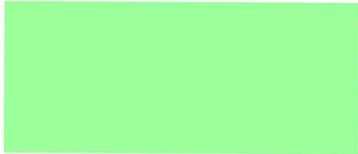
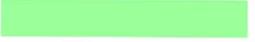




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 28 2013** OFFICE: VERMONT 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss 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, a California corporation, is a software development and consulting, and eCommerce deployment and hosting business. The petitioner claims to be a parent company of [REDACTED] located in Pune, India. The petitioner seeks to employ the beneficiary as its [REDACTED] Manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge.

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, the petitioner asserts that the beneficiary possesses specialized knowledge, and submits a brief in support of the appeal.

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.

I. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge.

The petitioner is a software development and consulting, and eCommerce deployment and hosting business. It claims to employ 35 employees in the United States, and have a gross annual income of \$11.5 million.

The petitioner stated the beneficiary will be working as a [REDACTED] for [REDACTED] [REDACTED] the petitioner's proprietary solution launched in the market in March 2007. The petitioner described how the beneficiary will be responsible for working on the [REDACTED] and [REDACTED] solution and upgrade it to new versions of [REDACTED] especially the upcoming [REDACTED]. The petitioner described the beneficiary's job duties as including: interacting with [REDACTED] customers to understand requirements; design for the [REDACTED] performance optimization for client environments and assessing the functionality of the data archival solution; creating functional specification documents, project planning, creating business cases, and identifying risks for new projects; analyzing domain requirements, identifying gaps and IT resources requirements; devising technical solutions and plans for any required problems; understand current business process architecture and

interrelation between business processes and systems, thereby analyzing the scope for systems/business process improvisation; preparation of the user manual for data archival, [REDACTED] business process; and manage the complete life cycle for system modification including conducting unit test, user acceptance test, deployment of solution and end user group training.

The petitioner described the beneficiary's qualifications as including more than five years of work experience in [REDACTED] and nearly four years of experience with its [REDACTED]. The petitioner claimed that the beneficiary "was involved in the design and development of the [REDACTED] [REDACTED]. The petitioner specified that the beneficiary's combination of knowledge of the petitioner's clients, experience with [REDACTED] training on [REDACTED] and proprietary knowledge of Ignify Data Archival solution, makes his skills "very unique."

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, additional evidence relating to the U.S. position being offered to the beneficiary. Specifically, the director requested: a detailed description of the beneficiary's duties on a daily basis; a list of proposed duties which require specialized knowledge; an explanation of why each duty requires a worker with specialized knowledge; a description identifying which processes, procedures, tools, and/or methods the beneficiary will use for each duty and from which company each processes, procedures, tools, and/or methods comes from; a description of how long it takes to train an employee to use the specific processes, procedures, tools, and/or methods utilized, and how many workers possess this knowledge and are similarly employed by the organization; an explanation of how the beneficiary's training differs from the core training provided to its other employees; and a record from the petitioner's human resources department detailing how the beneficiary gained his specialized knowledge, including the pertinent training courses, the duration and number of hours of the courses, the completion dates, and certificate of completion for the courses.

In response to the RFE, the petitioner reasserted that the beneficiary has more than five years of work experience with [REDACTED] and nearly four years of experience with the Data Archival product, during which he was "involved in the design and development of the [REDACTED] for [REDACTED]." The petitioner provided the same list of job duties for the beneficiary. The petitioner then specified that the job duties which require specialized knowledge are: design Ignify Data [REDACTED] upgrading client environments with [REDACTED] and ensuring the archival works post-upgrade; and understanding current business process architecture and interrelation between business process and systems and analyzing the scope of systems/business process improvisation as it relates to [REDACTED]. The petitioner explained that each of the above duties require a worker with specialized knowledge because the knowledge required to perform the work, such as understanding the multiple versions of server hardware, operating systems, archival device drivers, SQP databases and [REDACTED] the process of data clean-up and archival, are "extremely rare and specific." The petitioner described the beneficiary's specialized knowledge as "having the ability to understand the complexities at a high level from a business and strategic level and being able to drill all of the way down to the deepest technical level of databases and software." The petitioner also asserted: "As the sole designer of the product [the beneficiary] has specialized knowledge of the product and what it will take for the new development."

In response to the director's request to explain how the beneficiary's training differs from the core training provided to its other employees, the petitioner explained that the training for the beneficiary differs "due to his in-depth design and analysis of the [REDACTED] as described above," and because he is "one of our only team members" who have been trained in the new [REDACTED]. The petitioner asserted that it does not have any other workers who "possess a similar level of knowledge and skills." The petitioner then asserted that the beneficiary "developed all of the product documentation and training including a white paper on best practices for [REDACTED]."

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the petitioner failed to submit the beneficiary's training curriculum or any evidence that the beneficiary has specialized knowledge beyond that of his peers. The director also concluded that the use of the petitioner's proprietary solution "is merely incidental to the duties of the United States position as the perceived purpose of the beneficiary's work is to develop, maintain, and troubleshoot the client's upgraded systems after . . . implementation of [the] proprietary [REDACTED]."

