary possesses knowledge proprietary to your organization is insufficient to show that the knowledge is either "special" or "advanced." As noted above, if such knowledge can be readily transferred to others employed in the field in an occupation similar to the beneficiary's with little or no disruption to the company's operations, then the knowledge necessary to perform the duties in question may not rise to the level of specialized knowledge.

Accordingly, the evidence of record is insufficient to establish that the U.S. position, [US Position Title], involves a special or advanced level of knowledge in the [insert occup tion] field.

Viewed in its totality, the documentation submitted does not demonstrate by a preponderance of the evidence that the employment abroad was in a position that was managerial, executive, or involved specialized knowledge; that the beneficiary possesses specialized knowledge; and that the beneficiary's position in the United States involves specialized knowledge.

Off-Site Work with an "Unaffiliated Employer"

The last issue to be evaluated in this case involves whether the beneficiary is eligible for employment at an unaffiliated employer's worksite.

The L-1 Visa Reform Act of 2004, effective June 06, 2005, states the following:

SEC. 412. NONIMMIGRANT L-1 VISA CATEGORY.

(a) IN GENERAL- Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if--
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.'.
>
> (b) APPLICABILITY- The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle [June 06, 2005], whether for initial, extended, or amended classification.

The first part of the issue to be discussed is whether the alien will be controlled and supervised principally by the unaffiliated employer.

[Insert analysis for first part of issue] [OPTIONAL: You did not provide any documentary evidence in regards to the control and supervision of the beneficiary on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether the beneficiary will principally controlled and supervised by you or the unaffiliated employer. OR [USCIS will not dispute your claim that the beneficiary will be supervised and controlled by you in order to establish the first requirement of the L-1 Visa Reform Act. Thus, according to your statements and supporting documentation, it appears that the beneficiary will be controlled and supervised principally by you.]

The second part of the issue to be discussed is whether the placement of the beneficiary at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

[Insert analysis in regards to the submitted documentation; what do the contracts/work orders/end-client letter say?]

According to the submitted documentation, the service you are providing is, essentially, labor for hire. No documentary evidence was presented to show that specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

OR

As stated above, you did not provide any documentary evidence in regards to the work to be performed on the end-client project with [end-client name]. Therefore, USCIS is unable to determine whether specialized knowledge specific to [petitioner] is necessary in order to perform the work on the [end-client name] project.

Accordingly, you have not established that the placement of the beneficiary at the worksite of the unaffiliated employer is not labor for hire.

FINAL CONCLUSION:

The burden of proof to establish eligibility for a desired preference rests with you the petitioner. Here, that burden has not been met.

Consequently, the petition is denied for the above stated reasons, with each considered as an independent and alternative basis for denial.