

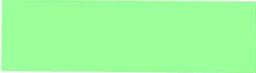


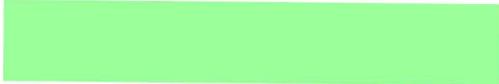
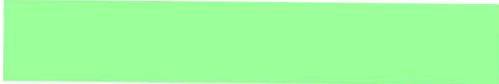
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



**JUN 29 2013**

DATE: 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:

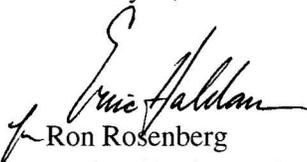
SELF-REPRESENTED

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, 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 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 vendor providing proprietary software solutions for data integration and web automation. The petitioner claims to be a subsidiary of

The petitioner seeks to employ the beneficiary as its Software Application Engineer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he will be employed in a position requiring 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 counsel contends that the beneficiary has a special knowledge of the petitioner's technologies and is of crucial importance to the organization. The petitioner submits a brief statement and additional evidence on 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 and will be employed in the United States in a specialized knowledge capacity.

The petitioner, [REDACTED] is a California corporation engaged in data integration services. More specifically, the petitioner provides software solutions for data integration and web automation. The petitioner claims the company's product, the [REDACTED], is "comprised of a set of products, programs, libraries, and programming languages" developed entirely in-house. The Form I-129 and supporting documents indicate that the petitioner's group has 85 employees worldwide and a gross annual income of \$3,412,429. The petitioner claims to be a wholly owned subsidiary of [REDACTED], located in Spain.

The petitioner provided a description of its software solution, noting that it includes the following company specific components: software products, including [REDACTED] and [REDACTED], programming languages, including [REDACTED] and [REDACTED], and [REDACTED] an [REDACTED]; a [REDACTED]; and proprietary Java [REDACTED] a set of libraries written in Java language and used to manipulate the functionalities of the components of the platform.

The petitioner emphasized that its platform can work in a variety of enterprise environments and that its software applications must know third party software capabilities and how to integrate them with the platform. The petitioner emphasized the proprietary nature of the [REDACTED] and stated that "mastering the use of all of its components within those environments can only be achieved after working for several years in various projects involving the use of the [REDACTED] in complex enterprise scenarios."

The petitioner stated the beneficiary will be working as a Software Application Engineer, responsible for designing, developing and implementing applications around the [REDACTED]. Specifically, the petitioner stated that the will perform the following duties:

- Analysis and design of software systems to be developed around the [REDACTED]
- Develop and implement prototype applications for verification and proof concept of the [REDACTED]
- Translate business needs into high level technical designs and develop documentation of technical requirements and specifications
- Serve as a mentor on how to integrate the [REDACTED] within customers' architectures and with 3<sup>rd</sup> party technologies
- Run and monitor performance tests on projects using the [REDACTED] for the purpose of improvement and general debugging
- Technically guide developers involved in projects working with the [REDACTED]
- Train customers and other team members in the [REDACTED] as requested . . .
- Liaise with the engineering department of our Spanish parent company

The petitioner stated that the position requires the following "skills and specialized knowledge":

- Demonstrable experience working in different real customer enterprise integration projects
- Good analytical and design skills and combined experience developing, implementing, an supporting enterprise-level commercial software applications and products

- Ability to understand complex customer integration scenarios
- Strong communications skills in English and Spanish
- Proven international project management experience, being able to take a project from the requirement gathering all the way through production deployment
- In-depth knowledge of [REDACTED] suite of product: [REDACTED]
- Demonstrable working knowledge of [REDACTED] proprietary languages such as [REDACTED]
- Proven experiences in the following frameworks: [REDACTED]  
[REDACTED] languages: Java and C

The petitioner further described that the beneficiary will be responsible for designing, developing, and implementing applications around the [REDACTED] providing technical support to the petitioner's [REDACTED] team and customers; installing, configuring, and maintaining the platform; executing tests to solve customer issues; developing Proof of Concepts and pilots to demonstrate the compatibility of the petitioner's products with third party vendor products; and liaising with partners to show them how to integrate the [REDACTED] platform with other market systems and applications. The petitioner further stated that the proffered position is the bridge between the engineering and sales departments, working to customize the [REDACTED] to the customer's needs.

