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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 29 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 Illinois corporation, is a packaging manufacturer. The petitioner is an affiliate of [redacted] located in Quebec, Canada. The petitioner seeks to employ the beneficiary as a marketing and sales support specialist (capsules) for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the following: 1) that the beneficiary's employment abroad was in a position that was managerial, executive, or involved specialized knowledge; 2) that the beneficiary possesses specialized knowledge; and 3) that the beneficiary will be employed in the United States 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 is eligible for the benefit sought, and that the director misapplied the law.

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. Facts and Procedural History

The petitioner is a packaging manufacturer for the food, healthcare, home, personal care, and industrial markets. According to the petitioner's letter dated July 6, 2011, the company employs approximately 22,000 individuals worldwide, including 2,375 employees in the United States, and has annual sales in the amount of Australian $9.8 billion.

The petitioner stated the beneficiary will be working as a marketing and sales support specialist (capsules) focusing on the company's capsules cluster products, specifically, the company's wine screwcap products. The petitioner described the beneficiary's duties with the foreign entity as a marketing and sales executive who is responsible for the marketing efforts of the company's capsule products for the wine and spirits industry throughout North America, including the United States. The petitioner described how the beneficiary will be responsible for analyzing the wine and spirits markets in the United States, carrying out studies to identify new opportunities, evaluating, and improving current marketing and sales procedures for the company's U.S. product, and training the petitioner's new U.S. based marketing and sales staff on the company's unique products and marketing. The petitioner asserted that "[p]erforming these duties requires an advanced and specialized knowledge of these proprietary screwcap/closure products and the company's marketing sales procedures for them." The petitioner also stated that there are no U.S. workers who have an advanced level of knowledge of the petitioner's proprietary wine screwcap products or the company's

marketing sales procedures for them, as many of these products have not been previously manufactured in the United States but have been produced and marketed through the foreign entity in Canada.

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

Counsel for the petitioner responded to the RFE with the following statement:

> The Request for Evidence (RFE) issued in this case consists of 8 pages of template language with very little reference to the actual evidence in the record. A more negligent RFE this practitioner of 14 years has not seen. Petitioner respectfully stands upon the record originally submitted. Please issue a decision accordingly.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary's employment abroad was in a specialized knowledge capacity, that the beneficiary has specialized knowledge, and that the proposed position in the United States requires specialized knowledge. In denying the petition, the director found that the record failed to establish that the beneficiary's position abroad as a marketing and sales executive required knowledge that exceeds that of any other marketing and sales executive or similar occupation working in this field. The director found that the petitioner failed to distinguish the beneficiary's training and knowledge from any of the company's other existing employees in the same or similar position. The director found that the beneficiary's proposed duties are similar and typical of a sales and marketing specialist or related occupation. The director also found that there was no evidence to establish that the petitioner's processes are so different from others in the industry that knowledge of the company's proprietary products alone would amount to "specialized knowledge." The director observed that "work experience and knowledge of a firm's technically complex products, by itself, does not equal 'special knowledge.'"

On appeal, counsel asserts that the beneficiary's position abroad and in the U.S. requires specialized, in-depth knowledge of the petitioner's products. Counsel asserts that the beneficiary's knowledge of the petitioner's proprietary products, their design and technical specifications, the petitioner's specific marketing strategies, and the petitioner's supply chain processes, as well as her knowledge in applying these marketing strategies in an international market, constitute special knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D).

Counsel also asserts that the director applied incorrect or inexistent standards to adjudicate the petition. Specifically, counsel asserts that the director erred by comparing the beneficiary's knowledge and training to other similarly employed workers within the organization as well as to other similar professionals in her field. Counsel asserts that the law does not require such a comparison. Counsel asserts that the law allows for two ways to find specialized knowledge: it can be knowledge that is "unique," or knowledge that is "advanced." Counsel concludes that the beneficiary possess both unique and advanced knowledge; her knowledge of the petitioner's unique business methods and products, alone, constitutes "unique" knowledge, and her technical

knowledge of the company's proprietary products, their design capabilities and processes, and the company's marketing strategies for a unique market, makes her knowledge "advanced."

III. Analysis

Upon review of the record, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge and that she has been, and will be, employed 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 beneficiary 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.* 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 both prongs of the statutory definition, asserting that the beneficiary has both a special knowledge of the company's products, and an advanced level of knowledge of the company's processes and procedures. However, the petitioner has neither adequately articulated nor documented any basis to support its claims. For this reason, the petitioner's claims fail on an evidentiary basis.

At the time of filing, the petitioner described the beneficiary's knowledge in broad and conclusory terms. For example, the petitioner asserted that through the beneficiary's training and experience, she "gained an advanced and specialized knowledge of [the petitioner's] proprietary capsules clusters products for wine and spirits, their unique features, capabilities, and marketing appeal." The petitioner also claimed that the beneficiary has received "extensive training on [the foreign entity's] unique and specialized marketing/sales

procedures for these products." However, the petitioner failed to explain exactly why the beneficiary's knowledge was advanced and specialized. The petitioner also failed to specifically identify the company's "unique and specialized marketing/sales procedures" and explain why the beneficiary's knowledge in these procedures constitutes specialized knowledge.

