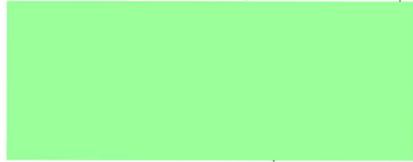




U.S. Citizenship
and Immigration
Services

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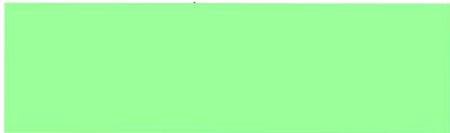


DATE: **APR 22 2013** OFFICE: VERMONT SERVICE CENTER FILE:

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 New Jersey corporation, is a computer software development and consulting company. The petitioner claims to be a subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as a quality assurance/business analyst functional lead for a period of three years. The petitioner indicates that the beneficiary will be stationed primarily offsite at the worksite of its client, [REDACTED].

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or that he will be employed in a position requiring specialized knowledge. In denying the petition, the director observed that the beneficiary completed approximately four months of company training in the petitioner's products and found that the evidence was insufficient to establish that the beneficiary's knowledge qualifies as special or advanced.

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 director did not properly consider the beneficiary's on-the-job experience, but instead focused on the beneficiary's formal classroom training. Counsel concludes that the evidence of the beneficiary's more than six and a half years of experience, managerial responsibilities, and involvement in creating and modifying the company's proprietary product establishes his employment 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:

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

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

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

I. The Issue on Appeal

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

The petitioner is a computer software development and consulting company offering server-based products that integrate embedded business rules with document management systems for banking, mortgage, apparel,

and title insurance industries. The company claims to have 70 employees in the United States and a gross annual income of \$17,253,786.

The petitioner indicates that the beneficiary worked for the parent company in Pakistan for over six years after receiving a Bachelor of Science in Computer Engineering. The petitioner submitted the following evidence of the beneficiary's education, training and work experience: university transcripts; appointment, pay raise, and promotion letters from the foreign entity; performance reviews; and certificates of training indicating the beneficiary completed four days of "Domain Training of [REDACTED] Product," one day of training on QA Automation using QTP, one day of training on Load Testing using Load Runner, and one day of training in Developing Managerial Skills.

In a letter submitted with the initial filing, the petitioner stated that the beneficiary will be working as a quality assurance/business analyst functional lead, responsible for adapting the company's trademarked software to meet the particular needs of [REDACTED] and other clients. More specifically, the petitioner claims the beneficiary will devise solutions for new features with the assistance of the architecture team and coordinate and assist the development and quality assurance teams in reaching their goals.

The petitioner placed particular emphasis on its [REDACTED] product suite for the mortgage and banking industry, specifically on its [REDACTED] title and settlement product. The petitioner claimed that because the company's [REDACTED] product suite and methodology are protected intellectual property, the training and knowledge needed to set-up and deploy the technology could only be gained through experience with the petitioner or its parent company. The petitioner emphasized that a competent software engineer or programmer/analyst would require one to two years of additional training to become competent in the proprietary products. The petitioner states that the beneficiary has worked with the petitioner's [REDACTED] and [REDACTED] products during his six years with the company and manages 15 IT professionals using the products.

A marketing brochure describes [REDACTED] software as "Business Process Modeling" software that provides an "orchestration of task dependent workflow, rules templates, and interfaces." No product documentation was provided for the [REDACTED] product, but the petitioner describes the product as a workflow and web-based title settlement product used to produce title commitments, policies, and closings. The petitioner states that the integration of business process modeling into the software gives the company a competitive advantage in the market.

The petitioner claims the beneficiary participated in all aspects of product development and implementation for the company's [REDACTED] software, and that for his work on the [REDACTED] project, the beneficiary was given an outstanding performance reward. The petitioner submitted awards for the beneficiary's performance on the [REDACTED] and for professional excellence throughout 2010. The petitioner further stated that the beneficiary has been "part of the core technology development and support team" for both products "for multiple clients such as [REDACTED] and [REDACTED]" The petitioner indicated that the beneficiary would be working

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primarily on a project for [REDACTED] at its Pittsburgh, PA worksite, but noted that he would occasionally work at various other clients' sites in Pennsylvania.

