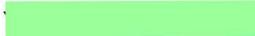


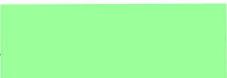


U.S. Citizenship
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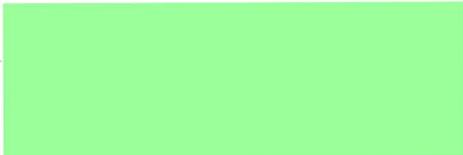


DATE: **MAR 14 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

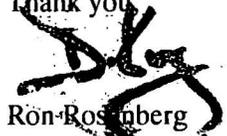


INSTRUCTIONS:

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.

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, an Arizona corporation, is a software consulting firm. The petitioner claims to be the parent company of [REDACTED], located in Indore (M.P.), India. The petitioner seeks to employ the beneficiary as a technical architect/project lead for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge and that he has been, and 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 asserts that the director erred in concluding that the beneficiary does not possess specialized knowledge.

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.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary possesses specialized knowledge, and whether he has been, and will be, employed in the United States in a specialized knowledge capacity.

The petitioner is a software consulting firm, specializing in digital marketing and advertising, branding, web development and graphic design. It employs 19 persons in the United States, and has a gross annual income of \$1.9 million.

The petitioner stated the beneficiary will be working in the United States as a technical architect/project lead. The petitioner listed the beneficiary's job duties in the United States as the following: interface with client/business teams to understand requirements; facilitate the creation of a well-defined product backlog; producing technical architectures that are modifiable, dependable and scalable; coordinate customer requirements with the offshore team in India; provide technical direction for the development, design and system integration for client engagement throughout the software cycle; prepare project status reports and project change requests; and manage the day to day project work with the offshore team in India.

The petitioner provided a description of the beneficiary's work experience with the foreign entity and his educational background. The petitioner described the beneficiary as having over nine years of experience in development of client-server systems, along with three years of experience in building e-commerce systems. The petitioner described the beneficiary's job duties abroad as being responsible for web design, development and documentation for clients in the education, retail, real estate, medical and health industries. The petitioner also indicated that the beneficiary has a "MCM in Computer Science," a bachelor's degree in Science and Mathematics, a diploma in advanced computing (C-DAC), and a developer/faculty certificate.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary was employed in a specialized knowledge capacity abroad, evidence that the beneficiary has specialized knowledge, and evidence of the beneficiary's proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner provided a description of the beneficiary's duties abroad as a software development manager. Specifically, the petitioner listed the beneficiary's job duties as including: interacting with project managers/clients to analyze and document systems; working with account manager and project manager to make sure deliverables are met on time; project management, design, and development; providing guidance to the company's development team as it relates to technology and directions; and mentoring a team of software engineers.

The petitioner described itself as offering tools and services that are "unique and advanced in the field of dynamic marketing and advertising, web development, and graphic design solutions." The petitioner described its need for an employee "who possesses an advanced level of expertise in [the petitioner's] specific software development, programming, services, operating procedures and processes." The petitioner asserted that beneficiary is the "ideal candidate" for the offered position because of the beneficiary's "in-depth knowledge of [the petitioner's] products and services, as well as extensive and hands-on experience of the development of [the petitioner's] unique products." The petitioner also asserted that the beneficiary has "an advanced level of specialized knowledge and expertise with [the petitioner's] software development processes and web development programming languages, such as .NET and PHP. The petitioner asserted: "Therefore, he has been trained at [redacted] for the proposed position of Technical Architect/Project Lead at [redacted]"

The petitioner described the beneficiary's duties in the United States as the following: provide effective technical direction and leadership to the development team; provide guidance to the business team as it relates to technology questions and directions; leverage a deep understanding (from an architect-perspective) of the petitioner's technology to work with business customers and the petitioner's product management team; define framework architecture on the application project code, and design and develop software systems; identify and implement policies and lead small and large application development projects; and code review and documentation. The petitioner emphasized that the proposed position "is extremely complex and requires a high level of expertise" and could only be filled by someone who "has been substantially involved in [the petitioner's] projects." The petitioner concluded that there is no one "more suitable" for the U.S. position than the beneficiary.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and that he has been, and will be, employed in a position requiring specialized knowledge. In denying the petition, the director found that the petitioner submitted insufficient evidence to establish that the beneficiary has knowledge that is special or advanced in comparison to other similarly experienced software development manager or person in a related occupation employed in the same field. The director also found that the petitioner's description of the beneficiary's job duties indicated that he would perform the same duties as other workers in a similar position.

