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: APR 0 2 2013 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Virginia corporation, is a menswear retailer. The petitioner claims to be a subsidiary of located in England. The petitioner seeks to employ the beneficiary as its branch manager for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the proffered position requires 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 for the petitioner contends that the beneficiary possesses specialized knowledge and submits a brief in support of the appeal.

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.

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

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in

international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

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

The petitioner is a menswear retailer based primarily on military bases. It was established in 1990 and currently has 20 employees. It claims to have a gross annual income in excess of $3.7 million.

The petitioner stated the beneficiary will be working in the United States as a branch manager, which it claims is a senior management position. The petitioner described the proffered position as follows:

> As Branch Manager, [the beneficiary] will be completely and directly responsible for the total operation of the store, including the planning, development, and implementation of policies, procedures, standards, guidelines, and objectives designed to optimize efficiency and maximize profits. His experience and specialized knowledge regarding the company's products and procedures are invaluable to [the petitioner], because [the beneficiary] can be entrusted with a high level of discretionary authority to manage the store's affairs without constant supervision from the British parent company.
>
> As Branch Manager, [the beneficiary] will supervise and coordinate all aspects of the retail sale of men's clothing items and accessories under [the petitioner's] brand at the Fort Meade

> store. He will be the direct supervisor of any subordinate personnel and will manage all employee matters. He will be solely responsible for the financial expenditures of and revenues generated by this store. [The beneficiary] will: review production costs and quality/inventory control programs to maximize store profits; prepare accounting records, inventory reports, and weekly profit and loss statements; and, maintain the professional display of custom-made tailored garments and ready-to-wear stock in accordance with the policies, principles, and procedures established by [the petitioner]. In addition, [the beneficiary] will maintain [the petitioner's] relationship with the host facility and various governmental agencies, and will meet with representatives to resolve issues as needed. He will also conduct sales negotiations on [the petitioner's] behalf, and plan and direct store sales programs. Importantly, [the beneficiary] will utilize his specialized and proprietary knowledge of products, fabric, garment construction, and figure analysis to assist customers with selecting both ready-made suits and tailoring suits custom suits [*sic*] to meet the customer's needs.

The petitioner further stated that the beneficiary had comprehensive knowledge of the petitioner's standard procedures and its clothing products based on his work abroad for the foreign parent company for the past eleven years.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide additional evidence to establish that the beneficiary has specialized knowledge including, *inter alia,* the following: (1) evidence that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor; (2) evidence that the beneficiary's knowledge is valuable to the employer's competitiveness in the marketplace; (3) evidence that the beneficiary possesses knowledge that can only be gained through prior experience with the employer and cannot be easily transferred or taught to another individual; and (4) evidence that the methodologies, tools, programs and/or applications used by the petitioner are exclusive and/or different from others in the industry.

In response to the RFE, the petitioner asserted that the petitioner, along with its foreign parent company, is part of the of companies, which provide custom made-to-measure suits in addition to off-the-rack merchandise. Specifically, the petitioner claimed that it offers customers suits that are manufactured to their exact measurements, thereby providing a "totally unique final product." The petitioner concluded that its system of measurements and figure analysis is proprietary and unique to its company and is what sets it apart from its competitors.

The petitioner also claimed that it is in the process of introducing a new software system called to its retail outlets in the United States. It claimed that the system is a highly specialized and proprietary system encompassing many different management and sales functions, and it used exclusively by the petitioner and other companies. In support of this contention, the petitioner submitted a copy of the user manual.

Regarding the beneficiary's specialized knowledge, the petitioner claimed that, while all employees "build a basic level of "insider knowledge" through the course of their employment," the beneficiary received extensive training beyond that which is common in the petitioner's companies or the menswear industry in general. The petitioner claimed that it offers a well-established, award-winning training program for its employees called "Passport to Success" that had three levels of training: bronze, silver, and gold. According to the training manual submitted, all employees complete the bronze level, and upon completion of that level they commence working toward the silver level, which takes approximately 6 to 18 months to complete. Thereafter, employees in a managerial capacity can complete the gold level, which is completed by approximately 15% to 20% of the employees. The petitioner further stated that this program takes approximately 12 to 18 months to complete.

