



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 13 2014** Office: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

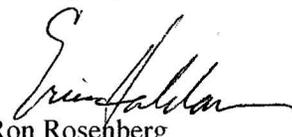
SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition to classify the beneficiary as an L-1B 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 Kansas corporation engaged in aerospace manufacturing, states that it is a subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary in the position of analysis engineer based at its Seattle, Washington office.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary's employment abroad was in a position involving specialized knowledge, (2) that the beneficiary possesses specialized knowledge, and (3) that the beneficiary's proposed position in the U.S. would involve 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. On appeal, the petitioner submits a brief which it claims "provides a much greater demonstration of the fact that [the beneficiary] does indeed possess 'Specialized Knowledge' critical to the success" of the petitioner's Seattle office.

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 parent, subsidiary, or affiliate of the foreign employer.

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(I)(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 (I)(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 sole issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and whether he has been employed abroad, and would be employed in the United States, in a position requiring specialized knowledge.

A. Facts

The petitioner states that the foreign employer is a supplier in the aerospace industry delivering to customers such as [REDACTED]. The petitioner submitted an annual report that demonstrates that the foreign employer earned €355 million during the 2011-12 fiscal year and that it employs 1,947 employees in Austria. The petitioner's initial evidence included a letter dated October 22, 2012 outlining the company's plans to open a Seattle-based engineering office to work with the company's major clients located in the state of Washington. In a separate letter, the foreign entity indicated its intent to hire approximately 20 engineers to staff the new location.

On the Form I-129, the petitioner specified that the beneficiary has been performing the following duties in his capacity as an analysis engineer for the foreign employer:

- Preparation of reports to certify static strength of primary and secondary structural composite & metallic parts.
- Performing of static, stability, fatigue and optimization calculations using FEA and analytical methods for metallic parts.
- Assessment of defect impact on composite and metallic structure.
- Review, assessment and disposition of production and in service non-conformities.
- Development of repair solutions.
- [REDACTED]

The petitioner stated on the Form I-129 that the beneficiary would perform the same duties as an analysis engineer based in the United States. The petitioner specified that the beneficiary's specific project would involve "[a]nalysis of new Split Winglet designs on [REDACTED]

In a letter submitted in support of the petition, the Head of [REDACTED] for the foreign entity further described the beneficiary's proposed duties as the following:

- Interface with new US Analysis staff
- Migration of [company] Headquarters Analysis "way of work" to new Engineering office Seattle.
- Structural Calculations for Metallic and Composite Components
- Compilations of Stress Substantiation Stress Notes and Certification of Stress Reports
- Calculation and Substantiation of MRB related Repair Solutions.

Finally, the petitioner provided an organizational chart for its Seattle engineering office. The chart shows that the office is managed by a Head of Engineering, who supervises 23 personnel in four departments, each of which has one technical lead and four to five additional employees. The chart depicts the beneficiary in the "C919 Spoilers and Winglet Analysis" department. This department has two contractors, including the technical lead, and five positions in total.

The director found the initial evidence submitted by the petitioner insufficient to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a capacity requiring specialized knowledge. Consequently, the director issued a request for additional evidence (RFE) listing evidence the petitioner could submit to establish that the beneficiary acts in a specialized knowledge capacity abroad, including *inter alia*: (1) a more detailed description of the beneficiary's duties abroad, (2) an explanation of how the knowledge required for the position is different from other analysis engineers employed by the foreign employer, and (3) a foreign company organizational chart including those in the beneficiary's immediate department along with names, job titles and summaries of duties for each employee.

