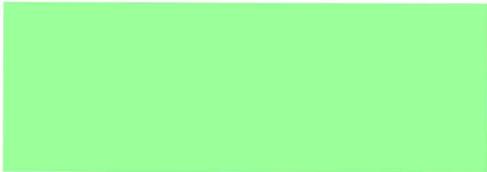
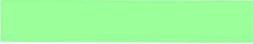




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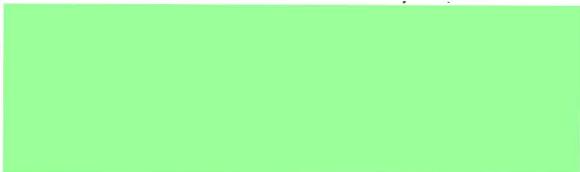


DATE: **APR 04 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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.

Thank you,


4 Ron Rosenberg

Acting 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 withdraw the director's decision and sustain 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 Massachusetts corporation, provides information storage and retrieval technology. The petitioner is the parent of [REDACTED] located in [REDACTED] Canada. The petitioner seeks to employ the beneficiary as a Customer Service Engineer for an initial period of three years.

The director denied the petition, concluding the petitioner failed to establish that the beneficiary possesses specialized knowledge and 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 for the petitioner contends that it has submitted sufficient evidence to establish the requisite specialized knowledge and that the Service Center misapplied the relevant legal standard in its denial.

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.

II. The Issue on Appeal

The issue on appeal is whether the petitioner established that the beneficiary possesses specialized knowledge and that it will employ him in a specialized knowledge capacity.

The petitioner supplies information storage and retrieval systems for other companies. It employs approximately 42,000 people worldwide and has revenues in excess of \$14 billion. According to the petitioner, the beneficiary has worked as an IT service specialist since 1995. In 2001, he started working as a Customer Service Engineer for the petitioner's United Kingdom subsidiary, and from

2005 to the time of the petition's filing, the beneficiary worked in the same position for the petitioner's Canadian subsidiary.

The petitioner submitted a letter accompanying its Form I-129, Petition for a Nonimmigrant Worker, which states that the beneficiary has specialized knowledge related to the installation, configuration and maintenance of the petitioner's proprietary products. In particular, the petitioner emphasized the beneficiary's knowledge of the [REDACTED] a high-end storage platform array, the [REDACTED] an enterprise-class storage platform for open and mainframe computing systems, and [REDACTED], an intelligent operating system that controls all components in a storage platform array. The petitioner provided detailed descriptions of these products, as well as published marketing material on each.

According to the petitioner, the beneficiary has gained specialized knowledge through his nine years of experience working with these products. The petitioner indicated that it considers the beneficiary an expert with regard to the procedures for installing, configuring, and maintaining the [REDACTED] and [REDACTED] series storage systems complex business environments, and indicates that he has created and innovated techniques for the service of these products. The petitioner explained that the beneficiary has experience working for top clients of his current employer, such as the [REDACTED]

The petitioner also stated that the beneficiary has completed 127 of the petitioner's certification courses since 2001.

The petitioner's letter included a detailed list of duties the beneficiary current performs in Canada. The petitioner emphasized that the beneficiary is currently the only employee in his region who possesses the expertise to install, configure and maintain the [REDACTED] and [REDACTED] product lines, in conjunction with the [REDACTED] software, and emphasized that his knowledge of these products "far surpasses the ordinary knowledge" of the petitioner's other employees.

The petitioner seeks to hire the beneficiary to work at the location of one of its premier clients, [REDACTED] in [REDACTED] South Dakota. It stated that, pursuant to its contract with the client, it needs to provide a Customer Service Engineer to maintain and consolidate 32 operating systems and to provide expertise for the client's transition from [REDACTED] systems to the [REDACTED] systems. The petitioner indicated that the beneficiary will work with one other engineer, whom he will train and guide.

Additional evidence submitted with the petition included a letter from the Canadian subsidiary's Senior Manager of Human Resources attesting to the beneficiary's work experience there, the petitioner's 2008 annual overview, and brochures for the relevant proprietary products.

The director issued a Request for Evidence (RFE) and requested that the petitioner provide additional evidence to show that the beneficiary possesses specialized knowledge and has been performing duties involving specialized knowledge with the foreign entity, including the foreign company's organizational chart and employee list, and duties abroad and examples of past assignments. The director also requested additional evidence related to the U.S. work assignment.

The petitioner submitted a complete response to the RFE. The petitioner provided the percentage of time that the beneficiary will allocate to his previously-described duties, as well as a list of the training courses completed by the beneficiary while working for the petitioner's foreign subsidiaries. The petitioner's response also included a letter from the beneficiary's supervisor at the foreign subsidiary attesting to his work there, and emails from clients and the subsidiary's staff expressing their satisfaction with the beneficiary's work.

The beneficiary's supervisor explained in detail how the beneficiary came to develop what the company considers to be expert knowledge on the petitioner's products based on his four years of experience supporting these products for a major client in Canada, which resulted in his receipt of several rewards. The petitioner emphasized that it does not currently have any customer service engineers with the beneficiary's level of knowledge related to the Storage Array products, and that the U.S. customer has over 40 Storage Arrays requiring expert-level support.

The director ultimately denied the petition, concluding that the petitioner failed to establish the beneficiary has specialized knowledge and will be employed in a specialized knowledge capacity. In denying the petition, the director found the petitioner did not demonstrate that the beneficiary's level of knowledge surpassed that of other similarly-employed individuals in the company and in the field.

On appeal, the petitioner asserts it has shown that the beneficiary has specialized knowledge and that the proposed position requires an individual with specialized knowledge. It submits a supporting brief and additional copies of evidence previously submitted. The petitioner contends that the information presented clearly shows that the petitioner has specialized knowledge and that he will be employed in a position that requires specialized knowledge.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he will 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 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.

In the present case, the petitioner's claims are based on the first prong of the statutory definition. The petitioner claims the beneficiary has special knowledge of the company's products and their application in international markets. Specifically, the petitioner states the beneficiary has crucial knowledge of the [REDACTED] Series and [REDACTED] storage platforms, as well as its [REDACTED] software. The petitioner established that this knowledge is special as the products themselves are exclusive to the petitioner. The petitioner also submitted evidence that the products are of sufficient complexity that it requires a substantial period of training and experience to perform at the beneficiary's level. In addition, the petitioner has established that the beneficiary's experience and training with the petitioner's products render his knowledge "special" within the company, such that few employees possess the beneficiary's level of knowledge, training, and experience with these products. *See* 8 C.F.R. § 214.2(l)(3)(iv).

While there are a number of Customer Service Engineers at the petitioner's Canadian affiliate, the evidence submitted demonstrates that the beneficiary's knowledge, based on his training and specific experience gained through previous assignments, is sufficiently uncommon and advanced within the company. Finally, the petitioner explained that the proffered position requires the beneficiary's special knowledge. The petitioner clearly articulated why the proposed assignment requires a customer service engineer with the specific experience and expertise that the beneficiary possesses due to the client's extensive reliance on the petitioner's proprietary products and the petitioner's contractual commitment to provide ongoing support for these products.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner

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in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the director's decision April 2, 2010 is withdrawn.

ORDER: The appeal is sustained.