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

U.S. Citizenship and Immigration Services

DATE: MAY 07 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 Delaware corporation, is an information technology consulting and software company. The petitioner claims to be a subsidiary of located in France. The petitioner seeks to employ the beneficiary as a pre-sales consultant for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge in the United States. Additionally, the director found that the petitioner failed to establish the beneficiary was employed abroad in a specialized knowledge capacity.

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 for the petitioner contends that the director's findings were erroneous, and claims that the beneficiary has been and will continue to be employed in a specialized knowledge capacity that is critical to the petitioner's sales process for its proprietary flagship product known as

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 Issue on Appeal

The issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and whether he has been and will be employed in a specialized knowledge capacity.

The petitioner is an information technology consulting and software company, and claims that it has a specific expertise in helping clients organize and optimize computer networks and operations. It further claims to have created a cross-platform job scheduler known as [redacted] a unique and proprietary software application that it distributes to multinational companies. According to its claims on the Form I-129 petition, the petitioner employs 28 people in the United States, and has a gross annual income of $3.7 million. The petitioner indicated that its international group employs 260 employees, with $51.2 million in gross annual income.

The petitioner stated the beneficiary will be working as a Pre-Sales Consultant. Regarding his employment with the foreign entity, the petitioner stated that the beneficiary began his employment abroad with the petitioner's Italian affiliate in October of 2005 as an information technology consultant, and that he was promoted to the position of senior information technology consultant-project manager in May of 2006. The petitioner stated that in this capacity, the beneficiary was responsible for job scheduling projects, including design and implementation, for the petitioner's clients in Europe, the Middle East, and Africa.

The petitioner further stated that from May of 2008 through July of 2010, the beneficiary was employed abroad as a pre-sales consultant, a position it claims was a managerial and specialized knowledge position. Regarding the duties performed by the beneficiary in this capacity, the petitioner stated that the beneficiary "used his advanced technical knowledge of the Company's proprietary technology to provide overall technical Pre-Sales support to prospective clients. He was responsible for all of [the foreign entity's] Pre-sales activities in Southern Europe, including Italy, Greece, Turkey, Bulgaria, Israel, and southern Switzerland." The petitioner concluded by stating that in August of 2010, the beneficiary began working for the petitioner's Canadian affiliate in Montreal, Canada. The petitioner further claimed that this employment, in the position of Pre-Sales consultant, was a specialized knowledge position and required the beneficiary to perform duties similar to those of the proposed position in the United States.

The petitioner also provided the following description of the beneficiary's foreign employment:

> As Pre-Sales Consultant for [the foreign entity] in Italy and Canada, [the beneficiary's] duties have included preparing and presenting comprehensive presentations to various audiences, adjusting the content and manner in which he explains complex technical concepts and associated business benefits to meet different levels of knowledge and interest. In order to efficiently market to potential customers, complete technical knowledge of the product is essential.

The petitioner further stated that the only way to acquire knowledge of its product was through hands-on, day-to-day utilization of the product. Moreover, the petitioner stated that, since the Pre-Sales Consultant is often required to make "on-the-fly" decisions in a sales environment, "hands-on experience over several years is needed to acquire the appropriate level of specialized knowledge to conduct the installation process at client sites."

The petitioner also distinguished the proffered position of pre-sales consultant from that of a sales manager and an IT consultant with the petitioner's company. Specifically, the petitioner claimed that the sales manager, who acts as the main liaison between customers and all teams at the company, is tasked to sell the product to the customer. Thereafter, the IT consultant will install according to customer specifications. The petitioner claims that the beneficiary, in the position of pre-sales consultant, is tasked with delivering technical presentations to the customers and answering technical questions regarding the product.

Regarding the beneficiary's experience and qualifications, the petitioner stated that he has been acquiring "specialized knowledge of the kind" since December 2003, at which time he was employed by a company founded by a former employee of the foreign entity, which required the beneficiary to work on projects involving Thereafter, the beneficiary commenced employment with the petitioner in October 2005, and became a pre-sales consultant in May of 2008. The petitioner concluded that the beneficiary gained his specialized knowledge based on his seven years of experience working with the product.

