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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

DATE: **APR 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

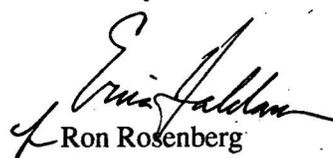
ON BEHALF OF PETITIONER:
[REDACTED]

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, California Service Center, ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 is a branch office of [REDACTED], a company organized in India. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicates it was established in 1998, employs 17 personnel in the United States and over 500 personnel worldwide, and had earned a gross annual income of \$1,889,050 in 2011. The petitioner states that it provides [REDACTED] software for the telecommunications and banking industries. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity as a systems engineer for a three-year period. The petitioner indicates that the beneficiary will work primarily offsite in Englewood, Colorado at the worksite of its client, [REDACTED] or "the unaffiliated employer").

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he had been or would be employed in a capacity that 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. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary possesses specialized knowledge and had been employed in a specialized knowledge capacity for the foreign entity and will be employed in the United States 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 parent, subsidiary, or affiliate of the foreign employer.

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

In the petitioner's letter appended to the petition, the petitioner stated that it provides: relationship-based pricing and centralized billing solutions for banking and financial services and insurance industries; convergent transaction pricing and billing solutions for communications, media, and entertainment; advanced meter-data management and billing solutions for fleet management and operational leasing; and streamlined pricing, billing and settlement solutions for port operations. The petitioner noted that its proprietary software, trademarked [REDACTED], allows companies to optimize the billing potential of multiple next-generation service offerings. The petitioner indicated that all the software and development and support functions for [REDACTED] occur at its facilities in India. The petitioner noted further that [REDACTED] had purchased a license to use the [REDACTED] software. The petitioner emphasized that the "software must be implemented so that all the telecommunications company customer's [*sic*] databases can be integrated with it" and the "software

must be customized to suit each customer's [sic] particular needs." The petitioner claimed that it is for these reasons that the implementation engineer who customized the product must also implement it.

The petitioner stated that the beneficiary in this matter joined the petitioner as a systems engineer in March 2010 and that during his tenure with the foreign entity had become an expert on its proprietary [redacted] software's Bill, Rate, and Mediate modules. The petitioner indicated that the beneficiary holds a bachelor of technology degree in computer science and engineering, had twelve software certifications, and had worked as a systems administrator for other companies from August 2007 until joining the foreign entity in March 2010. The petitioner noted that the beneficiary had been assigned to the [redacted] software development project for [redacted] in April 2010 and had contributed to the creation of the [redacted] product in four areas:

Alert Monitoring

- [redacted] engine failures specific to each project
- Analysis of file transfer/processes
- Back log age alarms for [redacted] engines
- Monitoring threshold of file count on specific directories
- Analyzing the Contab/UC4 for scheduled restarts/downtime
- Checking and evaluating the heartbeat and error messages
- Check the disk space/usage on mount points
- Checking databases using SQLs for Mediation/Rating/Consolidation
- Checking the Process age alarms
- Ensuring the reliability through monitoring tools
- Analysis of service warning/critical services using monitoring tools
- Monitoring the host-reachability/warnings

End to End Resolution and Root Cause Analysis

- Immediate response time within the allotted time frame
- Fast resolution
- Detailed report on root cause analysis and resolution

Process Improvement Inputs

- Suggesting and designing improvement mechanisms for [redacted] specific projects process flow
- Identifying the performance bottleneck in production servers

System Performance Inputs

- Performing the system memory checks and swap usages in production servers
- Checking the server hardware and kernel buffer messages

The petitioner noted further that the beneficiary had become a domain expert in the communication, media and entertainment fields. The petitioner stated that as the beneficiary had contributed to the offshore phases of the [REDACTED] software development projects for [REDACTED] he had been selected to implement the process improvements required to bring the proprietary [REDACTED] system's performance up to the client's expectations. The petitioner provided its Master Software License Agreement with [REDACTED] dated September 3, 2003 for the [REDACTED] (transaction mediation) license for the residential telephone division of [REDACTED] and the [REDACTED] billing license for the residential telephone division of [REDACTED]

The director issued a request for further evidence (RFE), requesting, *inter alia* evidence of the beneficiary's specialized knowledge, the specialized knowledge position at the foreign entity, and the specialized knowledge position in the United States. The director specifically requested more detailed information regarding the claimed specialized knowledge positions, including the beneficiary's knowledge of the petitioner's product or service, special or advanced duties, and the training, if any, the beneficiary would provide.

