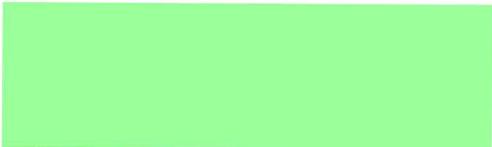


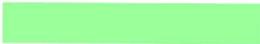
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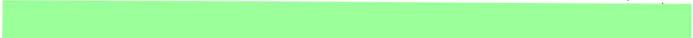
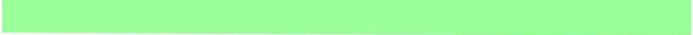
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **APR 09 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an Indiana corporation, is in the business of producing high quality wood veneer. The petitioner claims to be an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary as its Quality Control Manager for a period of three years.

The director denied the petition on two separate grounds, concluding the petitioner failed to establish: (1) that the beneficiary possesses specialized knowledge and will be employed in a specialized capacity; and (2) that it is doing business in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and additional documents. Counsel contends that the director failed to adequately review the submitted evidence and maintains that the evidence presented clearly establishes that the beneficiary possesses specialized knowledge and that the petitioning company is doing business as defined in the regulations.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

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

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (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 . . .

Pursuant to the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H), "doing business" is defined as follows:

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.

I. The Issues on Appeal

The issues on appeal are whether the petitioner established 1) that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity, and 2) that the petitioner is doing business.

The petitioner produces high quality wood veneer. It was established in 1993 as the subsidiary of the Dutch company [REDACTED]. The parent company has ownership interests in seven operations in France, Gabon, Ukraine, the United States, and the Netherlands. The parent and its subsidiaries employ a total of 355 individuals worldwide and had revenues of €21,293,981 in 2007. The petitioner currently has 8 employees and a gross annual income of \$8,325,720.

In a detailed, nine-page cover letter accompanying the petition, counsel for the petitioner explained that the beneficiary has 24 years of experience with the petitioner's group of companies and has become the "go-to" individual for veneer quality and production management for the parent company due to his specialized knowledge of the company's products, manufacturing methods, and customer requirements. Counsel described how the beneficiary gained specialized knowledge as a result of his more than two decades of experience with the petitioner's group of companies, the petitioner's customers, and the petitioner's manufacturing techniques. Counsel emphasized the breadth of the beneficiary's experience, which includes overseeing operations and training employees in all steps of the petitioner's production process on three continents. He stated that such extensive experience has resulted in the unique nature of the beneficiary's knowledge.

In a separate letter, the foreign entity's General Director indicated that the beneficiary began working for the company in 1985. Beginning in 1998, the beneficiary was assigned responsibility for selecting and purchasing logs and overseeing the cutting, slicing and clipping of veneer for the petitioner's affiliates throughout the world. More recently, from 2002 through 2006, the beneficiary worked as the Quality Control Manager for the petitioner's Dutch affiliate, a role which involved traveling to the parent company's subsidiaries in Gabon, Ivory Coast, Ghana and Ukraine. In Ukraine, the beneficiary was responsible for overseeing the start-up of a production line and the proper grading and selection of veneer. In 2006, the beneficiary came to the United States on an L-1B visa. However, the petitioner explained that he left the United States to provide assistance to the company's operations in Africa:

A few years ago [the foreign entity] tried to relocate production of some of the company's Faux-Swirl veneer to Africa. As production of veneer slowly began in Africa, [the company] noticed major quality problems with the end product and began receiving customer complaints and order cancellations. Based on these complaints, [the company] sent [the beneficiary], their most experienced quality manager/grader, to

Africa. [The beneficiary] was sent to Africa to help train the workers and oversee the quality of veneer being produced there because he is the most experienced Quality Control Manager within [the organization]. [The beneficiary] successfully trained workers and oversaw the production of a container of veneer that meet *[sic]* customer specifications, however, due to labor and equipment problems beyond his control [the foreign entity] has decided to shift production of Faux-Swirl veneer to the U.S.

The petitioner also submitted an 11-page letter from its Managing Director in support of the petition in which it explained in detail the beneficiary's employment history, the nature of his specialized knowledge, how he gained this knowledge during the course of his 24 years of employment with the organization, and the need for his services in the United States. Specifically, it stated that it seeks to employ the beneficiary in the United States as a Quality Control Manager in order to relocate production of its faux-swirl veneer to the United States. The beneficiary will be responsible for training and then overseeing the workers who perform the different steps in the veneer production process. The petitioner included a detailed description of its veneer products and all phases of its raw material selection and production process. This process involves multiple stages. After initial selection of the trees, workers must custom cut, open, cook, slice, dry, and grade the wood. The petitioner explained that each step of this process is slightly different depending on the initial tree selected and the end product desired, and indicated that the process is different depending on whether the trees are sourced in North America, Europe or Africa. The petitioner further explained that different end products have different uses and different profit margins, which also differ depending on whether they will be sold in the United States or Europe.

The petitioner submitted marketing materials showing examples of its veneer, the production process, and the history of the company. The brochures show the different cuts of wood available and examples of their end uses.

According to the petitioner's letter, the beneficiary's knowledge is particularly specialized due to his experience with the faux-swirl technique for cutting veneer. Faux-swirl is a way of peeling the veneer so that the wood appears to have a natural swirl. The petitioner explained that the faux-swirl veneer is used for the production of high end furniture, while normal veneers are used for commodity plywood production. The petitioner stated that production of faux-swirl veneer is very profitable because there are only a few people in the world who know how to produce it and are willing to undertake the risks involved in production. The petitioner explained that the tree selection and peeling process are more difficult with faux swirl, and a smaller percentage of the log is actually used. According to the petitioner: "Without employing a Quality Control Manager with the knowledge to ensure that the right logs are selected for the right customers and the precise production method, our production of faux-swirl veneers would be a complete financial disaster."

