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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

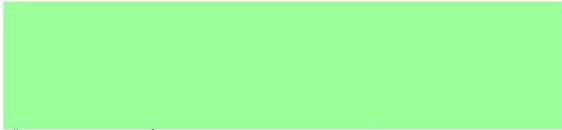


DATE: **FEB 08 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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 video supplier for the concert touring and music industry. It is a subsidiary of [REDACTED]. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a LED Field Technician, for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a specialized knowledge capacity.

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 evidence of record is sufficient to satisfy the petitioner's burden of proof and establishes that the beneficiary 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 subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

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

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

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in

international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

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

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

II. The Issue on Appeal

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

The petitioner is a member of a group of affiliated companies known as the [REDACTED] that is involved in video productions throughout the world. Specifically, the petitioner is a subsidiary of [REDACTED] in Belgium. The petitioner's United States operations had annual revenues in excess of \$8.7 million in the years prior to filing. The [REDACTED] Group employs over 250 people worldwide with revenues in excess of 80 million Euros. The nature of the [REDACTED] business was described by the petitioner as follows:

The company is technologically advanced, and is constantly developing new products and applications. Our staff is acknowledged as the leading experts in their field, and is the company of choice for many Blue Chip companies and events in creating and delivering innovative solutions in Visual Display reinforcement.

The petitioner specified that, as a leader in its field, it provides large-scale video technology and video support services for major sporting events, television shows, corporate conventions and events, political conventions, Broadway theaters and for international musical tours for the top acts in the world.

The petitioner stated the beneficiary will be working as an LED Field Technician for the company's operations in North Hollywood, California. The petitioner provided a lengthy description of the beneficiary's duties with the foreign entity. The petitioner described how the beneficiary is responsible for meeting with clients as well as training and supporting local crews to work with the PIXLED products. The petitioner

described the beneficiary's position in the organization and the nature of the training he received for the specialized knowledge position. Specifically, the petitioner explained that the beneficiary was trained on the "PIXLED Light" products exclusively developed by another [REDACTED] member company.

The petitioner indicated that the beneficiary's services are needed in the United States for several upcoming musical tours for top United States artists. The petitioner emphasized that the beneficiary, as a result of extensive on-the-job training and experience, possesses an advanced level of expertise with regard to the PIXLED segment of its products and service offerings that is not readily available in the United States market place.

The petitioner provided an organizational chart for the foreign and U.S. operations, the beneficiary's resume, newspaper and magazine articles about the petitioner's group and its PIXLED technology, and brochures describing the foreign entity's operations and the PIXLED products.

The director issued a Notice of Intent to Deny ("NOID"). 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.

In response, the petitioner provided a multi-page detailed explanation of the beneficiary's training and the nature of the specialized knowledge position in the United States. The petitioner provided a highly-detailed explanation of the specialized knowledge position and the company's internal training processes that clarified the nature of the training provided and the skills required for the three different levels of technicians within the company. The petitioner began by explaining the general training and promotion process for all crew technicians. Then, the petitioner further described how the LED Technicians responsible for the PIXLED Products receive additional training in excess of the training provided to the others, such that they become the only technicians qualified to work with the PIXLED products in the field and to provide training and supervision to local crews hired on a project basis for concert tours and similar major events.

The petitioner explained that the beneficiary is one of only six LED Field Technicians who function at a senior level as Crew Chief with regard to the PIXLED products.

The LED Field Technicians possess skills which our other technicians do not possess. They are employees who were specifically selected to be trained in the operation of the PIXLED products based on their understanding of the procedures and processes and values of the company. They have also demonstrated the high level of performance and expertise that is required for the projects that we are retained on and have distinguished themselves from the crews who they ultimately supervise.

The petitioner further clarified that the knowledge held by these technicians is currently not available in the United States, where the PIXLED products are only just being introduced. The beneficiary, as an LED Field Technician, would be transferred both to provide his services in the field as well as to provide training to the petitioner's employees in the United States so that they may also become "super users" of the PIXLED products.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position. In denying the petition, the director found that the petitioner failed to provide sufficient evidence that there is any significant distinction between the beneficiary and other similarly situated workers in the company or "video technicians" in the field. Specifically, the director found that the petitioner's description of the beneficiary's training and the nature of the specialized knowledge petition consisted solely of the petitioner's unsupported assertions.

On appeal, counsel asserts that the evidence establishes that the beneficiary's role is in a specialized knowledge position pursuant to section 214(c)(2)(B) of the Act and that the denial is based on a misapplication of law. Counsel reiterates how the beneficiary possesses the required specialized knowledge. Counsel provides again a detailed description of the petitioner's unique product; the beneficiary's prior on the job training and experience with the petitioner's affiliate in Belgium; and the beneficiary's position relative to other technicians. Furthermore, counsel asserts that the petitioner's detailed explanation and accompanying published articles regarding the petitioner's products and operations are sufficient to establish the nature of the specialized knowledge position.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a specialized knowledge position.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In the present matter, the director's determination appears to be based in part on the director's pre-conceived impression of what duties are typically performed by "video technicians" in the United States. The director should not hold a petitioner to an unsupported view of the standard duties of an occupation in making a determination as to whether the beneficiary will be employed in a specialized knowledge capacity. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

In the present case, the petitioner's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner explained that the beneficiary is one of only six individuals within the international organization with the required knowledge of the petitioner's unique and complex PIXLED products to perform the duties of the offered LED Field Technician position. The petitioner also distinguished between its standard LED product offerings, and the custom-designed, transportable PIXLED products designed for concert tours and major corporate events, which require significantly greater technical expertise in their installation, configuration, maintenance, and transportation.

The petitioner plainly conceded that general knowledge of video technology is not, in and of itself, specialized knowledge. However, when combined with extensive knowledge and experience with the petitioner's unique and well-documented PIXLED video products, the petitioner asserts that the knowledge held by its LED Field Technicians is truly "advanced" and affects the firm's efficiency and profitability. The petitioner's assertions are persuasive.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary is one of the few employees within the petitioner's organization who possesses advanced knowledge of the PIXLED products, and that such knowledge cannot be gained outside the organization. The record shows that the PIXLED products were introduced in Europe in 2008, less than two years prior to the filing of the petition, and that they are essentially brand new to the United States market. The petitioner also submitted evidence of the beneficiary's educational background and work experience that contributes to his advanced knowledge of the processes and procedures of the company. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position of LED Field Technician requires this advanced level of knowledge.

The evidence submitted establishes that the beneficiary possess 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.

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 sustained that burden. Accordingly, the director's decision is withdrawn. The appeal will be sustained and the petition approved.

ORDER: The appeal is sustained.