The petitioner explained that it requires a new software application engineer to support its current customer needs and that its training a person would require "more than a year working on lower level projects (for which there is no immediate need) and specific training in [REDACTED] technologies."

The petitioner stated that the beneficiary gained his specialized knowledge in the company's proprietary product through his education, experience working with the parent company, training, and work developing [REDACTED]. The petitioner submitted the beneficiary's resume; his bachelor's degree in computer engineering and mathematics from the [REDACTED] granted November 11, 2010; the beneficiary's certification as an Advanced [REDACTED] and his pay records confirming employment with the petitioner's Spanish parent company from February 2010 through January 2011.

The pay records indicate that the beneficiary was hired as a junior programmer on October 15, 2009 and reflect that he held this same job title as of January 2011. The documents in the record indicate the beneficiary completed training required to be an [REDACTED] Trainer on November 15, 2010 and is certified to conduct training in web integration, data virtualization, and the petitioner's [REDACTED] products. A document entitled "Train the Trainer" indicates that the training to obtain certification as an Advanced [REDACTED] included the following: attendance to each course once or twice, testing all technical laboratories, participation in at least two projects, satisfactory completion of a

technical [REDACTED] exam, a one-hour training program presentation, and evaluation and certification by a committee composed of several senior trainers and the Director of [REDACTED]

The petitioner also submitted a description of the beneficiary's project experience with the foreign company, indicating that he had worked on a total of eight customer projects for seven customers since November 2009 which involved the development of custom applications, web portals and web extractors using the petitioner's platform. The petitioner further indicated that the beneficiary has provided technical support to four customers.

The director issued a Request for Evidence ("RFE"), stating that the petitioner did not provide sufficient evidence that the beneficiary has specialized knowledge or that the proposed specialized knowledge position in the United States requires specialized knowledge. The director suggested the petitioner submit the following: (1) a description of the specialized knowledge involved in the beneficiary's position with the foreign entity and also the U.S. including the product, service, tool, research, equipment, process, or procedure the beneficiary uses; (2) the minimum amount of time required to perform the duties of the position including the training and actual experience the beneficiary accrued after the completion of training; (3) specific dates for the periods in which the beneficiary performed the duties to show one year of continuous full-time employment abroad in a specialized knowledge capacity; (4) the number of employees at the foreign location and the U.S. and the number that have acquired similar knowledge; (5) a detailed comparison of the company's equipment system, product, technique, research, service, and/or processes and procedures to others in the industry; (6) copies of the beneficiary's personnel, training, pay, or other records to establish demonstrate the beneficiary's specialized knowledge; and (7) and a description of any training the beneficiary will provide to other workers in the area of his claimed specialized knowledge.

In response to the RFE, the petitioner submitted a supporting statement, a letter from the foreign entity's Chief Financial Officer (CFO) and a copy of an internal training plan, authored by the "Engineering Department," to introduce the new Beta Version of the [REDACTED]

The petitioner provided a description of the new version of the company's product and stated that the beneficiary has been working with the engineering department in its development, testing and elaboration processes. The petitioner stated that, as a result, the beneficiary "has become an outstanding employee, as he possesses an unusual and extraordinary knowledge on the incoming Beta version." The petitioner also provided the internal training plan for the new version of the company's product, and a description of its new features pertaining to the [REDACTED]

The petitioner explained that the beneficiary gained his specialized knowledge in the company's products through his year and a half working on projects, collaborating with the engineering department, enhancing the product's functionalities, as well as designing and implementing complete systems using highly specialized and advanced knowledge of the [REDACTED] architecture and tools. The petitioner stated that six of the

70 individuals employed by the parent company, including the beneficiary, have the required skills and expertise for the position. The petitioner stated that the U.S. company has 16 employees, including five employees holding L-1B visa status who serve as software architects for [REDACTED]. The petitioner claimed, however, that the beneficiary has an in-depth knowledge of the new features of the beta version of the platform not held by any of the individuals currently employed in the U.S. The petitioner indicated that the beneficiary would be introducing these features to the rest of the U.S. team and providing new version trainings to customers. The petitioner also stated that the beneficiary's specialized knowledge includes "hands-on experience in [REDACTED] server administration and query optimization," and states that none of the other L-1B employees has acquired a specialized knowledge in [REDACTED].