The petitioner noted that the beneficiary has completed the gold level of training, and submits a copy of the beneficiary's "Gold Award" for the record. The petitioner concludes that, based on this achievement, the beneficiary possesses knowledge above that commonly held by basic employees. Moreover, the petitioner claims that, along with his eleven years of experience with the petitioner's affiliates, the beneficiary possesses specialized knowledge of measuring customers for made-to-order suits as well as of the computer system, which it claims is new and highly complex. The petitioner also stated that the beneficiary would be responsible for training all U.S. employees in the computer system. Finally, the petitioner concluded that the beneficiary's position is more than that of a basic sales clerk, and further claimed that, since each location typically has only one employee (i.e., the branch manager), existing knowledge of the petitioner's business is essential.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possess specialized knowledge or that he had been and would continue to be employed in a specialized knowledge capacity. In denying the petition, the director found that the beneficiary's employment was more akin to the L-1A classification of a managerial or executive employee. However, in reviewing the beneficiary's claimed specialized knowledge, the director found that the petitioner had failed to demonstrate that the beneficiary's knowledge of the petitioner's menswear procedures were not sufficiently distinguished from practices in the industry in general, nor was his knowledge special and advanced when compared to other similar employees in the petitioner's affiliated companies.

The director concluded that knowledge of the foreign entity's operations and computer system does not automatically constitute special or advanced knowledge. The director observed that the ability to take a customer's measurements and transmit them to the proper location seemed to be a rather basic skill attributable to any newly-hired employee via training. Moreover, the director found that there was no evidence to demonstrate that the beneficiary's knowledge of the computer system was special or advanced beyond that at a user-level. Finally, the director found that, based on the evidence submitted regarding the petitioner's family of companies in the there are hundreds of retail locations worldwide. Since the petitioner indicated that approximately 15%-20% of its employees received gold level training, the director concluded that this many employees with the same knowledge and training as the beneficiary suggested that this knowledge was not specialized as contemplated under the regulations.

On appeal, counsel asserts that the beneficiary possesses special knowledge. Specifically, counsel takes issue with the director's focus on the managerial aspects of the proffered position, arguing that managerial and specialized knowledge positions are not mutually exclusive. Noting the small size of the retail outlets in the United States, counsel asserted that the branch managers, including the beneficiary, wear "many hats" and therefore perform both managerial and specialized knowledge duties. Regarding the software system, counsel asserts that the beneficiary was a developer and not simply a user, thereby raising his level of knowledge in this regard beyond that of a general user as found by the director. Finally, counsel asserts that while taking a customer's measurements seemed like an uncomplicated task, it was in fact much more intricate and requires extensive training and experience such as that possessed by the beneficiary. No new evidence is submitted in support of the appeal.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D), or that he will be employed in a specialized knowledge capacity.

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 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner has failed to specify whether its claims are based on the first or second prong of the statutory definition found in Section 214(c)(2)(B) of the Act. The petitioner only asserted in a general and broad manner that the beneficiary has specialized knowledge.

While the petitioner has provided a detailed description of the beneficiary's duties, the AAO concurs with the director that the beneficiary's responsibilities are not dissimilar from those normally performed by experienced managers working in the menswear industry, and require the beneficiary to apply creative and technical skills that are commonly found within the profession. The beneficiary's advanced knowledge of the petitioner's business model, clothing line, and general procedure for taking measurements, while valuable to the petitioner, cannot be considered "specialized knowledge" that is specific to the petitioning organization.