On appeal, counsel provides a list of the beneficiary's projects, along with invoices, which "clearly show that in these past nine years, [the beneficiary] has been the lead developer on all the projects that involved [the beneficiary]." Counsel asserts that although the beneficiary's education and skills are "similar to that of any Computer Software Engineer and Computer Programmer," the fact that the beneficiary has been "the lead on every project" shows that the beneficiary "has been essential to not only the developing portion of petitioner's project, but also the key contributor to the overall presentation to petitioner's customer." Counsel emphasizes how the beneficiary has not only managed the development team, but also worked directly with clients on a daily basis. Counsel highlights one particular project which the beneficiary worked on for [REDACTED] [REDACTED] asserting that the beneficiary "single-handedly designed the workflow and currently communicates with the client to continue to provide desired results."

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge, and that he has been, and will 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 has been, and 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 second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. However, the petitioner has failed to establish that the beneficiary's qualifications equate to specialized knowledge specific to the petitioning organization. The petitioner described the beneficiary as having "specialized," "in-depth," and "advanced" knowledge of the petitioner's specific software development processes, web programming languages such as .NET and PHP, products, services, operating procedures, tools, and technology.¹ However, the record is devoid of any detailed technical description or documentation explaining exactly what are the petitioner's specific software development processes, web programming languages, products, services, operating procedures, tools, and technology. Moreover, the record is devoid of any description or evidence differentiating the petitioner's processes, languages, products, services, procedures, tools and technology from those utilized and offered by other similar companies. Without this evidence, the AAO is unable to evaluate the petitioner's claims that knowledge of the petitioning company's processes and procedures is truly specialized knowledge. For this reason, the petitioner's claims fail on an evidentiary basis.

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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO cannot accept the petitioner's and counsel's unsupported assertions regarding the claimed specialized knowledge. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel emphasizes the beneficiary's lead role in all the projects he has been involved with, and the beneficiary's ongoing responsibilities to communicate with clients. To support the appeal, the petitioner submits a list of the beneficiary's projects with a brief summary of the beneficiary's role in each project. For example, the list describes the beneficiary's role in the "Joint Implementation" project as "responsible for managing the development team . . . [and] is also actively involved in the technical architecture of the application. As the technical project lead, [the beneficiary] works directly with the client on a daily basis."

¹ The AAO notes that .NET and PHP are commonly used programming languages that are not proprietary to the petitioner.

The list describes the beneficiary's role in the "[redacted]" project as "overseeing the development team . . . [in which the beneficiary] singlehandedly designed the workflow, and continues to communicate with the client on a daily basis to achieve desired results." The list also describes the beneficiary's role for the [redacted] project as "the lead developer on the project . . . responsible for building the majority of the platform."

Counsel's assertions on appeal are unpersuasive. The fact that the beneficiary was given the lead role in all his projects and continually communicates with clients does not establish that the beneficiary possesses specialized knowledge and was employed in a specialized knowledge capacity. The broad and vague descriptions of the beneficiary's job duties during prior projects, consisting of overall team management, development and design, and client communication duties, fail to establish how the beneficiary's duties are different and more advanced from those typically performed by other technical architects and project leaders in the same field.

On appeal counsel highlights the beneficiary's achievements on the [redacted] project. According to the list of the beneficiary's projects, the start date for the [redacted] project was July 1, 2004. However, according to Form I-129, the beneficiary did not start employment with the foreign entity until July 4, 2004. Therefore, the petitioner's claim that the beneficiary was the "Lead Developer" of the [redacted] project is not entirely credible. Assuming *arguendo* that the beneficiary was immediately appointed the "Lead Developer" position when he first started employment with the foreign entity, this raises questions regarding whether the beneficiary's employment on this particular project required specialized knowledge. Furthermore, the invoices counsel submitted on appeal are of questionable relevance, as none of the invoices specifically identify the beneficiary as performing services for the projects.

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.*

Finally, although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States will require "specialized knowledge," the petitioner has neither adequately articulated nor documented any basis to support its claim. Again, the petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly employed persons in the same field. Counsel and the petitioner repeatedly assert that the beneficiary is the "ideal candidate" for the U.S. position and that the petitioner cannot find someone "more suitable" than the beneficiary. However, these broad assertions regarding the beneficiary's candidacy do not establish that the beneficiary will be employed in a specialized knowledge capacity.

The AAO does not dispute the possibility that the beneficiary is a skilled employee who has been, and would be, an asset to the petitioner. However, as explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. The beneficiary's duties and technical skills demonstrate

that he possesses knowledge that is common among similarly employed persons in the same industry. Furthermore, it is not clear how the performance of the beneficiary's duties would require more than mere knowledge and experience with the company's internal processes and methodologies. The petitioner has failed to establish how the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes used by the petitioner are substantially different from those used by other service providers in the petitioner's industry. *See Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982).

Any experienced software architect within the petitioning organization would reasonably be familiar with its proprietary products, internal processes, and methodologies. Similarly, most employees would also possess project-specific and/or client-specific knowledge from working with the company's clients. However, by itself, work experience and knowledge of a firm's technically complex products, processes, and procedures, will not rise to the level of "special knowledge." *Id.* at 53.

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 has been 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 appeal will be dismissed.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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.