The petitioner's initial evidence included a copy of its Master Services Agreement with [REDACTED] dated September 8, 2008, accompanied by eight work orders, the most recent of which had an end date of March 31, 2009, more than two years prior to the filing of the petition. Neither the Master Service Agreement nor the work orders mention [REDACTED] or [REDACTED] as project deliverables. The Master Service Agreement and work orders for the [REDACTED] project state that the petitioner provided the following services: a title entry web application, a vendor management system, and a title entry Smart Client application. Notwithstanding the petitioner's statement that the beneficiary will primarily work offsite at an [REDACTED] worksite, the petitioner did not provide evidence related to any ongoing or proposed services to be provided to this client during the requested petition validity dates.

The petitioner's initial evidence included copies of master service agreements, statements of work, work orders and other documentation related to several other client projects. The petitioner's marketing materials and these client agreements and contracts reflect that that the company offers a wide range of services, including supplemental IT staffing services, specialized Business Process Outsourcing services, offshore software maintenance and quality assurance testing services, as well as the company's own mortgage and lending industry products and services emphasized in the petitioner's letter.

The director issued a Request for Evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary has specialized knowledge and evidence of the proposed specialized knowledge position in the United States. Specifically, the director requested a detailed description of the actions and duties the beneficiary will perform on a daily basis with a list of the proposed duties requiring specialized knowledge and the reason specialized knowledge is required for those duties; identification of the processes, procedures, tools, and methods the beneficiary will use for each duty and the company (petitioner, third party, and/or client) where each process, procedure, tool, and/or method originated; the amount of time it takes to train an employee in the specific tools, procedures, and/or methods utilized and the number of workers within the organization who possess this knowledge and are employed similarly to the beneficiary; an explanation of the difference in the beneficiary's training from the core training of other employees; and a record from the human resources department detailing how the beneficiary gained his specialized knowledge.

In response to the RFE, the petitioner provided a letter from the foreign entity further detailing the beneficiary's past experience with the company's products. The letter indicated that the beneficiary worked on three projects with the foreign company including, [REDACTED] from April 2005 to April 2007, [REDACTED] from July 2007 to December 2008, and [REDACTED] since January 2009. The petitioner provided a list of the duties and responsibilities the beneficiary held during each project. With respect to the beneficiary's work with the [REDACTED] product, the petitioner stated that the beneficiary gained "advanced specialized knowledge of our proprietary [REDACTED] application as related to all the quality assurance aspects of developing, modifying and implementing the application for various clients."

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The beneficiary's duties included understanding the functional specifications, performing impact analysis, and identifying, writing, and performing testing scenarios on the [REDACTED] products. The petitioner stated that the beneficiary managed IT professionals working with the [REDACTED] and [REDACTED] products and had additional responsibilities for these projects including the preparation and publication of reports, defect analysis, quality assurance artifact maintenance, preparation of the Functional Specification document, and task management and delegation to other members of the team.

The petitioner stated that in addition to the beneficiary, there is only one Quality Assurance Lead employed at a supervisory level who possesses the required advanced knowledge of [REDACTED] and that this employee is assigned to a separate project. The petitioner stated that due to the beneficiary's technical experience in quality assurance and business analysis and his managerial skills in the field, no other employee is available to perform the same job. The petitioner submitted an organization chart showing the beneficiary in a supervisory role over ten Quality Assurance/Business Analyst employees.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or would be employed in a specialized knowledge position. In denying the petition, the director found that the petitioner submitted evidence that the beneficiary attended about four months of training, but failed to show the training was extensive or to indicate the number of workers, similarly employed by the organization, that received training comparable to the beneficiary.¹

On appeal, counsel for the petitioner claims that the director erroneously focused on the beneficiary's formal classroom training and did not properly consider the amount of training the beneficiary received during his six and a half years working with the company's products. Counsel contends that the beneficiary's experience considered with his supervisory position over ten to fifteen other employees and his involvement in the development of the company's products establish specialized knowledge.