Further, the director requested additional evidence to establish that the beneficiary possesses specialized knowledge, suggesting that the petitioner submit evidence of the beneficiary's educational credentials and a

letter from the beneficiary's supervisor describing his training or experience abroad. Additionally, the director recommended that the petitioner submit a detailed description of the beneficiary's claimed specialized knowledge. Specifically, the director explained that the petitioner should indicate the amount of time required to acquire the knowledge, indicate whether the knowledge is held by others in the organization, whether the knowledge could be easily transferred or taught to another individual, amongst other information relevant to demonstrating that the beneficiary's knowledge is special or advanced. The director also asked that the petitioner indicate the total number of employees with the foreign employer who have acquired the same knowledge as the beneficiary, documentation of any specialized training completed by the beneficiary, a comparison of the company's products or services with others in the field, and any patents or published materials relevant to the beneficiary.

Finally, the director stated that the petitioner should submit the following to establish that it would employ the beneficiary in a position requiring specialized knowledge, including: (1) a more detailed description of the beneficiary's proposed duties, and (2) an explanation of how the duties of the beneficiary are different from other employees working for the company or other similarly-employed workers in the industry.

In response, the petitioner provided a letter further describing the beneficiary's specialized knowledge, his duties abroad and his proposed duties in the United States. The petitioner generally described the beneficiary's role as follows:

It is specifically pointed out that [the beneficiary] possesses specialized and in depth knowledge of [the petitioner's] way of working within [redacted] Analysis discipline as well as at the MRB (Material Review Board) interface between [redacted] Production. It is strongly required that this know-how is transferred to our overseas engineering office in order to ensure that products developed there follow the [redacted] headquarter's [sic] way of working. [The beneficiary], his 8 years of [redacted] experience combined with his specialized knowledge is deemed to be one of the means to transfer this know-how.

The petitioner also indicated that the beneficiary has advanced knowledge in the fields of: aircraft engine analysis; metallic part analysis and metallic material behavior; aircraft fuselage structure, aircraft wing components structure; designing, manufacturing, repairing and inspecting monolithic structures as well as sandwich structures; test preparation, test results evaluation for aircraft components; and methodology and procedures applied by aircraft companies [redacted]. The petitioner described the following areas as "specialized knowledge":

- Complex knowledge of aircraft systems – engines, wing components, fuselage
- Highly developed and extraordinary knowledge of general analysis used in aircraft industry
- Highly developed and extraordinary knowledge of [the petitioner's] internal analysis tool [redacted]. Beneficiary worked as tester and member of this software development team in term 2007 – 2009. Since 2009 analysis tool [redacted] is used at [redacted] projects.
- Highly developed and extraordinary knowledge of [the petitioner's] state of the art manufacturing procedures, repairing and inspecting composite structures (monolithic and

sandwich), including part building process (lay-up process, curing, assembly), production and service damage inspection and treatment, repair procedures creation, allowable defect size definition, knock-down factors definition.

The petitioner also noted that the beneficiary was a co-author of a patent related to an aircraft turbofan engine, and submitted documentation from the Industrial Property Office of the Slovak Republic to support this assertion. Further, the petitioner explained that the beneficiary had focused on the following three major projects since January 2012: (1) acting as an MRB analysis engineer in the [REDACTED] program, (2) performing on-site technical support for [REDACTED] program, and (3) more recently overseeing an overwing and underwing fairing team working at the company's headquarters on the aforementioned [REDACTED] project. In the case of the [REDACTED] project, the petitioner differentiated the beneficiary's role from three other analysis engineers on the project by explaining that the beneficiary approved and signed repair procedures formulated by these other engineers. Additionally, the petitioner stated that the beneficiary was "uniquely in charge" of the [REDACTED] overwing and underwing fairing project, consisting of four other analysis engineers.

