



U.S. Citizenship
and Immigration
Services

(b)(6)

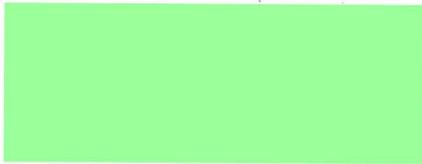


DATE: **APR 09 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 California corporation, is a wholly owned subsidiary of [REDACTED] located in Taiwan. The foreign employer supplies high precision mechanical components and assemblies to high-tech companies primarily focused on hard disk drive manufacturing. The petitioner provides direct technical and engineering support to the foreign employer's U.S.-based customers that incorporate the foreign employer's components into their products. The petitioner seeks to employ the beneficiary in the position of Technical Support Engineer for a period of three years.

The director denied the petition, concluding that the petitioner provided insufficient evidence to establish that the petitioner has been doing business in a regular, systematic, and continuous fashion as defined in the regulations. Further, the director found that the record was insufficient to show that the beneficiary possesses specialized knowledge or that he will be employed in a capacity 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. On appeal, counsel asserts that the director misunderstood the nature of the petitioner's business and the beneficiary's advanced knowledge. Counsel maintains that the petitioner is doing business according to the Act and that the beneficiary is, and will be, employed in a specialized knowledge capacity.

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:

(b)(6)

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 Issues on Appeal:

A. Doing Business in the United States

The first issue to be addressed is whether the petitioner established that the petitioner is doing business as a qualifying organization in the United States. "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad. 8 C.F.R. § 214.2(l)(1)(ii)(H).

The petitioner is a U.S. subsidiary of [REDACTED] located in Taiwan. The parent company has a gross annual income of approximately \$415 million and 4,500 employees worldwide.

including subsidiary companies in various countries. The foreign employer supplies high precision mechanical components and assemblies to high tech companies primarily focused on hard disk drive manufacturing. The petitioner states that it was incorporated in the United States in 1998 and earned \$398,760 in revenue in 2008, all through fees paid by the foreign employer to the petitioner for the provision of technical support services to U.S. based customers. The evidence of record establishes that the petitioner has two employees, including a Vice President of U.S. Operations and an Account Manager/Technical Support Engineer providing support to the foreign employer's U.S. customers. The petitioner indicates that the beneficiary will replace the current technical support engineer, whose L-1B visa is nearing expiration.

The director concluded that the petitioner was not doing business in a regular, systematic, and continuous manner as defined in the regulations. More specifically, the director found that the petitioner is merely an agent of the foreign employer since it did not garner revenue beyond fees paid by the foreign employer for the petitioner's provision of services to U.S. customers. The director also reasoned that the petitioner did not directly transact business with third party customers apart from the foreign employer. The director pointed to the fact that all invoices provided were from the foreign employer and that all goods were shipped from the foreign employer to U.S. customers, and not provided directly by the petitioner.

Counsel asserts that the director erred in concluding that the petitioner was not doing business, pointing to evidence on the record that indicates goods are shipped and services are provided in the United States. More pointedly, counsel references substantial e-mail correspondence showing that a current employee, another L-1B beneficiary, is working in a specialized knowledge role and continuously providing services in the United States.

The AAO finds counsel's arguments persuasive. Contrary to the finding of the director, the AAO finds that the petitioner has provided sufficient supporting evidence to establish by the preponderance of the evidence that it is engaged in the regular, systematic, and continuous provision of services in the United States and is not a mere agent of the foreign employer. The director reasoned that since petitioner was not directly selling goods to, and invoicing, the foreign employer's customers that it could not be found to be a business operating in a regular, systematic, and continuous fashion in its own right. However, the petitioner provided extensive evidence of its ongoing business operations, including invoices for sales transactions facilitated by the petitioner, telephone bills, bank account statements, audited financial statements, federal tax returns, businesses licenses, and payroll documentation.

Most importantly, the record contains substantial evidence that the petitioner provides regular and consistent technical support to U.S. customers purchasing the foreign employer products. The fact that the petitioner receives all of its revenue through fee agreements with the foreign employer or that it does not directly sell goods to, or receive payment from, third party customers does not lead to a conclusion that the petitioner is not doing business. The totality of the circumstances should be considered to determine whether the preponderance of the evidence supports that the petitioner is providing goods or services in a regular, systematic, and continuous fashion. Based on the evidence submitted above, the AAO finds that the petitioner has met the burden of showing that it is doing business as defined in the regulations.

As such, the director's determination that the petitioner is not doing business in the United States will be withdrawn.

B. Specialized Knowledge Capacity

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

1. Facts and Procedural History

As noted, the petitioner is a U.S. subsidiary of the foreign employer that supplies high precision mechanical components and assemblies to high tech companies world-wide primarily focused on hard disc drive manufacturing. The petitioner provides technical support to U.S. customers of the foreign employer. The aforementioned technical support focuses on the sale and implementation of the foreign employer's processes and components into customer products. The petitioner offers that the beneficiary will work as a Technical Support Engineer providing high level customer support to the foreign employer's major U.S. customers.

