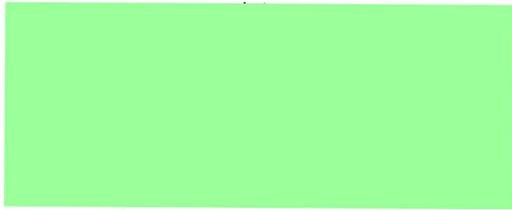




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 01 2013**

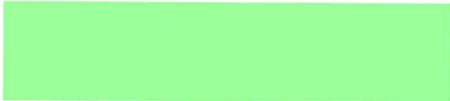
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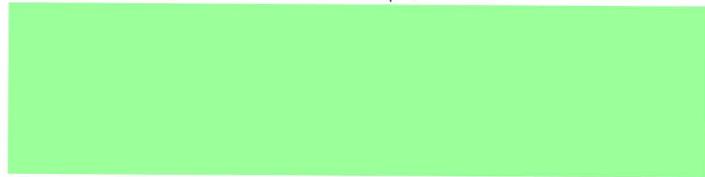
Petitioner:

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 a manufacturer, distributor, and retailer of cosmetics, fragrances, and jewelry. The petitioner claims to be an affiliate of [REDACTED] located in Peru and states that both companies are ultimately subsidiaries of [REDACTED]. The petitioner seeks to employ the beneficiary as its Commercial Planning Analyst for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal counsel contends that the director erred as a matter of law in determining that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge.

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.

I. The Issue on Appeal

The sole issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity.

The petitioner is a manufacturer, distributor, and retailer of cosmetics, fragrances, and jewelry, with 100 employees, and a gross income of \$21.5 million.

The petitioner stated that the beneficiary will be working as a Commercial Planning Analyst. The petitioner provided a description of the beneficiary's duties with the foreign entity. As a Commercial Planning Analyst, the beneficiary will be responsible for developing and implementing "aggressive commercial and marketing strategies" in Puerto Rico. The petitioner stated that this position requires "extensive specialized knowledge" of the petitioner's products, as well as its "marketing and sales processes and goals." The beneficiary's duties will include the following: generating the value matrix for the commercial activities plan; proposing pricing strategies based on marketing position, supply, and demand; gathering marketing and sales information; analyzing growth tendencies; defining the company's pricing and supply positions; and estimating the extent and impact of third-party marketing campaigns.

The director 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. Specifically, the director requested the total length of any classroom or on-the-job training courses the beneficiary completed and the minimum amount of time required to train a person to work in the position the petitioner is seeking to fill.

In response to the RFE, the petitioner provided a short description of the beneficiary's training. The petitioner stated that the beneficiary received "extensive" on the job training during the first two years of employment with the foreign affiliate. The training described included "training and seminars" specific to the petitioning organization's corporate practices; "GAC Training" covering departments, branding, publicity, and market focus; cross-departmental sales training; and commercial planning training including specialized programs used by the commercial planning department.

The petitioner further described the beneficiary's specialized knowledge as follows:

[The beneficiary] is one (1) of only two (2) out of sixty two (62) Commercial Planning Analysts who are qualified to create, develop and train Commercial Planning Departments within [redacted] companies across South and Central America and the Caribbean . . . In addition,[the beneficiary] is one (1) of only six(6) out of sixty two (62) Commercial Planning Analysts in the South and Central America, and Caribbean regions that have demonstrated the advanced skill and knowledge necessary to participate in specialized assignments involving brand development and implementation.

The petitioner provided the same list of job duties as submitted with the initial petition. An expanded explanation was provided regarding the specific projects to which the beneficiary would be assigned. Specifically, the beneficiary would be assigned to a team overseeing the "roll-out and implementation of the [redacted] brand" in Puerto Rico. The beneficiary's role would be to prevent overlap between the [redacted] brand and other brands in the same market owned by the petitioner's parent organization. The beneficiary would also be responsible for proposing a commercial strategy for the petitioner's [redacted] brand in Puerto Rico.

The petitioner stated that the specialized knowledge position in the United States would require specialized knowledge of "several tailored programs" used by the petitioner to include knowledge of the following: **Business Objects**, the petitioner's principal database; **Infoview**, the company's internal daily database, which allows the commercial planning department to identify sales tendencies per campaign; **Lago**, a specialized system used by the petitioner's group of companies to create and design the catalogues for each brand; and **Visto**, a program used by group companies to design additional promotional and commercial materials.