With respect to the beneficiary's proposed duties in the United States, the petitioner stated that all members of the Analysis Stress Team will perform stress calculations and compile stress reports. The petitioner further stated:

Beneficiary's role is more complex, requires advanced knowledge [described previously herein], and contains the following activities:

- Implementation of [REDACTED]
- Supervising of new US analysis staff
- Coordinating communication between Analysis team Seattle and [the] Production team [abroad]
- Evaluation of production defects occurred on products developed by Seattle office
- Developing of repair procedures for defects, moreover, performing stress calculations, reports compilation

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. In denying the petition, the director stated that the petitioner had failed to submit evidence to demonstrate that the beneficiary's knowledge of the company's tools, processes, procedures and methodologies was different or uncommon when compared to others similarly placed within the company or I his field. Further, the director acknowledged the beneficiary's co-authorship of a patent, but emphasized the petitioner's failure to explain the significance of the patent and whether it was relevant to his current assignment or his proposed assignment in the United States.

On appeal, the petitioner contends that the beneficiary holds specialized knowledge of the method by which the company performs repairs and how these repairs are substantiated through adequate analysis. The petitioner explains that this knowledge resides within the MRB department based in Austria, whose sole task

is to calculate "the adequacy of chosen repair procedures in a merge between engineering data and fabrication possibilities." The petitioner states that the beneficiary had been selected as the MRB analysis engineer to transfer this knowledge to its fifteen locally-hired engineers based in Seattle engaged in a [REDACTED] retrofit project.

The petitioner emphasizes the beneficiary's eight years of experience in company processes, and contends that it would take 5-8 years to train another employee for this role "depending on previous experience and education." The petitioner also explains that the beneficiary is one of the leading members of a "development team responsible for developing a methodology to estimate the life of laminate affected by matrix cracks," and further notes that this developed methodology is "one of a kind" and "intellectual property of the company." Lastly, the petitioner states that a dismissal of the appeal would cause significant disruption of its business causing it to not be able to fulfill pressing customer requirements in the United States.

B. Analysis

Following a review of the petitioner's assertions and the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed with the petitioner in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(I)(1)(ii)(D).

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.

In order to establish eligibility, the petitioner must show that the individual's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(I)(3)(iii). 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(I)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition. In the present case, the petitioner's claims are based on the second prongs of the statutory definition, asserting that the beneficiary has advanced knowledge of the company's processes and procedures.

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 matter, the petitioner has not provided sufficient supporting documentation to establish that the beneficiary holds specialized knowledge of the company's processes or procedures. The petitioner has provided explanations of the beneficiary's knowledge and experience, including his expertise in the company's MRB analysis. However, the petitioner has submitted little other than these assertions to demonstrate that the beneficiary's knowledge is special or advanced. The petitioner has not provided sufficient descriptions, or supporting documentation, relevant to differentiating the beneficiary's knowledge from the similarly placed analysis engineers working for the foreign employer. Likewise, the petitioner has failed to explain which other employees, if any, hold a similar level of knowledge. A petitioner must submit sufficient documentary evidence to establish that such knowledge is special and advanced within the organization or the industry.

For instance, the director stressed in the RFE that the petitioner had not sufficiently compared and contrasted the beneficiary's knowledge against that of his colleagues or other similarly placed professionals within the industry and requested that the petitioner provide explanations and supporting documentation as necessary to differentiate the beneficiary's knowledge as special or advanced. Specifically, and especially relevant to the current matter, the director asked that the petitioner submit a foreign organizational chart relevant to the beneficiary's immediate hierarchy, the names and titles of these employees, and a summary of their duties. However, the petitioner did not submit such an organizational chart to allow an effective comparison of the beneficiary's level of knowledge and experience to that of colleagues. Instead, the petitioner vaguely noted that the beneficiary approved and signed off on the work of three other analysis engineers on an [REDACTED] project and that he was "uniquely in charge" of a [REDACTED] overwing and underwing project. On appeal, the petitioner stresses that the beneficiary holds proprietary knowledge of a methodology he developed to "estimate the life of laminate affected by matrix cracks," noting that this methodology is "one of kind and intellectual property of the company." The petitioner also states that "composite fatigue is very rare and unexplored field with minimum information available for public use." However, the petitioner does not explain the relevance of his knowledge to the current [REDACTED] project in the United States nor does it provide supporting documentation to substantiate this proprietary knowledge.

