



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 29 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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)

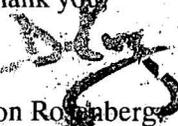
ON BEHALF OF PETITIONER:

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 Florida corporation established in 2010, engages in the business of "IT solutions, software manufacturer and system development."¹ The petitioner is a subsidiary of [REDACTED], located in Brazil. The petitioner seeks to employ the beneficiary as a project manager for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish the following: (1) that the beneficiary possesses specialized knowledge; (2) that the petition is approvable under the L-1 Reform Act of 2004; and (3) that the U.S. entity can financially support the proposed position within one year of operation.

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 asserts that beneficiary possesses specialized knowledge, that she will not primarily work offsite, and that the petitioner and its foreign parent can financially support the proposed position.

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:

¹ On Form I-129, the petitioner indicated that it was established in [REDACTED]. However, the petitioner's Articles of Incorporation filed with the State of Florida reflects that the petitioner was established on November 15, 2010.

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 Issues on Appeal

The primary issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge.

The petitioner engages in the business of IT solutions, software manufacture and systems development. It currently employs five employees in the United States, and claims a gross annual income of \$218,000.00.

The petitioner stated the beneficiary will be working as a project manager in the United States. The petitioner explained that the beneficiary will be responsible for directing and managing the company's

██████████ project for ██████████ the company's major client, in the United States. The petitioner explained that it had recently signed a contract with ██████████ to provide ██████████ and ██████████ with automated independent test unit services for the ██████████ project. The petitioner asserted that while the tests units are being developed in the United States, none of its U.S. employees have the knowledge of the company's system developed in Brazil. The petitioner explained that the beneficiary currently works as the project manager in Brazil for the ██████████ project. The petitioner asserted that the beneficiary is vital to the development and implementation of pilot units for ██████████ because of her "specialized knowledge in this system, in the financial area, as well as any regulating collateral issues such as laws regulating trusts accounts and trustee's obligations (the bank is always the trustee), negligence liability, agency laws, etc." The petitioner explained that the beneficiary's activities in the United States require "an advanced level of knowledge to implement pilot unit systems for ██████████". The petitioner concluded: "In closing, it should be emphasized that [the beneficiary's] assignments in the US are based upon her experience and the specialized knowledge she possess in financial (bank) software systems."

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 the petitioner to provide: a detailed description of the duties the beneficiary will perform; a list of proposed duties that require specialized knowledge; an explanation of why each duty requires a worker with specialized knowledge; an explanation identifying whether the processes, procedures, tools, and/or methods the beneficiary will use for each duty, and identifying whether the process, procedure, tool, and/or method is proprietary to the petitioner; an explanation of how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized, and how many similarly employed workers possess this knowledge; and an explanation of how the beneficiary's training differs from the core training provided to other employees.

In response to the RFE, the petitioner explained that it urgently needs the beneficiary in the United States to manage a new "Quality Assurance" project it has just contracted with ██████████. The petitioner submitted a list of the necessary training courses for the project manager position as follows: ██████████ (30 hours); Project Management Methodology (40 hours); Training the Trainers (40 hours); Management of Projects of Optimization and Testing (60 hours); Sales of ██████████ and ██████████ (40 hours); XINFO Installation and Support (45 hours); CAST/DS Installation and Support (70 hours); and Negotiation, Products and Services (30 hours). The petitioner estimated that it would take an average of eight months to complete all the training courses, at a cost of USD \$40,570. The petitioner asserted that the beneficiary has completed all of the above courses.

The petitioner listed the following products that the beneficiary or any newly hired employee must use in order to perform the work required for a project manager, as well as the following descriptions for how each product will be utilized:

- Project Management Methodology for the [REDACTED] project. The petitioner explained that this methodology was “adapted to work with specific processes of [the company]”;
- [REDACTED] for the [REDACTED] project. The petitioner explained that this was used for “production monitoring and trend analysis”;
- [REDACTED] for the [REDACTED] project. The petitioner explained that these products are used to review the quality of various source codes, such as COBOL, CICS, VSAM, DB2, NATURAL, CICS, VSAM, and ADABAS.
- XINFO for the [REDACTED] project. The petitioner explained that they provide training for installation and support of this software, which reviews and documents all source code of JCL, DB2, IMS, CICS, SMF, TWS, CONTROL-M, CA7, Zeke, and BETA93;
- Training of the staff that will work with the [REDACTED] project. The petitioner explained that this training gives “information about new processes, systems, products and services”;
- Optimization and Testing of projects Management for the [REDACTED] project. The petitioner explained that “[s]pecific processes [were] developed at [the company]”;
- Installation and support of CAST/DS for the [REDACTED] project. The petitioner explained: “[p]roduct represented by [the company]”; and
- Negotiation, Services and Products to search for new business opportunities with existing and potential clients. The petitioner explained that this “[i]ncludes knowledge of the products and services of [the company].”