III. Analysis

Upon review, the record does not establish 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

¹ The certificate of training for the Domain Training of the [REDACTED] is dated "04-01-2009 to 08-01-2009." It is unclear whether the date is written in day-month-year or month-day-year format. However, since the petitioner indicates that the beneficiary was assigned to a [REDACTED] project as of January 2009, the AAO finds it more likely than not that the training was actually completed in 5 days (January 4 to January 8, 2009), rather than over the course of four months.

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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. 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.

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 first prong of the statutory definition, asserting that the beneficiary has specialized knowledge of the company's trademarked [REDACTED] and [REDACTED] software and its application in the international market.

The petitioner claims that the beneficiary has specialized knowledge of the company's [REDACTED] and [REDACTED] products, which are web-based systems designed for use in the mortgage industry. The petitioner maintains that the products are exclusive to the company and thus not widely known in the industry. However, in order to support its claim that the beneficiary's proprietary knowledge is "special" and different from what is generally known among software professionals with experience in the mortgage industry, the petitioner must establish that the product is not only exclusive to the petitioner, but that it is of significant complexity, requires a substantial period of training or experience to perform at the beneficiary's level, or that it is otherwise not easily transferrable to other similarly-employed workers in the beneficiary's field.

The petitioner has not provided evidence to demonstrate that these products differ from other work-flow or web-based systems used in the mortgage industry. For example, the petitioner has not provided evidence to demonstrate that the technological environment or testing tools required for the company's trademarked software differ significantly from those commonly found within the IT field so that a similarly experienced and educated software professional employed by the petitioning organization or in the industry at large could

not perform the duties of the position after a minimal period of training. Without evidence of the process and methodology, the petitioner has not supported that performing quality assurance functions for these products requires knowledge beyond that normally used in the field.

Moreover, the training certificates provided show that the beneficiary appears to have completed only five days of "domain training on [REDACTED]" The certificate indicates the beneficiary underwent training in the [REDACTED] software from January 4, 2009 to January 8, 2009, the same month he started working as the quality assurance team lead on a project involving [REDACTED] There is no evidence that he had any prior exposure to the product in previous assignments. The other certificates show one day of training in LoadRunner and QTP, third-party software commonly used in the software testing field. The short duration of the training on the company's specific product indicates a strong possibility that other experienced software professionals within the company could readily be trained to work with the product. Beyond the five-day training on the company's product, the petitioner has not established that an employee assigned to the project would need additional training to perform the duties required for the position and has not provided evidence to support its claims that a competent software engineer or programmer/analyst would require one to two years of additional training to become competent in the proprietary products.

The beneficiary's training certificate in the [REDACTED] software is also inconsistent with the petitioner's claims that the beneficiary participated in all aspects of the product's development and implementation. Clearly, if the petitioner had already developed a training course for this specific product as of January 2009, the beneficiary did not play a key role in its development thereafter. 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). The petitioner has not provided any independent evidence to support that the beneficiary participated in the development of the [REDACTED] software. Rather, it appears that he performed quality assurance functions for one or more client projects that involved the implementation of this software, following his completion of a five-day training course.

Further, although the petitioner claims specialized knowledge of [REDACTED] and [REDACTED] is required for the U.S. position, the Master Service Agreement and Work Orders submitted for the [REDACTED] project do not mention either of these products in the deliverables. The Master Service Agreement states that the company is "primarily providing services" and "may from time to time provide to Company certain Third Party hardware, software, and other items as an incidental part of the Services." The petitioner submitted only outdated work orders related to its agreement with [REDACTED] which also failed to mention any of the petitioner's proprietary products, and did not provide the work orders for the beneficiary's primary project assignment in the United States. As such, even if the petitioner had established that beneficiary's knowledge of [REDACTED] and [REDACTED] constitutes specialized knowledge, the petitioner has not provided evidence to establish that the project to which the beneficiary will be assigned will require the use of the company's proprietary software. 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. 1998) (citing

Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). The work orders, description of the software, and the description of the proposed position fail to establish that the proposed position involves a contract for the company's proprietary products or requires specific knowledge of the products.

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.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.