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning group's products, and knowledge of the men's fashion industry as it relates to custom-made clothing, beyond that regularly attributed to stores providing ready-to-wear clothing. However, the petitioner has not defined any specialized measuring, tailoring, or other custom services performed by the beneficiary in the past, nor has it described in any detail the company's general sales and marketing procedures and why familiarity with such procedures constitutes specialized knowledge. The director specifically requested that the petitioner identify any company-specific processes, tools, procedures and/or methods the beneficiary uses to perform his duties. The only processes and tools described in the RFE response were the beneficiary's general measurement skills along with knowledge of the petitioner's software system. The petitioner did not provide an overview of its custom measurement and tailoring methodologies as they relate to the customer experience, thereby raising questions regarding why the specific duties to be performed by the beneficiary cannot be performed by any other similarly-trained retail or tailoring personnel in the menswear industry.

The petitioner has not supported its claim that the beneficiary possesses knowledge that can be gained only with the foreign entity, or that the position requires such knowledge. Specifically, the petitioner has neither explained nor documented why the knowledge required to take measurements for custom-made menswear products, and simultaneously manage the petitioner's store and process the retail sales transactions for the orders of these custom products, would be different from that required to custom design any apparel in any market. Although the petitioner claims that the beneficiary has completed its gold level training and thus possesses knowledge above and beyond that attributed to basic, entry-level employees of the petitioner's

affiliated companies, a review of the training manual submitted reveals that this gold training is simply basic management training.

For example, the gold level section of the training manual states that many staff members, such as concession managers who manage staff, and in some cases all store managers, must complete various sections of the gold training program. The manual also states that employees who have completed the silver training are required to take certain courses, thereby demonstrating that gold level training is not necessarily reserved for employees possessing special and/or advanced knowledge of company processes or procedures. Finally, despite the petitioner's contentions that achieving the gold level training takes between 12 to 18 months, the training manual indicates that each of the nine training courses at the gold level has a duration of one day, thereby rendering the petitioner's claims to the contrary without merit. 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).

It is reasonable to believe that the foreign entity expects all of its branch managers to be intimately familiar with the vision and market for their assigned retail stores, and to possess the technical skills necessary to ensure successful custom-made garments are designed for its customers. The fact that the beneficiary completed the gold level training and has worked for the petitioner's affiliates for eleven years, while possibly enabling him to excel in his duties, does not establish that the beneficiary's knowledge specific to the petitioning organization is indeed special or advanced.

Additionally, the AAO notes the petitioner's claim that the beneficiary was involved in the development of the software system. Based on this contention, the petitioner asserts that the beneficiary has specialized knowledge of this proprietary software system and no other employee in the U.S. location would be qualified to train others with regard to this software. The petitioner's contention is not persuasive for several reasons. First, other than screen prints of the various steps in the software system and the contentions of the petitioner in its letters, there is no evidence that this software system is proprietary to the petitioner or that the beneficiary was personally involved in its development. 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)). Moreover, the beneficiary's resume indicates that he has no postsecondary education and simply completed sales and customer care training as well as a retail management and development advancement course. Therefore, the claim that the beneficiary is also a software developer is not persuasive based on the evidence of record. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

In addition, the petitioner claims that the beneficiary's knowledge of this software system is essential to its continued business operations, since no one in the United States is familiar with this system. The petitioner contends that the beneficiary will be responsible for training other employees in the use of this proprietary system. However, the petitioner simultaneously claims in the record that the U.S. locations are typically staffed by one employee (generally a branch manager) and thus it is essential for that employee to possess

specialized knowledge of the company's operations from a customer service perspective as well as with regard to its proprietary computer system. Therefore, although the petitioner failed to specifically discuss other employees with similar training as that of the beneficiary, it appears that all branch managers tasked to singularly operate each U.S. location of the petitioner possess the same knowledge as that of the beneficiary with regard to the system, thereby establishing that this knowledge is on the lower level of that of a user as opposed to that attributed to a developer.

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 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.