The petitioner maintains that the U.S. position requires advanced knowledge of the foreign employer's products, manufacturing processes, and proprietary information in order to provide advanced technical support. The petitioner further states that the beneficiary is currently employed with the foreign employer as a Supervising Engineer within the New Product Introduction (NPI) Hard Disk Drive section, responsible for supervising ten subordinate engineers within this department. The petitioner also notes that the beneficiary has been employed with the foreign employer since 2003 as an engineer, has worked his way up to a supervisory position, and holds advanced knowledge of the foreign employer's various manufacturing processes, components and assemblies. Additionally, the petitioner provided a lengthy description of the beneficiary's duties with the foreign employer detailing his responsibility, among other duties, for managing a team of engineers. These engineers are responsible for advancing certain technological and process innovations which included developing a new testing method for the foreign employer's products. Further, the petitioner provided evidence that the beneficiary earned a Bachelor of Science degree in mechanical engineering from [REDACTED] in China in 2002.

The petitioner described the beneficiary's specialized knowledge and its relevance to the U.S. position as follows:

[The beneficiary's] experience with [the foreign employer] is critical in performing [the U.S. position] duties. A thorough understanding of the manner in which [the foreign employer] manufactures its products, as well as of the products themselves is key. [The beneficiary's] experience has provided him with the knowledge of the company's own manufacturing processes concerning clean room environments, tooling design and fabrication, plastic injection and molding, sheet metal precision stamping, and quality assurance procedures. Furthermore, his knowledge of the company's latest in-house magnetic technology in the manufacturing of [REDACTED] will provide further competitive value to the

company. [The beneficiary's] proprietary, specialized knowledge is critical in performing the job duties . . . for the U.S. customers.

The director subsequently issued a request for additional evidence ("RFE") requesting that the petitioner provide additional evidence and explanation in support of its claim that the beneficiary possesses specialized knowledge and will be employed in position requiring specialized knowledge in the United States.

In response, the petitioner complied with the director's request by providing a 15-page letter and supporting documentation which included: detailed explanations of the beneficiary's qualifications, foreign job duties, and U.S. job duties; a detailed explanation of the petitioner's products; information regarding the foreign and U.S. employer's organizational structure and the beneficiary's place therein; and explanations of why the beneficiary's knowledge is special and advanced which reference to his specific project assignments, experience and training. The petitioner also provided explanations with respect to how its products, and manufacturing processes, and techniques differ from those of its competitors in the industry.

The director found that the record was insufficient to establish that the beneficiary possesses specialized knowledge or would be employed in a specialized knowledge capacity. The director reasoned that the record lacked substantiating evidence that the beneficiary had developed proprietary techniques as claimed by the petitioner, such as patents, employment records, awards, or proof of training. Further, the director noted that the petitioner had not produced sufficient evidence to show that the beneficiary's knowledge was any more advanced than the foreign employer's other engineers.

Counsel asserts on appeal that the director failed to understand the extent of the beneficiary's advanced knowledge of the foreign employer's products and processes. Counsel offers additional evidence on appeal to substantiate the claim that the beneficiary is a top engineer with the foreign employer; such as various projects the beneficiary has specifically led with the foreign employer, a PowerPoint presentation relevant to a product development innovation project the beneficiary led, and detailed letters from foreign employer management and human resources explaining that the beneficiary is one of only seven engineers in the company with the offered level of advanced knowledge. In total, counsel maintains that the beneficiary qualifies as having specialized knowledge of the company's products and processes.

2. Analysis

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

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. 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.

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's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced knowledge of the company's processes and procedures. The AAO finds that the petitioner has produced sufficient evidence to establish with a preponderance of the evidence that the beneficiary holds advanced knowledge of the foreign employer's processes and procedures related to product design and manufacturing, and that this specialized knowledge will be critical to the beneficiary's technical support role in the United States.

First, the petitioner has provided very detailed explanations of the beneficiary's job duties with both the foreign employer and petitioner; including specific examples of projects, products, and processes focused on and specific duties performed related thereto. Further, the petitioner has provided relevant, probative, and credible evidence sufficient to establish that the beneficiary has over six years of experience with the foreign employer and has advanced significantly through the foreign employer's engineering hierarchy based on his expertise and performance. The record reflects that the beneficiary currently supervises teams of engineers and has led product innovation projects with the foreign employer. Further, the petitioner has adequately documented its claims with relevant supporting documentation. In short, the totality of the evidence establishes that it is more likely than not that the beneficiary's knowledge of the foreign employer's processes and procedures is in fact advanced within the organization, given the beneficiary's increasing responsible roles in both the research and development of improvements to both product design and manufacturing techniques.

Second, the petitioner has provided credible evidence that the beneficiary's role in the United States requires the beneficiary's advanced knowledge. The petitioner has submitted substantial e-mail chains illustrating frequent and advanced coordination between the previous Technical Support Engineer, the role the beneficiary will fulfill, and the foreign employer's major U.S. customers. The petitioner and foreign entity have persuasively emphasized that the role requires an engineer with an advanced level of knowledge of the foreign employer's products, manufacturing processes and capabilities. Indeed, it is more likely than not that a company would assign a very experienced engineer to a technical support role in the United States rather than a sales engineer with only general knowledge, as suggested by the director, particularly since the position operates as the primary contact between major U.S. customers and the foreign entity's product design staff and production staff.

In conclusion, the evidence submitted establishes that the beneficiary possesses specialized knowledge and that he 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 director's determination to the contrary will be withdrawn.

III. 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 sustained that burden. Accordingly, the director's decision dated December 9, 2009 is withdrawn.

ORDER: The appeal is sustained.