The petitioner provided a letter clarifying the reasons for requesting the beneficiary’s transfer to the United States. Specifically, the letter described how the beneficiary was an employee at [REDACTED] for 22 years, during which time she worked in various departments at [REDACTED]. The letter stated:

She has deep knowledge about the business area of Citibank and she also worked with most people that work at [REDACTED] in the United States ([REDACTED]), which is the reason why the responsible person at the [REDACTED] project, requested [the beneficiary] in the U.S., to work on the new system.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the petitioner failed to establish that the methodologies and tools required to perform the duties for the Citibank project, such as project management methodology, [REDACTED] XINFO, Training, Optimization and testing of project management, and CAST/DS, are specific to the petitioning company and not common to the IT industry. The director found that while the beneficiary has a great deal of [REDACTED] knowledge, she did not have specialized or advanced knowledge specific to the petitioner. The director also found that the petitioner failed to distinguish the beneficiary’s training and knowledge from her peers within the company or in the industry.

On appeal, counsel for the petitioner disputes the director's conclusion that the methodologies and tools needed for the [REDACTED] project, i.e., project management methodology, [REDACTED] XINFO, Training, Optimization and testing of project management, and CAST/DS, are not specific to the company. Counsel points to the previously submitted evidence of the petitioner's federal registration of its patent from the Brazilian Patent and Trademark Office for [REDACTED]. Counsel submits a letter from an independent consultant attesting that the company's products, [REDACTED] and [REDACTED] "have excellent quality and its characteristics are unique in the market." Counsel submits a letter from a different independent consultant attesting that the company's project management methodology has "some unique characteristics quite different from conventional methodologies used in the market" and that the optimization and testing project management methodology is "actually a very specific application of techniques and softwares owned by [the company]"; this letter further indicates that [REDACTED] is the company's only trademarked and patented product, and that the company has "exclusive representation in Brazil" for Xinfo and CAST/DS, products that are the property of other unaffiliated companies. Counsel provides several other letters from IT consultants who have worked with the beneficiary attesting to her general technical ability, leadership, and communication skills. Counsel asserts that these letters show that the beneficiary has "deep, specialized knowledge in all of the petitioner's products" and that the "beneficiary's knowledge is materially different from that of ordinary peers in the industry." Counsel emphasizes the difference between the position of a software developer and a project manager, who must plan, budget, monitor, and control the development of the process.

II. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized or would be employed in a specialized knowledge capacity.

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.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director

must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner failed to establish how the beneficiary's knowledge equates to specialized knowledge specific to the petitioning organization or an advanced level of knowledge of the processes and procedures of the company. The petitioner also failed to establish that the beneficiary's proposed position as a project manager would require specialized knowledge.

The petitioner listed the products and processes that the beneficiary purportedly has specialized knowledge in as the following: Project Management Methodology, Management of Projects of Optimization and Testing, XINFO Installation and Support, CAST/DS Installation and Support, Training the Trainers, and Negotiation, Products and Services. However, other than listing the training courses the beneficiary received in the above products and processes and asserting that the beneficiary has specialized knowledge in them, the petitioner provided no detailed description as to the level of the beneficiary's actual knowledge in each particular product and process. Instead, the petitioner repeatedly asserts in a conclusory fashion that the beneficiary has "specialized" or "advanced" knowledge of the above products and processes. Conclusory assertions that the beneficiary has specialized knowledge in these products and processes, without more, is insufficient to meet the burden of proof in these proceedings.

On appeal, the petitioner provides letters from independent IT consultants attesting to the beneficiary's "deep, specialized knowledge" in the petitioner's products. However, none of the writers provided any details as to how he came to this conclusion, other than to vaguely state that he has worked with the beneficiary and that the beneficiary showed "deep knowledge" about the company's products and was "critical" to the success of the projects. Again, conclusory assertions regarding the beneficiary's knowledge is insufficient to meet the burden of proof in these proceedings.

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 AAO cannot accept the petitioner's and counsel's unsupported assertions regarding the claimed specialized 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).