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 duties the beneficiary will perform appear to be those of a skilled worker and that the knowledge required to perform those duties would be common among commercial planning analysts. Furthermore, the director noted that the petitioner failed to submit the requested information regarding the length of the classroom or on-the-job training or the minimum amount of time required to train a person to work in the position the petitioner is seeking to fill. Finally, the petitioner failed to establish that familiarity with the petitioner's tools including Business Objects, Infoview, Lago, and Visto, verified that the beneficiary possesses bona fide specialized knowledge.

On appeal, counsel asserts that the evidence of record supports a finding that the beneficiary's proposed job duties in the United States require specialized knowledge. Specifically, counsel for the petitioner claims that the [redacted] brand rollout project requires "expert knowledge of each brand, how it performs, and how it intersects and interacts" with the petitioner's other brands. Furthermore, counsel states that the beneficiary is

one of six, out of a total of 62 Commercial Planning Analysts, that are (1) qualified to create, develop, and train Commercial Planning Analysts; (2) have demonstrated the advanced skill and knowledge necessary for the assignments involving brand development and implementation; and (3) have the unique and specialized knowledge of historic brand interaction.

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). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

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 and second prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

The petitioner failed to meet its burden of proof with regard to the specialized nature of (1) the beneficiary's actual duties; (2) the tools and methodology required to perform the duties; and (3) the beneficiary's knowledge of the petitioner's product.

First, the petitioner's description of the beneficiary's job duties does not demonstrate that the beneficiary would perform any duties requiring specialized knowledge beyond what would normally be acquired by a commercial planning analyst. Duties such as developing and implementing marketing strategies; generating a value matrix for the commercial activities plan; proposing pricing strategies based on marketing position, supply, and demand; gathering marketing and sales information; analyzing growth tendencies; defining the company's pricing and supply positions; and estimating the extend and impact of third-party marketing campaigns all appear to all be duties generally performed by marketing research and commercial planning analysts.

Additionally, in response to the RFE, the petitioner provided further explanation regarding the specific programs that the beneficiary will be assigned to at the employer in Puerto Rico. The petitioner stated that the beneficiary has "extensive knowledge of the [REDACTED] brand in Central and South America" making him uniquely qualified for the launch of the [REDACTED] brand in Puerto Rico. The petitioner, however, failed to specify how the beneficiary's knowledge of these brands is different than other commercial planning analysts within the company. In the alternative, the petitioner does not articulate how the beneficiary has a special knowledge of the company product and its application in international markets compared with other commercial planning analysts in the industry.

Furthermore, the petitioner's reference to the company's internal methodologies and programs is vague and insufficient to establish that knowledge of these programs equates to specialized knowledge. The petitioner states that the position of Commercial Planning Analyst requires knowledge of a number of databases, systems, and programs used by the petitioning entity, but again does not otherwise specify how the beneficiary's knowledge of these systems is different than others within the company. The petitioner also fails to identify how familiarity with these databases, systems and programs results in acquisition of knowledge that is truly special among similarly-employed workers in the industry at large. The fact that such programs may be internal or even proprietary to the petitioner does not establish that any level of knowledge of these programs should be deemed "specialized knowledge." Rather, the petitioner must establish that, as a result of his familiarity with these programs, the beneficiary possesses knowledge that is not generally known among other similarly skilled and experienced commercial planning analysts and that such knowledge is of some complexity and could not be easily transferred to those employed outside the petitioner's group of companies. The petitioner has not met this burden.

Moreover, the petitioner failed to respond to the director's request regarding the regarding the length of the classroom or on-the-job training or the minimum amount of time required to train a person to work in the position the petitioner is seeking to fill. The petitioner generally stated that the beneficiary received "extensive on the job training, which included training and seminars." The petitioner did not otherwise provide the total length of the classroom courses or otherwise state how long it would take to train someone to fill the specialized knowledge position. 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). 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)).

Finally, the petitioner claims that the beneficiary is only one of six employees in the overall organization qualified to perform the duties in Puerto Rico, but failed to specify how the beneficiary and the five other Commercial Planning Analysts referenced differ from the other 56 Commercial Planning Analysts in knowledge and skill level. Conclusory assertions stating that the beneficiary is only one of six employees with the aptitude to perform the required tasks do not sufficiently establish that the beneficiary has an advanced level of knowledge of processes and procedures of the company with relation to the other analysts. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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.