The petitioner also emphasized that an experienced Quality Control Manager is necessary to sequence the wood, which refers to the process of placing the wood in an order so that the natural flow of the wood appears. The petitioner states this is very important for architects and designers, and sequenced wood can sell at a 40% higher profit margin.

The petitioner submitted four letters from its clients citing their reliance on the beneficiary and his expertise in providing an excellent product as well as sound advice.

The petitioner also submitted evidence regarding the petitioner and its foreign affiliate. The petitioner's tax returns show that the petitioner had \$12.1 million in gross income in 2007 and \$8.3 million in gross income in 2008.

The director found the evidence submitted insufficient and issued a Request for Evidence ("RFE"), instructing the petitioner to provide additional evidence in support of its claims that the beneficiary possesses specialized knowledge and will be employed in specialized knowledge capacity.

In response to the RFE, the petitioner provided a brief, copies of previously submitted exhibits, as well as new submissions. The petitioner addressed each RFE request and pointed to the document or documents containing the evidence requested. It emphasized the beneficiary's knowledge in the faux-swirl production process and stated that he is needed to train over 200 workers who will be engaged in carrying out the petitioner's faux-swirl production processes and procedures.

The petitioner also provided a detailed list of the number and kind of employees the beneficiary has trained and supervised in the company's locations throughout the world. It indicated that the beneficiary has experience training and supervising employees in all stages of the raw material selection and veneer production process (log-yard, peelers, clippers, dryers, etc.). He has supervised these employees in Africa, Europe and the United States, all of which have different tree species. The petitioner explained that this broad range of experience is necessary for the beneficiary's proposed position because he will be training U.S. workers in sequencing, angles, grading, and flitching with African wood species, which will be new for the American workers.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity. The director found the petitioner failed to show the requisite specialized knowledge in that it had not articulated or elaborated any duty of the beneficiary that would require specialized knowledge. The director further stated that the beneficiary's skills did not seem so specialized that they could only be gained by extensive experience with the company.

The director further found that the petitioner failed to establish that it is doing business as defined in the regulations. Specifically, the director found the petitioner failed to show it had been doing business because it submitted tax returns showing negative taxable income for the 2008 tax year. The director stated that a negative taxable income, without further explanation, meant the petitioner failed to document that it is engaged in the regular, systematic, and continuous provision of goods and/or services.

On appeal, the petitioner contends that the director made conclusory statements regarding the beneficiary's specialized knowledge and that she failed to conduct a proper analysis of the evidence provided. The

petitioner notes that it previously provided a detailed description of its production process and the beneficiary's specialized knowledge of this process.

On appeal, the petitioner also contests the director's finding that it failed to demonstrate it has been doing business. Counsel for the petitioner noted that the petitioner submitted numerous documents showing it is doing business, including: the petitioner's articles of organization, its Indiana business entity report, its 2007 and 2008 income tax returns, a letter from the petitioner's managing director, a letter from the General Director of the parent company, letters from four of the petitioner's clients and business partners, evidence of the petitioner's corporate structure, and copies of company brochures. Counsel for the petitioner also disputes the director's reasoning that a negative taxable income suggests the petitioner was not doing business. It points to its gross income of \$8.3 billion in 2008 and contends that this demonstrates that it has in fact been doing business.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner has also provided sufficient evidence to show that it is doing business, as defined by 8 C.F.R. § 214.2(l)(1)(ii)(H).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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

In the present case, the petitioner's claims regarding specialized knowledge are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner states that it needs the beneficiary in the United States in order to start a production line for its faux-swirl veneer. The beneficiary has worked for the petitioner's foreign affiliate for 24 years and has recently spent significant time starting production lines and training employees

in all aspects of the process at affiliates all over the world. The petitioner claims that the beneficiary's extensive experience with the company, especially in starting up new production lines, makes him uniquely qualified for the position of Quality Control Manager in the United States. The petitioner provided a detailed description of the process used to create the petitioner's veneer products and explained how experienced oversight is essential in each stage of the process.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary is among the employees in the petitioner's organization who possess advanced knowledge of the petitioner's veneer production process. The petitioner established that the knowledge is quite complex and involves the intersection of numerous considerations, such that comparable knowledge cannot be easily learned. The petitioner also submitted evidence of the beneficiary's significant work experience that contributes to his advanced knowledge of the company's veneer production process. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires the beneficiary's advanced knowledge. Accordingly, the director's finding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity will be withdrawn.

The remaining issue in this matter is whether the petitioner established that it is and will be doing business as a qualifying organization in the United States. *See* 8 C.F.R. § 214.2(l)(3)(1). The director found the petitioner failed to meet this requirement because its 2008 tax return shows negative taxable income. On appeal, the petitioner provides persuasive arguments regarding the flaws in the director's reasoning. Specifically, negative taxable income is not an indication of whether the petitioner has been doing business. Rather, the \$8.3 million in gross income, when combined with the numerous other documents provided, supports the petitioner's assertion that it is doing business.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* section 214(c)(2)(B) of the Act. Similarly, the petitioner has provided sufficient evidence to demonstrate it is doing business. Accordingly, the appeal will be sustained.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has met that burden. The director's decision is withdrawn.

ORDER: The appeal is sustained.