In response, the petitioner noted that the beneficiary had attended two training programs to gain knowledge of its proprietary product. The first training occurred in March 2010 over a three-day period and covered induction training on [REDACTED]. The second training occurred in July 2010 over a ten-day period and covered [REDACTED] advanced training.¹ The petitioner asserted that the beneficiary is one of eight to ten people who worked exclusively on the product and that it would take another software development engineer 18 to 24 months to acquire the beneficiary's expertise on the bill and rate modules of the product. The petitioner also restated the beneficiary's duties for the foreign entity. The petitioner noted that the beneficiary's duties, as related to the [REDACTED] transaction billing and rate solution, are as follows:

Alert management

- Run page and log file based analysis of alerts
- Analysis of issues which are repeating
- New Run Page Configuration in Nagios

Release Assistance

- Pre-Release Activities includes notifying about the upcoming down-time of engines, bringing down the engines and snoozing alerts
- Post-Release Activities includes bringing-up the engines & notification, activation of alerts, monitoring and ensuring proper working of engines

UC4/Crontab Maintenance

- New job scheduling in UC4/Crontab
- Scheduling new UC4/Crontab jobs for engine restart and stop

[REDACTED] refers to the software product relating specifically to the telecommunications industry.

Performance Tuning & Process Improvement Activities

- Analysis of low performance engines – Query development, script development, Query costing activities etc.
- Communication with other teams for faster issue resolution
- Delay Management – Deploying new engine instance to clear backlogs, cleaning locks/waits in tables, releasing used memory etc.
- Data correction activities using scripts

File Management

- Directory Structure Management – Folder Management for each application
- Rejection issue analysis and rectification – input feed correction, application of correction scripts, engine restart etc.
- Recovery and Reprocess – Error file recovery and correction.

The petitioner indicated that the beneficiary would perform these same duties in the United States when customizing the bill and rate modules on the [REDACTED] project. The petitioner stated that it did not have any U.S. software development engineers trained in its bill and rate modules for the [REDACTED] proprietary product. The petitioner added that in addition to the rate and bill module customization duties, the beneficiary would also be responsible for an "outbound spam mitigation development" project. The petitioner did not further describe this project. The petitioner also provided purchase orders from [REDACTED] dated between November 2, 2010 and February 16, 2011 for the petitioner's consulting services. The purchase orders listed the purchased services. Only two of the 27 services listed referenced the [REDACTED] software and those indicated the delivery date for the services as December 10, 2010 and December 17, 2010.

Upon review of the evidence in the record, the director denied the petition. On appeal, counsel asserts that the director failed to accurately evaluate the job description beyond the listed duties. Counsel contends that it is the unique knowledge of the petitioner's [REDACTED] product in performing the listed duties that establishes the proffered position as a specialized knowledge position. Counsel references the petitioner's claim that only a small group of eight to ten people have worked exclusively on the [REDACTED] product and that the beneficiary's U.S. duties are unique and specific to the bill and rate modules on the [REDACTED] proprietary product. Counsel avers that the beneficiary's specialized knowledge is based not only on his education and training but on his four years of experience designing and developing modules for the petitioner's [REDACTED] product sold to [REDACTED] and now being implemented in the United States.² Counsel references the petitioner's claim that it would take 18 to 24 months for a software development engineer to acquire the beneficiary's expertise on bill and rate modules. Counsel also notes the petitioner's statement that the beneficiary was involved in the creation of aspects of the [REDACTED] software. Counsel concludes that the

² Counsel's reference to the beneficiary's four years of experience working on the petitioner's [REDACTED] product appears to be a misstatement as the petitioner reports that the beneficiary began his employment with the petitioner in March 2010 and began working on the [REDACTED] product in April 2010. As the petition was filed in March 2012, the beneficiary's work experience for the petitioner totaled only two years when the petition was filed.

petitioner has provided credible and probative evidence establishing the beneficiary's eligibility for the requested visa.

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.

United States Citizenship and Immigration Services (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). USCIS 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. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge. The crux of the petitioner's claim is that its [REDACTED] software is proprietary and the beneficiary's experience in working with this software has resulted in the beneficiary's specialized and advanced knowledge. The petitioner, however, does not identify any particular training necessary to prepare the beneficiary to use the [REDACTED] software other than a

three-day training session and a ten-day training session. On appeal, counsel for the petitioner asserts that it is the beneficiary's familiarity with the software and working with a particular unaffiliated client gained over a four-year span of time that creates the beneficiary's specialized and advanced knowledge. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, as noted above, the beneficiary did not have four years of experience working for the petitioner when the petition was filed. The petitioner in this matter does not describe the beneficiary's experience in detail. It does not describe how the beneficiary's claimed specialized knowledge is typically gained within its organization and it does not explain how and when the beneficiary gained such knowledge.