On appeal, the petitioner asserts:

The [beneficiary] is the ONLY employee of the knowledge of the [REDACTED]. No peers or his manager have knowledge of this product. The beneficiary is our sole specialist with knowledge of this product. One of the developers that worked on the product with the company has left the company due to health reasons and has not been with [the petitioner] for over 2 years now. The beneficiary's manager is [REDACTED] Chief of Operating officer and head of the ERP division. Eric has been with [the petitioner] for a little over a year and does not have any technical knowledge of the [REDACTED] solution and is certainly not equipped to do the job that the beneficiary does. The beneficiary's peers specialize in our ecommerce solution which is a completely different product and is used for Business to consumer ecommerce and Business to Business web stores and have no knowledge of the [REDACTED] solution. Our initial letter made it clear and we re-iterate that the beneficiary is the only person at Ignify that has knowledge of the [REDACTED] solution

The petitioner asserts that the use of the proprietary system is not merely incidental but is "integral" to client deployment because the operations require recurring archival and purge operations that are extremely complex, and furthermore, because the beneficiary will also be responsible for designing and developing new functionality of the proprietary solution. The petitioner asserts that the beneficiary "has invented for Ignify the core archival, integrity verification and data compression techniques in a format that allows for archival without impacting production databases" and "is the only person at [REDACTED] that is familiar with the key algorithms that are the underpinning of the [REDACTED]."

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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 or prongs. 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.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on the first prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's product, specifically, the [REDACTED]. However, in the present case the petitioner has made vague and conflicting claims regarding the scope of the beneficiary's knowledge of [REDACTED].

In the initial documentation, the petitioner stated broadly that the beneficiary "was involved in the design and development of the [REDACTED] and that he has "proprietary knowledge of [REDACTED]. Other than these broad references, the petitioner did not provide any detail explaining the extent of the beneficiary's involvement in the design and development of the product, or the nature of his "proprietary knowledge."

In its response to the RFE, the petitioner claimed that the beneficiary is “the sole designer” of [REDACTED]. On appeal, the petitioner asserts that the beneficiary “has invented for [the petitioner] the core archival, integrity verification and data compression techniques” and is the “only person at [the petitioner] that is familiar with the key algorithms that are the underpinning of the [REDACTED].” In addition, on appeal the petitioner emphasizes that the beneficiary is the “only person at Ignify that has knowledge of the [REDACTED].”

However, the petitioner’s claims are not credible or supported by the record. According to the petitioner’s own claims, [REDACTED] was “launched in the market in March 2007 and has had rapid adoption by customers.” In contrast, according to Form I-129, the petitioner started working for the company in May 2007. The petitioner failed to explain how the beneficiary could be the sole designer and inventor of core components of [REDACTED] when he was not even employed by the company until several months *after* the product was launched on the market.

Furthermore, the petitioner’s claim that the beneficiary is the “only person” with knowledge of the [REDACTED] is not credible. The petitioner has not explained how it is plausible or feasible for a company to have only one person with knowledge of one of the petitioner’s proprietary products, which has been on the market since 2007 and has had “rapid adoption” by customers. Moreover, the petitioner contradicts this claim with other documents it has submitted. For instance, the petitioner states on appeal that “[o]ne of the developers that worked on the product with the company has left the company due to health reasons.” The petitioner failed to explain how many other developers worked on the product, and whether the other developers are still with the company. Without any background information regarding how many developers worked on the product and are still with the company, the petitioner’s claim that “one of the developers” left the company does not support the conclusion that the beneficiary is the only employee with knowledge of the product.

The beneficiary’s training log reflects that upon the beginning of his employment with the company, the beneficiary received classroom training in [REDACTED] from June 11, 2007 to August 16, 2007. The fact that the petitioner provided the beneficiary with data archival training undermines the petitioner’s claims that the beneficiary is the only person in the company who has knowledge of its proprietary data archival solution.

Finally, the petitioner made conflicting claims regarding how many papers or documents the beneficiary has authored on [REDACTED]. The petitioner claimed that the beneficiary published “all of the product documentation and training including white paper on best practices for [REDACTED]” and then undermined this claim by asserting that the beneficiary published “several” of the whitepapers and documentation. Moreover, the beneficiary’s resume states only that he “lead the content development of the technical overview of the ‘What’s new in [REDACTED]’ white paper that was published.” Nevertheless, even if it is true that the beneficiary has authored all or some of the product and training information about the petitioner’s product, this does not inherently establish that the beneficiary possesses specialized knowledge of the product. As the director noted, this only establishes that the beneficiary is familiar with the product, not that he has specialized knowledge.

Overall, the petitioner has made fundamentally inconsistent claims regarding the extent of the beneficiary's knowledge of the petitioner's proprietary product. The petitioner's claims regarding the beneficiary's knowledge of its product range from the beneficiary being "involved" in the design and development of the product, to being the "sole developer" of the product, to being an "inventor" of core functions of the product, to being the only person that is "familiar with the key algorithms that are the underpinning of the [REDACTED] [REDACTED] to being the "only person" within the entire company that has any knowledge of the product. Based upon the petitioner's failure to clearly articulate and establish the actual extent of the beneficiary's knowledge, the petitioner has failed to meet its burden of proof in establishing that the beneficiary possesses special knowledge of its product, [REDACTED]

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and thus will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

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 not met that burden.

ORDER: The appeal is dismissed.