The CFO submitted a letter stating that the beneficiary's salary is "50% higher than the salary for the top category job detailed in the Collective Agreement that regulates the terms and conditions of employees in our industry." The petitioner stated that the high salary is indicative of the beneficiary's positive effect in the market place, and that the U.S. market increased considerably, requiring the immediate employment of a person with the specialized knowledge of Software Application Engineer to develop and implement applications around the [REDACTED]. The petitioner reiterated that to gain the knowledge required for the position, a new person would require more than a year working on lower level projects and training in [REDACTED] proprietary technologies by trainers currently unavailable in the U.S.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position or that the beneficiary possesses specialized knowledge. In denying the petition, the director found insufficient evidence to demonstrate that the beneficiary contributed "substantially" to the development of the platform or training documentation, noting that the training document for the beta version did not indicate the document's authors. The director also stated that the mere possession of the skills required to use a product or the familiarity with an organization's product or service, does not alone constitute specialized knowledge.

On appeal, the petitioner asserts that the position requires and the beneficiary possesses specialized knowledge beyond those of the typical skilled software engineer. The petitioner submits a chart indicating the difference between a skilled software engineer and one with specialized knowledge. The petitioner states that the beneficiary's specialized knowledge is based on his special knowledge in the petitioner's proprietary platform, languages and products, his involvement in the development of the new version of the platform, and his crucial role within the professional services department and the company as a whole.

On appeal, the petitioner submits: a revised version of the "New Internal Training Plan for [REDACTED]" which identifies the beneficiary as one of three authors from the engineering department; a letter from [REDACTED] Chief Technology Officer, addressing the beneficiary's role with respect to the new version of

the petitioner's platform; and "two academic papers describing the [REDACTED] and its proprietary programming languages."

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or 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).

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.

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. 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on the first and second prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company product and its application in international markets and an advanced level of knowledge of the company's processes and procedures.

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R.

§ 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge, or that the position requires such knowledge, will not suffice to meet the petitioner's burden of proof.

The job description includes duties such as integrating the petitioner's product with third party software, translating business needs into technical designs, analyzing and designing software systems, developing and implementing prototype applications for verification and proof of concept, running and monitoring performance tests, and liaising with the engineering department. The petitioner also states that the position requires experience with [REDACTED]

[REDACTED] The description of the duties, alone, does not establish that the proffered position requires specialized knowledge beyond what is typically required of a software engineer. Therefore, the petitioner's claim rests on the assertion that the position requires specialized knowledge because it requires knowledge of proprietary products and programming languages.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The petitioner has not provided an explanation or evidence demonstrating that its proprietary product differs significantly from other industry products or is at a level of complexity such that it requires knowledge that could not be easily transferred to a similarly experienced software application engineer within a relatively short period of time. The proprietary qualities of the petitioner's process or product do not establish that any knowledge of it is specialized. Rather the petitioner must establish that the qualities of the process or product require the beneficiary to have knowledge beyond or different from what is common in the industry. This has not been established in this matter.

Furthermore, although the petitioner claims that training in the proprietary languages is not commonly available in the labor market and can only be obtained by working with the petitioner's organization, the petitioner provided a report prepared by [REDACTED], which describes the services offered by the petitioner and its competitors in the data services market. The [REDACTED] report states that more than 100 enterprises worldwide use the [REDACTED]. The "Education Services" portion of the petitioner's webpage offers training on "core concepts and methodologies for using [REDACTED] tools to build applications." This information suggests that access to training and certification in such products is not restricted to the petitioner's company. The petitioner has not supported its claims that the training is not available outside of the organization.