Regarding the beneficiary's proposed position in the United States, the petitioner stated that he would be responsible for aggressive expansion of sales in the North American market. Although the petitioner claims that the duties of the beneficiary in the United States would be similar to those performed abroad, the petitioner also provided the following list of the beneficiary's proposed duties:

- [P]roviding overall technical pre-sales support for potential buyers of
- [U]pdating existing customers on new versions of
- [P]reparing documents about that show the benefits and weaknesses of various implementation schemes;
- [P]reparing and delivering presentations on tailoring the complex technical explanation of to customer knowledge and needs;
- [P]reparing and delivering product demonstrations to customers;
- [D]rawing on in-depth technical knowledge and deliver POCs (proof of concepts);
- [A]nswering requests for information with detailed technical explanations;
- [U]nderstanding customer needs and tailoring product specifications accordingly; and
- [G]athering product enhancement requests from existing customers.

The petitioner concluded by stating that, while "general IT knowledge and specific knowledge of software languages and environments will play an important role in the successful performance of [the beneficiary's] duties as Pre-Sales Consultant, it is the third kind of knowledge – specialized knowledge of – that is the crucial qualification for the Pre-Sales Consultant position at [the petitioner]." Noting that there are currently only three Pre-Sales Consultants in the United States, and further noting that qualified candidates must have "several" years of experience with the product that can only be gained through employment with the petitioner, the petitioner concluded that the pool from which to draw additional candidates for the proffered position is very small.

The director subsequently issued a Request for Evidence ("RFE"). The director requested that the petitioner provide, *inter alia,* evidence that the beneficiary has specialized knowledge and evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner provided an overview of a typical week for the beneficiary in the position of Pre-Sales Consultant, outlining the standards tasks to be performed and number of hours devoted thereto. In addition, the petitioner reiterated that specialized knowledge of the product can only be gained by employment with the petitioner. The petitioner further stated that the three main tasks of the beneficiary, as pre-sales consultant, required specialized knowledge and were as follows:

- [I]nstalling and configuring in client-specific environments during the crucial Proof of Concept (POC) stage of the sales process;
- [D]elivering presentations and demonstrations on to prospective clients; and
- Making technical qualification calls for I

Regarding the beneficiary's POC duties, the petitioner provided a chart which indicated that, in order to perform such duties, three years of experience working on the product was required. The petitioner explained that the beneficiary gained this knowledge between 2005 and 2008 with his employment abroad, and also gained general experience prior to that in his previous employment, as well as via completion of various educational/training programs. The petitioner further stated that his experience abroad provided him with the knowledge required to perform presentations and technical qualification calls, and indicated that his general IT knowledge further equipped the beneficiary to perform the required duties of the position.

In addition, the petitioner stated that it took at least three years of hands-on, experiential training to acquire sufficient knowledge of to perform the duties discussed above. Regarding the other pre-sales professionals in the United States, the petitioner stated that the pre-sales director possessed over nine years of experience with the petitioner, and the other pre-sales consultant worked with the petitioner for three years before being promoted to the position. With respect to its standard training procedures, the petitioner stated that the first one to two years of employment were executed under heavy supervision, after which the employee would receive less supervision and eventually undertake solo projects. Thereafter, the petitioner states that, prior to being considered for the pre-sales position, strong knowledge of must be demonstrated. Additionally, the petitioner claimed that in order to transition to the pre-sales team, the employee must: (1) undergo initial training in France (for an unspecified period); (2) shadow another team member; and (3) demonstrate the ability to adapt to client-specific environments. In summary, the petitioner claimed that formal training is administered early in the job with an ultimate transition to experiential training in the field.

The petitioner further stated that the pre-sales department is a small group, noting that there are only five employed by the foreign entity, in addition to the pre-sales director and the pre-sales consultant in the United States. Finally, the petitioner submitted copies of certificates demonstrating the beneficiary's completion of various training programs.

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 that the proffered position appeared more akin to that of a salesperson rather than one that required specialized knowledge.

On appeal, counsel for the petitioner asserts that the director's decision constituted an abuse of discretion and should be reversed. Counsel reiterates that the proprietary nature of the product requires individuals with specialized knowledge of the product to perform the duties of the proffered position. Contending that the petitioner demonstrated that the beneficiary possessed such knowledge, counsel asserts that the petition should therefore be approved.