Rather, the petitioner lists the generic duties of a software engineer who is required to monitor, maintain, and note potential enhancements for particular software. The record does not include specific data regarding the beneficiary's experience with the software that demonstrates the routine duties described are specialized. 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)).

The petitioner has not demonstrated what aspects of implementing and maintaining its "proprietary" software would require knowledge that is particularly complex or different from what is commonly held by experienced software professionals. Moreover, the petitioner's claim that it would take 18 to 24 months to "train" other software professionals to perform the duties described is not established in the record. Again, going on the record without supporting documentary evidence is insufficient to meet the burden of proof. *Id.* The petitioner in this matter has not described what specific knowledge of the [REDACTED] software could not be conveyed to similarly experienced software professionals in a three and ten day training session.

The petitioner's claim that the beneficiary is one of eight to ten employees to have worked exclusively on the [REDACTED] product, relative to the bill and rate modules, is insufficient to establish that beneficiary possesses either special or advanced knowledge. Although the petitioner has provided an overview of the bill, rate, and mediate module solutions, the petitioner has not identified with any specificity the aspects of these modules of the [REDACTED] product that distinguishes it from other convergent transaction pricing and billing solutions designed for communications, media and entertainment players for full service providers with the new technologies of triple and quadruple play services. As observed above, any of the petitioner's systems engineers would reasonably be familiar with the petitioner's internal processes and methodologies and proprietary tools necessary for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more clients and the client's particular products or systems. USCIS cannot find that an employee's knowledge of a client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any software consultant in possession of project experience. The petitioner in this matter has not established that the beneficiary's education, training, and experience

resulted in his specialized knowledge of the petitioner's product and its application in international markets or an advanced level of knowledge of processes and procedures of the company.

In the present matter, the petitioner does not clearly state whether its claim is based on either the first or second prong of the statutory definition of specialized knowledge. As referenced above, the petitioner states generally that the beneficiary has special knowledge of the petitioner's proprietary product. The petitioner initially indicates that since April 2010, the beneficiary has been assigned to the software development project for and that he has contributed to the creation of the product in the alert monitoring, end-to-end resolution and root cause analysis, process improvement inputs, and system performance inputs. In response to the director's RFE, the petitioner's overview of the beneficiary's duties for both the foreign entity and the U.S. entity changed to include only the billing and rate solution modules for. Again, however, the petitioner failed to explain what particular duties involved in the monitoring and maintenance of the previously licensed software required specialized knowledge. The petitioner does not identify what aspect of either the foreign entity or the U.S. position requires knowledge that is specialized within the industry. Rather the record demonstrates at best that both positions require the employee to hold general knowledge and technical skills related to the petitioner's billing and rate software. The record, however, does not include probative evidence distinguishing this general knowledge from knowledge held by similarly experienced and qualified systems engineers. The beneficiary's familiarity with the petitioner's software is insufficient to elevate the position to one that requires specialized knowledge.

The petitioner has also failed to demonstrate that the beneficiary's knowledge is advanced within its organization. The petitioner did not provide detailed and credible evidence to demonstrate that the beneficiary possesses advanced knowledge of the software, or that such knowledge is required for the project to which he is assigned. The petitioner has not explained why the beneficiary's project assignment requires advanced knowledge of the software. The petitioner's claim that the beneficiary assisted in the creation of the software is not persuasive. As noted above, the petitioner's licensing agreement for the software is dated in 2003 and predates the beneficiary's employment with the company by seven years. The petitioner has not provided consistent evidence demonstrating that the beneficiary's duties for the foreign entity included designing and developing the software. The record does not provide sufficient consistent evidence establishing that the beneficiary was routinely required to enhance the software rather than monitoring and maintaining the software. Moreover, it appears the foreign entity routinely provides training on this software to systems engineers upon their entry into employment and additional ten-day training once its systems engineers pass their probationary period. As referenced above, the record does not include the requisite probative evidence demonstrating that either the foreign position or the U.S. position requires advanced knowledge of the petitioner's proprietary software. The petitioner has not articulated with specificity what components of the positions require advanced knowledge. Again, one or more years of experience working with particular software and a particular client is insufficient to establish that the performance of the duties of a position requires advanced knowledge. We also note that the petitioner has not provided current invoices from referencing upgrades or the implementation of enhancements or improvements to the already licensed product. Accordingly, it is unclear what specific work the beneficiary would actually perform.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.