Furthermore, the petitioner explains that "the beneficiary is one of 2 persons at [the company] authorized to perform stress evaluation on behalf of [REDACTED] for A380 Flap Track Fairings." However, again, the petitioner does not indicate the relevance of this designation to his proposed role working with [REDACTED] in the United States, nor does the petitioner provide specifics regarding how the beneficiary acquired this knowledge. Additionally, as noted by the director, although the petitioner provides evidence that the beneficiary co-authored a patent, the relevancy of this patent to his current, or coming, assignment is not explained. The petitioner also does not clarify whether the beneficiary's co-authoring of a patent sets him apart from his colleagues, or indeed, whether the petitioner even has any proprietary interest in this patent and whether it will be used during the beneficiary's assignment in the United States. 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)).

In addition, the petitioner has submitted inconsistent information regarding the nature of the U.S. assignment. The petitioner states in its letters that the beneficiary will work on the [REDACTED] team; however, the petitioner depicted the beneficiary as a member of the C919 Spoilers and Winglet team on the submitted U.S. organizational chart. 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).

Further, although the petitioner indicates that its locally-hired U.S. engineers do not have the knowledge to fully perform the petitioner's contract requirements with [REDACTED] the organizational chart nevertheless indicates that it has filled four lead technical positions that, based on other evidence in the record, appear to be senior to the beneficiary's analysis engineer position. The organizational chart also reflects that three of these four lead positions were filled by contractors, which raises further questions regarding the necessity of knowledge that is specific to the petitioning company. The petitioner has not provided any additional information regarding the titles, duties or backgrounds of the employees depicted on the chart as a point of comparison.

The AAO does not doubt that the beneficiary possesses knowledge of the company's internal processes, procedures and "way of work" applicable to his engineering discipline, or that he is a capable and experienced engineer. However, the beneficiary's knowledge of such internal processes alone is insufficient to establish that the knowledge he possesses is special or advanced. Rather, the petitioner must establish that qualities of the companies processes require the employee to have knowledge beyond what is common in the company or the industry. Much of the beneficiary's claimed advanced knowledge is general knowledge that would be available to any aircraft structural or analysis engineer. While the petitioner clearly has developed internal systems and processes for conducting analysis and documenting repair procedures, it has not adequately explained or documented these systems or established the amount or type of training required to become proficient in these systems and procedures. 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*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Former Immigration and Naturalization Service (INS) director James Puleo stated the following in a memorandum issued on March 4, 1994, clarifying the burden a petitioner must meet in order to demonstrate specialized knowledge:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not

the beneficiary possesses specialized knowledge. See James A. Puleo, Assoc. Comm., INS, "Interpretation of Special Knowledge," March 4, 1994 (Puleo Memorandum)

As such, requiring a petitioner to establish that a beneficiary's knowledge is special or advanced as compared to his colleagues within, and outside, their organization is an accepted means of determining whether a beneficiary's knowledge of company processes and procedures is set apart from elementary or basic knowledge. Again, the AAO does not dispute that the beneficiary is a skilled and experienced employee who has been, and will be, a valuable asset to the company and that he is undoubtedly knowledgeable, experienced, and qualified to carry out the goal of transferring company knowledge to the United States. However, demonstrating this is not alone sufficient to establish that the beneficiary holds specialized knowledge. The petitioner much effectively differentiate the beneficiary's knowledge from that held by others in the organization or similarly placed in the field to establish the knowledge as special or advanced. However, in the present matter, the petitioner has provided little specific comparison of the beneficiary with his colleagues or other evidence to support the beneficiary's knowledge as special or advanced.

Based on the foregoing, the petitioner has not demonstrated with sufficient evidence that the beneficiary's knowledge is special or advanced. Therefore, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a qualifying specialized knowledge capacity in the United States. For this reason, the appeal must be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, that burden has not been met.

ORDER: The appeal is dismissed.