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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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File: WAC 08 243 51402 Office: CALIFORNIA SERVICE CENTER Date: **JAN 26 2010**

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Perry Rhew
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 sustain the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as an L-1B intracompany transferee with specialized knowledge 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 semiconductor manufacturer, is the parent company of the beneficiary's foreign employer located in Costa Rica. The petitioner seeks to employ the beneficiary as an Epoxy Auditor/Engineer Technician at its Chandler, Arizona facility from September 16, 2008 until June 6, 2009.

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 the United States in a position requiring specialized knowledge. In denying the petition, the director observed that the beneficiary would be entering the United States as a trainee. The director further observed that the record consisted primarily of the unsupported assertions of the petitioner, and that such assertions were insufficient to establish the beneficiary's eligibility.

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 asserts that the director disregarded the petitioner's probative evidence of the beneficiary's eligibility for L-1B classification without consideration or analysis. Counsel asserts that the director mischaracterized the beneficiary's proposed duties as those of a "trainee," and emphasizes that the beneficiary will be involved in leading the transfer of a new technology from the United States to Costa Rica for which specialized knowledge specific to the petitioner's manufacturing processes is necessary. Counsel submits a detailed brief in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(1)(3)(ii) and (iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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(1)(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 petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 11, 2008. In a letter dated September 10, 2008, the petitioner stated that the beneficiary has been employed by its Costa Rican subsidiary since May 10, 1998, where he has held the positions of manufacturing specialist, manufacturing technician and, currently, as an epoxy engineer with the foreign entity's Epoxy Receiving Team (ERT).

The petitioner described the beneficiary's proposed U.S. assignment as follows:

[The beneficiary] will temporarily travel to the U.S. as part of the Costa Rica ERT to transfer [the petitioner's] 1268 Phase 1 (1268Ph1) products business process from [the petitioner's] Chandler, AZ site to the Costa Rica site. This process and related tools are not currently utilized at the Costa Rica site. [The petitioner] requires the Costa Rica site to implement the 1268Ph1 products business process to allow the site to manage the high volume manufacturing of [the petitioner's] 2009 products, which are based on 1268 technology.

While in the U.S. [the beneficiary] will work as an Epoxy Auditor/Engineer Technician, responsible for understanding the new 1268Ph1 platform in preparation for the release of products to the high volume manufacturing environment at [the foreign entity]. [The beneficiary] will gain an understanding of 1268PH1 through on-the-job training and hands-on work with the process at the Chandler site.

Specifically, [the beneficiary's] duties will include:

- Obtaining and understanding a working knowledge of 1268Ph1 with an eye toward high volume manufacturing;
- Developing paths to implement 1268Ph1 at the Costa Rica site;
- Assisting in the equipment installation process to learn procedures to install, test, and qualify 1268Ph1 tools;
- Training on level 1 operational and level 2 training maintenance; and
- Learning to solving [*sic*] issues to 1268Ph1 platform and tools.

At the conclusion of the training, [the beneficiary] and the rest of the Costa Rica ERT will return to [the foreign entity's] Costa Rica site to implement the 1268Ph1 process there. . . .

The petitioner indicated that the position requires "training and hands-on experience with [the petitioner's] previous platforms and tools" to "meaningfully grasp the 1268Ph1 process and tools and its impact on [the petitioner's] high volume manufacturing." The petitioner emphasized that the products and processes involved are proprietary to the company, and that knowledge of such products and processes can only be gained through on the job training with the petitioner or its subsidiaries.

The petitioner submitted an organizational chart depicting the structure of the foreign entity's "Epoxy Receiving Team" which is comprised of eleven employees, including the beneficiary, who is listed as an epoxy engineer.

The director issued a request for additional evidence on September 18, 2008, advising the petitioner that the initial evidence was insufficient to establish that the beneficiary possesses specialized knowledge. Specifically, the director instructed the petitioner to submit: (1) information regarding the total number of foreign nationals employed at the location where the beneficiary will be employed, including their job titles and visa status; (2) the number of persons at the U.S. location holding the same or similar positions as the beneficiary; (3) evidence regarding any special or advanced duties performed by the beneficiary, including an explanation as to how the beneficiary's duties abroad and in the United States are different from those performed by others in similar positions; (4) evidence that the beneficiary's training or experience is uncommon, noteworthy or distinguished by some unusual quality and not generally known by others employed by the petitioner in the same field; and (5) if applicable, a description of any training the beneficiary will provide to U.S. workers while in the United States.