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)). 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).

Therefore, the director reasonably issued a request for evidence ("RFE"), requesting the petitioner to submit additional evidence to support the petition. The RFE advised the petitioner that the evidence submitted did not compare and contrast the beneficiary's duties with others performing the same type of work. The director requested evidence such as: a description of how the beneficiary's duties abroad were different than other marketing and sales executives employed by the foreign company or others employed in similar positions in the industry; a copy of the U.S. and foreign entities' organizational charts; a description of exactly why the beneficiary's knowledge is special or advanced; a description of whether the beneficiary's knowledge is held by others employed by the organization or by other employers in the United States and abroad; and a description of the number of employees enrolled in each training course the beneficiary participated in, and how the training establishes a "special" or "advanced" level of knowledge when compared to other employees of the company.

In response to the RFE, the petitioner offered no additional evidence and requested a decision upon the record as constituted. The petitioner's failure to submit any evidence in response to the RFE precluded material lines of inquiry into the nature of the beneficiary's knowledge and employment capacity, and therefore shall be grounds for denying the petition.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The record as presently constituted is insufficient to establish that the beneficiary possesses specialized knowledge, and that she has been, and will be, employed in a specialized knowledge capacity. As discussed above, the petitioner provided only broad and conclusory assertions regarding the beneficiary's knowledge and employment capacity, without any specific explanations or corroborating evidence to support such conclusions. Critically, the petitioner failed to provide any explanation or documentation regarding how the beneficiary's level of knowledge is different from others within the organization or industry-at-large. Without

such information, USCIS is unable to determine whether the beneficiary's knowledge is truly "special" or "advanced."

On appeal, counsel asserts that the law does not require a comparison of the beneficiary to other similarly employed professionals within the organization or within the industry at large. Counsel asserts that the regulations can be satisfied by showing that the beneficiary either possesses "unique" knowledge, which counsel asserts is synonymous with "special" knowledge, or that the beneficiary possess "advanced" knowledge. Counsel then asserts that the beneficiary possesses both, asserting that the beneficiary's knowledge of the petitioner's unique business methods and products, alone, constitutes "unique" knowledge, and her technical knowledge of the company's processes and marketing strategies for a unique market makes her knowledge "advanced."

However, counsel's assertions are unpersuasive. While counsel disputes the use of comparison to other similarly employed professionals within the organization or within the industry-at-large, counsel has not articulated any meaningful, alternative method to define the terms "special" or "advanced."

Counsel makes a blanket assertion that the beneficiary's knowledge of the petitioner's unique products, alone, constitutes special knowledge. This assertion is unpersuasive. Most manufacturers can be said to develop and sell products that are different in some way from their competitor's products. Therefore, most manufacturers can be said to have "unique" products. Moreover, most employees with experience within the petitioning organization would reasonably be familiar with the company's unique products. By counsel's logic, anyone employed at the petitioning organization with any work experience and knowledge of a company's unique products would be considered to have "special knowledge." Such an interpretation strips the statutory language of any efficacy. As the director discussed, by itself, work experience and knowledge of a firm's technically complex products, even if proprietary, will not rise to the level of "special knowledge." *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In other words, specialized knowledge requires more than experience and familiarity with the petitioner's products; otherwise, specialized knowledge would include almost every employee in an organization. If everyone in an organization is specialized, then no one can be considered truly specialized.

Similarly, counsel's blanket assertion that the beneficiary's knowledge of the company's unique processes and marketing strategies makes her knowledge "advanced." Most companies can be said to have internal processes and methodologies that differ from other companies' processes and methodologies, and most employees with experience within the petitioning organization would reasonably be familiar with these unique processes and methodologies. The beneficiary's knowledge of the company's unique processes and methodologies, alone, will not rise to the level of "advanced" knowledge absent a showing of how the beneficiary's knowledge is more advanced than others.

In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

> This ambiguity [of the term "specialized knowledge"] is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special

> only in the sense that it is not ordinary; to define special one must first define what is ordinary . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf.* Westen, *The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).
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> *1756, Inc. v. Attorney General*, 745 F.Supp. 9, 14-15 (D.D.C., 1990).

As the terms "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. As the petitioner refused to provide any information regarding how the beneficiary's level of knowledge compares to others within the organization or the industry at large, the petitioner failed to provide any context in order for USCIS to consider whether the beneficiary's knowledge is truly "special" or "advanced." Therefore, the petitioner failed to meet its burden of proof in establishing that the beneficiary is eligible for the benefit sought.

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.

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge, and that she has been, 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.