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 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). USCIS 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 [redacted] product and its application in international markets. Specifically, the petitioner asserts that as a pre-sales consultant, the beneficiary possesses the exclusive ability to demonstrate to potential clients the manner in which the [redacted] product can be adapted to meet client specifications. Although the petitioner indicates that a sales manager and an IT consultant also work to distribute the [redacted] product, the petitioner insists that the sales manager is simply a sales person and the IT consultant is simply an installer, whereas the beneficiary, as a pre-sales consultant, possesses all the knowledge of the claimed proprietary product and thus is essential for the petitioner's intended expansion of the [redacted] product.

The petitioner repeatedly claims that the pre-sales consultants are the employees responsible for the presentations of the products to clients, noting that their presentations are not merely prepared scripts but

thoroughly-detailed presentations incorporating and anticipating unique customer requirements and questions. However, despite the repeated assertions regarding the specialized knowledge of the pre-sales consultants and the detailed information explained in detail during these presentations, the petitioner has failed to supplement the record with documentary evidence to support these assertions. For example, it appears that, based on the petitioner's contentions, the beneficiary as pre-sales consultant is required to specifically tailor each presentation to meet a specific client's needs. The petitioner asserts that the specialized knowledge gained by the beneficiary through his experience with the product is the foundation for these presentations, which ultimately enables him to customize a proposal after anticipating client requirements, thereby creating a virtual work product that differs based on each particular client. Despite the petitioner's claims, the record contains no evidence, such as examples of a typical sales presentation demonstrating the manner in which the beneficiary utilizes his claimed specialized knowledge of the product.

In fact, a review of the record demonstrates a lack of evidence pertaining to the product in general aside from a printout from the petitioner's website identifying the product as a type of job scheduling software.[1] Without additional information and documentation pertaining to the product, the AAO cannot determine the nature of the beneficiary's claimed 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)). 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 AAO emphasizes that the petitioner's claim that the product is proprietary does not exempt it from submitting evidence that the beneficiary's knowledge of the product qualifies as either "special" or "advanced." Therefore, while the product may be exclusive to the petitioner, the petitioner must still establish that the knowledge required to perform the duties of a pre-sales consultant for this product is of significant complexity, requires a period of training or experience to perform at the beneficiary's level, or that it is otherwise not easily transferrable to others in the beneficiary's field. The petitioner has not met this evidentiary burden, as it has not submitted evidence beyond assertions that the product is "unique and proprietary."

The petitioner repeatedly contends that the beneficiary as a pre-sales consultant is more than a simple sales person, and alternatively is responsible for preparing client-specific presentations and demonstrations that no other employees are capable of performing. The petitioner clearly stated that sales managers have virtually no knowledge of the product, and that it is the pre-sales consultants who are responsible for selling the products to the clients by highlighting the specific ways that the petitioner's software can benefit a specific customer. While the AAO acknowledges that the beneficiary may have more intricate knowledge of this product beyond that of the sales managers, the petitioner has failed to supplement the record with documentary evidence corroborating these claims. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

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[1] It should be noted that the product brochure for provides basic information regarding the product and the solutions is can offer to potential users. Absent documentation of a typical sales presentation prepared by the beneficiary, it is unclear how the beneficiary's role as a pre-sales consultant requires specialized knowledge beyond that of a sales professional.

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 AAO further notes that, in both its letter of support and again on appeal, the petitioner asserts that it has sold more than 30,000 licenses for its product, and distributes the software in approximately 50 countries. It further claims that its product is utilized by a large number of companies including With the vast amount of licenses sold for the product to date, it is unclear how each purchaser receives a presentation tailored specifically to its own unique needs, which is what the petitioner claims is a critical task of the beneficiary. Rather, it would appear that the Dollar Universe product is a generalized product that most customers can decipher without requiring an individual and personalized presentation by a pre-sales consultant. However, as previously stated, the record lacks sufficient evidence to permit the AAO to examine this issue more thoroughly. Again, 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).

Again, the petitioner submits no evidence, such as work product of the beneficiary or examples of proposals specifically tailoring to unique customer needs. Moreover, the record indicates that, after three years of experience working with the petitioner, an employee can perform the duties of a pre-sales consultant. There is insufficient evidence to support a finding that the beneficiary, merely by completing several years of employment with the petitioner, has gained a specialized level of knowledge that sets him apart from other employees familiar with the Although the petitioner claims that the beneficiary has completed training, there is no information regarding what this training entailed or the number of employees who have completed similar training. In fact, the petitioner's explanation of this area of training indicates that a one-hour exam is given to all employees with one year of experience with

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 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.