The director advised the petitioner that, based on the initial evidence, "it appears the beneficiary is being transferred to the United States to take part in training administered at [the petitioner's] Chandler, Arizona site rather than impart or utilize any specialized knowledge gained in Costa Rica." The director therefore asked that the petitioner further explain the purpose of the assignment.

In response to the RFE, the petitioner submitted a letter dated October 15, 2008. The petitioner explained its use of the L-1B classification, noting that its design, fabrication and manufacturing sites are located around the world. The petitioner noted that each product is assigned to a particular business group, which often includes both U.S. and foreign employees, resulting in a need for U.S. and foreign sites to partner resources from conception to the final production phases of an assigned product. The petitioner emphasized that in cases where a business group has both U.S. and foreign employees working on a product, "the employees are not duplicating work or

development. Rather, each site contributes to a portion of the production, with an eye toward merging activities to generate a single, quality product."

The petitioner stated that it utilizes the L-1B classification to temporarily bring the team lead of each business group to the U.S. for critical steps in the production cycle, and to "temporarily bring team leads and/or team members with specific advanced knowledge of [the petitioner's] proprietary processes and products to assist the U.S. team and/or site with new processes and/or tools" as required by production cycle deadlines. The petitioner stated that, in the instant matter, the beneficiary is needed because of his "specialized knowledge of the epoxy module as it exists at the Costa Rica site to operate the new 1268 Phase 1 (1268Ph1) products business process at [the petitioner's] site in Chandler, Arizona." The petitioner explained that an upcoming ramp in production in Costa Rica requires that the site implement and operate the 1268Ph1 process currently under development in the United States. The petitioner stated that "the goal in transferring [the beneficiary] to the U.S. is to allow him to identify gaps between [the foreign entity's] epoxy module and the 1268Ph1 epoxy module so that the epoxy group will be prepared to operate the new business process during the ramp in production."

The petitioner further explained the need for the beneficiary's services as follows:

The spread of new processes and technology from one [company] site to another is a business practice that [the petitioner] calls Copy Exactly! Under this model, a new process and supporting tools and machinery will be developed at one [company] site and then integrated into other sites that are involved in producing the same or similar products. When this occurs, [the petitioner] will temporarily transfer key personnel from the receiving site to train on and operate the equipment so that they can later lead the implementation of the new technology at the receiving site. This process maintains continuity between [company] facilities that are involved in bringing the same product to market and allows for the efficient proliferation of new technology within the company.

The petitioner explained that the epoxy module is "one of the processes within [the petitioner's] overall semiconductor manufacturing process." The petitioner explained that an epoxy seal is applied during the manufacturing process to attach a die, a small block of semiconducting material on which a circuit is fabricated, onto the silicon crystal wafer that houses it. The petitioner further stated:

[The petitioner's] 1268Ph1 platform, which will be used to increase the production of [the petitioner's] P1266 (45 nanometer processor) technology, is a groundbreaking small die processor whose enhanced speed and efficiency required the development of new epoxy machinery, processes, and tools. . . . [T]he 1268Ph1 process relies on highly sophisticated, multi-million dollar machines that have been specifically designed to meet [the petitioner's] specifications. This equipment is therefore [company-specific], since the technology cannot operate outside of [the petitioner's] native production process.

The epoxy module challenges posed by the new 1268Ph1 platform required the development of a new underfill processes and new loaders, unloaders, and a next-generation dispenser. In fact, [the petitioner's] new 1268Ph1 process has the biggest impact on the epoxy module. The epoxy module step is critical to the production of microprocessors. . . .