On appeal, the petitioner asserts that its products are unique and different from its competitors. In particular, the petitioner points out that it has a patent for [REDACTED]. The petitioner provides letters from independent consultants attesting to the "unique" characteristics of [REDACTED] and the company's project management and optimization and testing methodologies. One consultant also attested that the petitioner has "exclusive representation in Brazil" for Xinfo and CAST/DS, although no supporting documentation was submitted to support this assertion. The petitioner asserts that because its products and processes are unique, the petitioner's knowledge of them is necessarily "specialized" and different from her peers. However, again, other than asserting that the company's products and processes are "unique," the petitioner provides no detailed, technical descriptions of its products and methodologies in order to differentiate them from those offered and utilized by other companies.

The fact that the petitioning company offers unique products and processes, and that the beneficiary has knowledge of these unique products and processes, does not establish that the beneficiary's knowledge is specialized. Most software developing companies, such as the petitioner, can be said to develop and offer products that are different in some way from their competitor's products. Likewise, most companies can be said to utilize internal methodologies and processes that are different in some way from their competitor's methodologies and processes. Therefore, most software developing companies can be said to have "unique" products and processes. Moreover, most employees with experience within the petitioning organization would reasonably be familiar with the company's unique products and processes. By the petitioner's logic, anyone employed at the petitioning organization with any work experience and knowledge of a company's unique products and processes would be considered to have "special knowledge." Such an interpretation strips the statutory language of any efficacy. In other words, specialized knowledge requires more than experience and familiarity with the petitioner's products; otherwise, specialized knowledge would include almost every experienced employee in an organization. See *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982) (holding that, by itself, work experience and knowledge of a firm's technically complex or proprietary products will not rise to the level of "special knowledge").

Here, the beneficiary will be employed as a project manager, not as a software developer or a similar type of highly technical position. The petitioner's description of the beneficiary's job duties included generic project management duties such as: defining scope, goals and deliverables; scheduling project timelines and milestones; communicating project expectations to team members; liaising with project stakeholders; estimating the resources and participants; and drafting and submitting budget proposals. The beneficiary's training record indicates that she received training in general project management skills, such as project management methodologies, train-the-trainer, optimizing and testing methodologies, and negotiation strategies. As discussed above, the petitioner failed to provide any technical description differentiating the petitioner's project management methodologies from other companies. Considering the petitioner's failure to establish how any of its methodologies and processes are different from that utilized by other companies, the petitioner failed to establish that the beneficiary's duties as project manager would require specialized

knowledge, and moreover, would require specialized knowledge *specific to the petitioning organization*. It appears that the beneficiary will perform project management duties that are similar to the duties of any other project manager for a software developer or similar type of company.

In addition, the petitioner failed to clearly articulate the nature of the beneficiary's specialized knowledge. For instance, with the initial petition the petitioner asserted that the beneficiary has specialized knowledge in "financial (bank) software systems" as well as in collateral issues within the financial area, such as laws regulating trust accounts and trustee's obligations, negligence liability, and agency laws. In a letter submitted in response to the director's RFE, the foreign entity explained that it chose to transfer the beneficiary to the United States - at [redacted] request - because of her "deep knowledge about the business area of [redacted] and [her prior work] with most people that work at [redacted] in the United States [redacted]" Thus, the record is not clear whether the petitioner is claiming the beneficiary has specialized knowledge in bank software systems in general, the financial field in general, or about [redacted] and its employees. In any case, none of these particular areas of knowledge would constitute specialized knowledge *specific to the petitioning organization*. The record is also devoid of any explanation of how the beneficiary would apply her expertise in the financial field or knowledge of [redacted] to her proposed position in the United States.

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.* Here, the petitioner failed 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. For this reason, the appeal will be dismissed.

Although the appeal will be dismissed, the AAO will withdraw the director's finding that the petition is not approvable under the L-1 Reform Act of 2004. The evidence in the record does not support the director's conclusion that the beneficiary will be primarily stationed offsite at [redacted] work site. Contrary to the director's finding, the petitioner did not indicate on Form I-129 that the beneficiary would be stationed primarily at the client's work site.

Finally, the AAO will withdraw the director's finding that the petitioner failed to show that the U.S. entity can financially support the proposed position within one year of operation. The petitioner has presented sufficient evidence to establish that, through its present contracts with [redacted] and the foreign entity's financial resources and support, the petitioning organization has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

IV. Conclusion

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The petitioner failed to establish that the beneficiary possesses specialized or would be employed in a specialized knowledge capacity. The petition will be denied and the appeal dismissed for this reason. 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.