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

(b)(6)

DATE: JUN 2 3 2014 Office: CALIFORNIA SERVICE CENTER FILE

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 is a New Jersey branch office of the beneficiary's foreign employer located in India. The petitioner is engaged in providing professional engineering services. The petitioner seeks to employ the beneficiary in the position of instrumentation and control engineer for a period of three years. The petitioner indicates that the beneficiary will be stationed primarily offsite at the [redacted] California worksite of its client, [redacted] or "the unaffiliated employer.")

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a position requiring specialized knowledge. Additionally, the director concluded that the petitioner had failed to demonstrate that the beneficiary's placement at the unaffiliated employer's worksite was not labor for hire as defined in section 204(c)(3) of the Act, 8 U.S.C. § 1184(c)(2).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director misapplied the law and provided an inconsistent adjudication. Counsel states that the petitioner has established with sufficient evidence that the beneficiary has been and will be employed in a specialized knowledge capacity. Further, counsel contends that the beneficiary's assignment to the unaffiliated employer's worksite will not be labor for hire.

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, Petition for a Nonimmigrant Worker, 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

A. Specialized Knowledge Capacity

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

1. Facts and Procedural History

The petitioner filed the Form I-129 on February 27, 2013. The petitioner stated that the foreign employer is a leading engineering consulting firm which provides a wide spectrum of services, including pre-project activities, design engineering, procurement assistance, project management and coordination, inspection and expediting, construction supervision and commissioning assistance. The petitioner indicated on the Form I-129 that the company has 3,300 employees worldwide. The petitioner seeks to employ the beneficiary in the position of Instrumentation and Control Engineer and indicates that she will be assigned to work on a large plant migration project for the petitioner's client, [redacted]

In a letter submitted in support of the petition, the petitioner described the beneficiary's experience and her proposed role in the United States, indicating that she has advanced knowledge of its instrumentation and control engineering practices, procedures and requirements for plant migration based on her eight years of experience with the company. The petitioner submitted a detailed explanation of the specific tasks the beneficiary will perform and the level of skill and specific knowledge required to perform them.

The petitioner explained that the beneficiary had undergone extensive training during the course of her tenure with the company, gaining "an in-depth specialized knowledge of [the petitioner's] proprietary development procedures, methodologies, and tools," which would be integral to the successful completion of the assigned project. The petitioner conveyed that, within the company, the beneficiary is considered an expert in instrumentation and control systems for pharmaceutical, nuclear, chemical and cement plants, and detailed how she had gained experience during the course of her work on thirteen projects since 2004. The petitioner fully listed these thirteen projects, the beneficiary's dates of assignment, the location of the assignments and the applicable clients, including previous assignments to in 2008 and 2009.

The petitioner noted that out of approximately 3,000 employees in the company only five other employees had the beneficiary's level of training and experience in the field and estimated that it would take more than three years to train a typical instrumentation and control engineer to the beneficiary's knowledge level. The petitioner also submitted documentation to support its assertions regarding the beneficiary's knowledge, including a letter from the client explaining the beneficiary's proposed engagement and their need for the beneficiary's services and knowledge of the petitioner's tools and engineering processes, a scope of work from the client relevant to the control room project, a voluminous master list of instrumentation and control procedures specific to the company, and training materials from courses completed by the beneficiary, amongst other supporting evidence.

The petitioner provided a listing of its instrumentation and control engineers along with their hire dates, relative experience and current status with the company in support of its assertion that the beneficiary's knowledge is advanced within the organization. The petitioner also submitted an evaluation letter from an associate professor of computer systems at who provided a detailed overview of the project, and explained why the U.S.-based project requires knowledge beyond what would normally be held by an instrumentation and control engineer in the general workforce.

The director denied the petition, concluding that the petitioner had not established that the beneficiary possessed specialized knowledge or that she would be employed in a specialized knowledge capacity in the United States. In denying the petition, the director referenced the position of "computer systems analyst" included in the Department of Labor's Occupational Outlook Handbook and concluded that the beneficiary's duties were not established as special or advanced when compared to this position description. Further, the director determined that the evidence did not demonstrate that the beneficiary had developed any of the proprietary knowledge held by the petitioner. In sum, the director concluded that the petitioner had not established that the beneficiary's knowledge was significantly different from those similarly employed in the industry.

On appeal, counsel states that the petitioner has articulated with specificity the beneficiary's specialized knowledge and provided sufficient documentation to support its assertions. Counsel asserts that the director misapplied the law by requiring that the petitioner demonstrate that the beneficiary had developed proprietary

knowledge in order to qualify. Lastly, counsel points to the fact that the director mistakenly compared the beneficiary against a job category relevant to computer systems analysts, whereas, the beneficiary is in fact "an instrumentation engineer working on sophisticated engineering projects."

2. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that she would be employed in the United States in a specialized knowledge capacity.

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. 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.* 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.

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 second prong of the statutory definition, asserting that the beneficiary has an advanced knowledge of company engineering processes and procedures. The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses advanced knowledge of the company's engineering tools, processes, standards and methodologies in the instrumentation and control field and possesses expertise with power plant migration procedures that can be distinguished from that possessed by others in the company. The petitioner also established that such knowledge cannot be gained outside the organization and that the company-specific knowledge is of sufficient complexity that it cannot be readily taught to engineers in the instrumentation and control

engineering field. The petitioner provided evidence of the beneficiary's educational background and work experience that contributes to an advanced level of knowledge regarding the processes and procedures of the company. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires this advanced level of knowledge.

In conclusion, the petitioner established by a preponderance of the evidence that the beneficiary possesses specialized knowledge and that she 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 director's determination to the contrary will be withdrawn.

B. Beneficiary's assignment to the United States as "labor for hire"

The next issue to be addressed is whether the beneficiary's placement primarily at the petitioner's worksite is considered labor for hire as defined as specified in section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2).

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
>
> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

In denying the petition, the director found that the petitioner had not demonstrated that beneficiary would be providing a product or service for which specialized knowledge specific to the petitioning employer is necessary. As such, the director concluded that the petitioner had not established that the beneficiary's placement at the client worksite would not be labor for hire as excluded by the Act.

As discussed above, the petitioner has submitted sufficient evidence to establish that the beneficiary's assignment requires knowledge specific to the petitioning company and that she will be supervised and controlled by the petitioner. For instance, as discussed above, the petitioner had provided sufficient detail regarding the beneficiary's knowledge, much of which is proprietary to the company, including how the beneficiary acquired this knowledge on specific projects over the last decade. The petitioner also submitted a master list of internal instrumentation and control procedures held by the company, company marketing materials, and an annual report confirming that the company holds proprietary knowledge in the field of engineering. Furthermore, the petitioner has submitted letters from the client to whom the beneficiary will be assigned, confirming that it is in need of the petitioner's proprietary knowledge to complete the project.

In addition, it is clear from a scope of work document provided that the client requires the petitioner's proprietary tools and processes in order to complete the project. Therefore, the petitioner has established that the beneficiary's placement at the client's worksite is in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary. As such, the director's decision to the contrary is hereby withdrawn.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained and the director's decision dated June 10, 2013 is withdrawn.

ORDER: The appeal is sustained.