Before [the foreign entity] can begin production of [the petitioner's] new 45 nanometer process technology, the site must prepare its high volume manufacturing environment to allow the integration of the newly developed 1268Ph1 platform. To this end, it is critical that highly specialized . . . epoxy technicians and manufacturing technicians travel to the Chandler site to develop the paths for implementing the technology [in Costa Rica]. [The beneficiary] was selected for this assignment because he is among the highest grade epoxy technicians at [the foreign entity], evidenced in part by his role as a Peer-Trainer, responsible for training more junior technicians on the operation of the epoxy module.

The petitioner stated that the beneficiary's "specialized knowledge is the in-depth, on-the-job use of [the foreign entity's] current proprietary epoxy module process, which includes a crucial understanding of the site's current production process platform and capacity and the paths needed to replace and/or update the current platform." The petitioner emphasized that it needs to quickly transfer the new 1268Ph1 technology "to meet the production deadlines for the new 45nm technology."

The petitioner acknowledged that the foreign entity employs a number of epoxy technicians, but emphasized that most are designated as first-line technicians, and are junior to those employees who are assigned to the Epoxy Receiving Team. The petitioner explained that new hires in the position are placed at grade 51, while the beneficiary has achieved grade 55 classification in the manufacturing technician occupation along with the job title "epoxy engineer" and responsibility for peer training first-line technicians. The petitioner emphasized that attainment of this grade level "requires eight-to-ten years of outstanding performance." The petitioner stated that the beneficiary currently "serves in a key capacity with regard to the existing process and will be key to the successful integration of 1268Ph1 as he trains first-line technicians in Costa Rica on its use."

The petitioner indicated that there are no epoxy technicians currently employed at its Chandler, Arizona site. The petitioner stated that "while other Intel U.S. employees currently work with the new 1268Ph1 platform, they do so in the ordinary course of [the petitioner's] manufacturing activities, not with the purpose of translating the technology to a completely different production environment." The petitioner further stated that the beneficiary "will contribute his knowledge of foreign operating conditions to develop paths to transfer and implement the new 1268Ph1 platform to the Costa Rica site," and that his work in the U.S. "is fundamentally different than that of any others performing similar or related day-to-day work."

In response to the director's request that the petitioner explain any special or advanced duties performed by the beneficiary, the petitioner stated:

[The beneficiary's] duties differ from other [company] employees having the same job title because his duties abroad over the past ten years have focused solely on the epoxy module process as operated at [the foreign entity]. . . .

It would not be feasible for other employees at [the petitioner's] sites in the U.S. and abroad to take the place of [the beneficiary] in this U. S. assignment. The goal of this assignment is to build competency among the seven key employees involved in the epoxy module process at [the foreign entity] so that the 1268Ph1 process can be introduced at that site for the production of [the petitioner's] 45 nm products. It is therefore critical that the technicians and manufacturing

technicians who will be responsible for the implementation of 1268Ph1 in Costa Rica apply their specialized knowledge of [the petitioner's] proprietary epoxy process and high volume manufacturing environment and be prepared to operate the equipment and instruct others on its use.

[The petitioning organization] has continuously employed [the beneficiary] in a highly specialized position. He has ten years of experience within the production environment at [the foreign entity] working exclusively in the epoxy module group. During this time his performance has been deemed outstanding in light of [the petitioner's] grade-specific expectations such that he has earned a promotion to grade 55 and been given peer training responsibilities. As such, he is one of seven key ERT employees qualified for and indispensable to the success of this project.

The petitioner indicated that the beneficiary would be one of seven ERT employees "traveling from Costa Rica to lead the transfer of the new 1268Ph1 platform to the Costa Rica site."

In its response to the RFE, the petitioner submitted copies of several training certificates the beneficiary received while employed by the foreign entity, and a four-page chart listing over 150 training courses he completed by course code, title, type, and completion date for the period 1998 through August 2008.

The director denied the petition on October 28, 2008, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been and will be employed in a capacity requiring specialized knowledge. The director acknowledged the petitioner's claim that the beneficiary has been employed in a key capacity in which he has been responsible for training junior technicians. However, the director concluded that "it appears that the beneficiary would be entering the United States as a trainee."

The director also acknowledged the training records submitted, but found that "the training record bears no discernable markings that would even suggest that the beneficiary is the recipient of the training listed." The director concluded that the petitioner provided no evidence to establish that the beneficiary "has knowledge that exceeds that of any other similarly trained and experienced epoxy auditor/engineer technician employed by the petitioning organization."