The petitioner has also made inconsistent claims regarding the amount of training and experience required for the software application engineer position. The petitioner stated in its letter dated February 9, 2011 that mastery of the use of the components of the [REDACTED] platform "can only be achieved after working for several years in various projects" involving the use of the platform. In its letter submitted in response to the RFE, the petitioner stated that it would take a new employee one year of experience working on less complex projects to gain the knowledge and skills required for the position. The difference between "several years" and "one year" of required experience for mastery of the products is critical, as the beneficiary in this matter had only 16 months of experience with the petitioner's parent company at the time the petition was filed. 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).

Furthermore, the record indicates that the beneficiary was hired by the foreign entity October 15, 2009 and began working on projects using the company's proprietary product in November 2009, apparently while still attending university. The petitioner provided no specifics about the proposed position to demonstrate that the job requirements for the U.S. position are different from the requirements for the same position with the foreign entity. Going on record without 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)).

The petitioner has not demonstrated that the beneficiary's knowledge of the petitioner's proprietary product and programming language gained during his 16 months working with the company is advanced compared to other similarly employed workers within the organization. In fact, despite the petitioner's claims that the beneficiary was hired as a software application engineer, the foreign entity's payroll records identify his job title as "junior programmer." None of the organizational charts submitted identify the position of "junior programmer," but they do identify trainee and junior software developer positions. Given this discrepancy, and the fact that the beneficiary was hired by the foreign entity prior to completion of his bachelor's degree and with no prior professional experience, it is unclear when or if he actually assumed the position of software application engineer with the foreign entity. Again, 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).

The petitioner has submitted a certificate for the beneficiary showing he is completed the requirements to be an advanced trainer in the company products; however, the record does not include a description of the duration or number of hours required to obtain the certificate or the number of employees that are similarly trained. Without such evidence it is not possible to discern the beneficiary's knowledge is advanced relative to others working in the petitioner's organization. Given the petitioner's claim that the core duties of the

software application engineer position are to "train customers and other team members in the [REDACTED]" it appears that the training certificate may be required for the position.

The petitioner states that the beneficiary has special knowledge compared to the employees currently in the United States; however, it has not explained why the experienced software engineers familiar with the petitioner's programming languages and platform would be unable to perform the duties or why the knowledge required for the position could not be imparted to the U.S. employees. Specifically, in response to the RFE, the petitioner stated for the first time that the beneficiary's specialized knowledge includes his knowledge of the new beta version of the petitioner's platform and his knowledge of the company's [REDACTED] product. It is noted that the petitioner provided a detailed three-page description of the beneficiary's duties and experience gained with the foreign entity in its letter in support of the petition and failed to mention either of these areas as a source of his claimed specialized knowledge. The initial letter also made no mention of the need for the beneficiary to train U.S. employees and customers in this latest release of the product. If the beneficiary was, in fact, instrumental in the development of the latest release of the petitioner's platform, and he is coming to the United States to train others in this new version of the platform, it is unclear why the petitioner did not state as much at the time of filing. The description of his role provided at the time of filing detailed 12 different client projects which involved the development of custom applications and technical support. The initial letter also indicated a general need for a software applications engineer who has already been trained in the company's products and who will be able to fully perform the duties of the position without additional training. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

The AAO does not dispute that the beneficiary is a skilled employee who has been, and would be, an asset to the petitioner. As explained above, however, the record does not meaningfully distinguish the beneficiary's knowledge of company products or processes as more advanced than the knowledge possessed by other software application engineers employed by the petitioning organization or as specialized compared to similarly employed workers in the industry. The beneficiary's duties and technical skills, while impressive, demonstrate that he possesses knowledge that cannot be considered uncommon among software engineers in general. Further, the discrepancies and unsupported claims in the record further undermine the petitioner's claims that the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge.

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.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence 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. Accordingly, the petition 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.