On appeal, counsel for the petitioner asserts that the director failed to consider the petitioner's response to the RFE, and instead relied on "boilerplate" language that did not include a meaningful analysis of the petitioner's evidence. Counsel asserts that the petitioner submitted significant probative evidence to establish that the beneficiary is a key employee possessing specialized knowledge, and thereby satisfied all statutory and regulatory criteria for L-1B classification.

Counsel asserts that the beneficiary qualifies as an L-1B intracompany transferee possessing specialized knowledge "based on his advanced knowledge and expertise in [the petitioner's] Epoxy Module process, which is critical to its semiconductor manufacturing activities." Counsel objects to the director's finding that the petitioner failed to establish that the beneficiary is "key personnel," emphasizing that "[the beneficiary's] training responsibilities in Costa Rica both preceding and following the technology transfer are especially noteworthy in light of this decision, as they reflect that he serves a key role at its Costa Rica site and that he is in a better

position than similarly situated epoxy engineering technicians to lead the implementation of the new technology at the Costa Rica site."

Counsel asserts that the petitioner "provided a detailed explanation of the Epoxy Module process and the criticality the process plays in [the petitioner's] fabrication of semiconductor products." Counsel contends that "[the petitioner's] decision to provide [the beneficiary] with exclusive training in Epoxy Module technology while concentrating his duties exclusively on Epoxy Module tools and processes over a decade of service signifies the crucial role [the petitioner] has expected him to play within the Epoxy Module process." Counsel emphasizes that the director "failed to consider, or even address, [the beneficiary's] specialized knowledge of the Epoxy Module process in its notice of denial."

Counsel further states that the petitioner explained in response to the RFE that the beneficiary's proposed assignment "will require [the beneficiary] to apply his specialized knowledge of the Epoxy Module currently used at the Costa Rica site while working with the next generation Epoxy Module at the U.S. site so that he can identify the gaps and distinctions between the two processes." Counsel contends that "purpose of [the beneficiary's] assignment is not to 'train' on new technology, but rather to leverage his expertise in [the petitioner's] past-generation epoxy process in order to engage in productive work on the next generation process in the U.S. so that he can effectively transfer this upgraded technology to the Costa Rica site." In addition, counsel emphasizes that employees who had not previously worked with the process would not be capable of working on the next generation process required for the technology transfer without extensive training.

Upon review, counsel's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner in this case has established that the beneficiary possesses an advanced knowledge of the epoxy module process in place at the petitioner's Costa Rica manufacturing facility based on his ten years of experience and completion of extensive training with the foreign entity. Contrary to the director's findings, the AAO finds no reason to doubt the authenticity of the training record submitted. The petitioner has also established through the submission of evidence that the beneficiary has achieved a high grade within his occupation, along with peer training responsibilities, as a result of his outstanding performance and long tenure with the foreign entity. Finally, the petitioner has established that the epoxy module is a critical component of the petitioner's semiconductor manufacturing activities.

The AAO further disagrees with the director's conclusion that the beneficiary would be coming to the United States as a mere "trainee." While the beneficiary will familiarize himself with new epoxy equipment and processes developed in the United States specifically for the 1268Ph1 manufacturing process, the petitioner has persuasively explained that the primary purpose of the transfer is to allow the smooth transfer of the new technology to Costa Rica, where large-scale manufacturing of the new product will occur. The beneficiary and the other members of the small team assigned to effectuate this transfer would reasonably apply their specialized knowledge of existing epoxy processes and technology utilized in the Costa Rican manufacturing facility in order to determine the most efficient way to implement the new process overseas. The AAO finds the petitioner's explanation of its "Copy Exactly!" practice and its explanation of the purpose of the transfer

sufficient to establish that the U.S. position requires the application of the specialized knowledge the beneficiary gained with the foreign entity.

Accordingly, the record establishes that the beneficiary possesses specialized knowledge of the petitioner's processes and that the position offered with the United States entity requires specialized knowledge.

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, that burden has been met. The director's decision is withdrawn and the petition is approved.

ORDER: The appeal is sustained.