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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

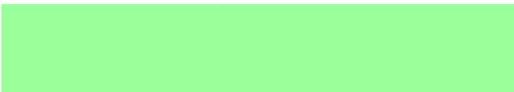


U.S. Citizenship
and Immigration
Services



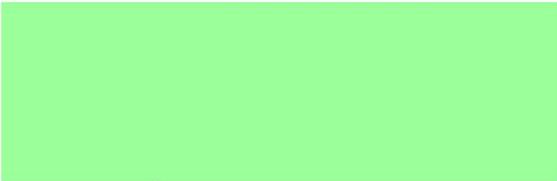
DATE: **FEB 19 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 law was inappropriately applied by us in reaching our 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 California corporation, is a developer of computer games and entertainment software. The petitioner is a subsidiary of [REDACTED] ("the foreign entity"), located in Paris, France. The petitioner seeks to employ the beneficiary as an associate web software engineer for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge, and that he will be employed in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal counsel contends that the beneficiary possesses specialized knowledge, and that he will be employed in a position requiring specialized knowledge.

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 developer of computer games and entertainment software. According to Form I-129, the petitioner employs approximately 1851 persons and has a gross annual income of \$4.9 billion (parent).

The petitioner stated the beneficiary will be working as an associate web software engineer. The petitioner described how over the next 12-24 months, the company seeks to unify its European and U.S. applications to a global common code. The petitioner explained that in order to complete this project, it needs staff in the United States with an intimate knowledge of European applications, payment systems and providers, and legal requirements for applications particular to European users. The petitioner described how the beneficiary will be serving on a team that is being relocated from Paris to the petitioner's headquarters in California in pursuit of this project, and how all European web development will soon be handled exclusively by the company's headquarters in California. The petitioner described how the beneficiary has experience and special knowledge of the company's web European payment methods, including a unique expertise with different payment methods that the company currently utilizes in various European countries and Russia. The petitioner described how it does not have any U.S. employees who have this knowledge or who could acquire this knowledge in a timely fashion.

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.

In response to the RFE, the petitioner clarified that it plans to centralize its payment systems and applications by using the company's web European payment methods, which have proven to be more successful, as a model. The petitioner clarified that they need someone like the beneficiary who is highly skilled and knowledgeable with the company's computer systems, particularly its European applications, in order to successfully complete its project. The petitioner asserted that they are seeking to relocate the beneficiary and his "entire unit to be staffed by nine [9] workers from [the foreign entity] to our headquarters in Irvine, California" in order to complete this project. The petitioner asserted that the beneficiary's special and advanced knowledge and skills include the beneficiary's existing contacts with the European payment gateway parties, his knowledge of the company's specific web payment applications and databases, his knowledge of the company's European-only applications and databases, his multilingual competence, and his knowledge of the different policies, procedures, and processes used to deliver a project properly. The petitioner asserted that this knowledge could take years to acquire, if at all.

In a separate letter, counsel clarified that the beneficiary's duties at the foreign entity involved software security for account management and online platforms of payment, and that he was chosen for this position because of his distinct combination of experience and knowledge in computer science and financial security. Counsel asserted that the beneficiary possess technical knowledge of payment flows that enables him to implement them into the company's new modules. Counsel emphasized that the company's database architecture for its web applications must be materially different from those of other software tools to ensure computer security.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and would be employed in a specialized knowledge position. In denying the petition, the director found that the petitioner failed to provide any evidence of the beneficiary's training to establish that his experience with the foreign entity involved specialized knowledge. The director found that the skills described for the beneficiary are not unique skills that cannot be taught or would require a specialized knowledge beyond the ordinary or usual knowledge of a computer systems analyst.

On appeal, counsel asserts that the director failed to fully consider the evidence. Counsel asserts that the previously submitted letter from the petitioner "clearly states" that the beneficiary will be engaged in designing a unique database structure for account management and online payment. Counsel concludes that "[t]he job duties are exceptional and so unique that implementation of the duties requires specialized knowledge." Counsel also asserts that the director failed to compare the beneficiary with the petitioner's workforce and the general industry. Counsel points out that the beneficiary is one of only three associate software engineers tasked to develop and execute the company's account management and online payment platforms, out of a total of 626 employees in France. Counsel asserts that the petitioner seeks to transfer two of its associate software engineer specialists from Europe to the United States. Counsel also asserts that the beneficiary's knowledge is not common among the general labor market, as the job requires specific knowledge of the company's unique database code, encoding language, web applications, and products.

II. 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(I)(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(I)(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(I)(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 has not specifically identified whether its claims are based on the first or second prong of the statutory definition. Rather, the petitioner asserted in a generalized and broad manner that the beneficiary has specialized knowledge.

The petitioner failed to describe with specificity what constitutes the beneficiary's specialized knowledge, how he gained such knowledge, and how the knowledge is typically gained within the organization. With the initial supporting documents, the petitioner claimed that the beneficiary has "a deep knowledge of the workflow and rules of all the web European payment methods," and that the beneficiary has "unique expertise" with different bank debit methods used in various European countries which he gained from working as a web programmer in

Europe operating in different countries, languages, currencies, and laws. Other than these broad assertions, however, the petitioner failed to explain in any detail why the beneficiary's knowledge is "deep" and "unique."

Therefore, the director issued a detailed request for evidence. In the RFE, the director instructed the petitioner to submit a more detailed description of the beneficiary's duties abroad and in the United States, and explain how his prior education, training and employment qualify him to perform services in a specialized knowledge capacity. The director also instructed the petitioner to explain in more detail the beneficiary's special or advanced duties, and the petitioner's particular equipment, system, product, technique, research, or service in which the beneficiary has specialized knowledge.

The petitioner subsequently provided a response to the RFE. However, the petitioner's response still failed to provide the type of technical details that would support the petitioner's claim that this individual beneficiary's knowledge is specialized or advanced.

For example, the petitioner claimed that the beneficiary possesses specialized knowledge of its web or normal applications and databases because he has "present existing contacts with the European payment gateway parties," and sometimes when a billing team has a problem with a customer, they require someone from the beneficiary's development team to provide them with an answer. The petitioner's response does not explain how the beneficiary's "present existing contacts with European payment gateway parties" constitutes special or advanced knowledge that could not be easily passed on to others, or why the beneficiary's ability to assist the billing team is considered special or advanced.

The petitioner asserted that "[s]ome applications have only been made in Europe for European specificities and the knowledge is handled by the current European developers." The petitioner then referenced the beneficiary's "significant expertise" with its payment applications and characterized him as a "key professional" within the European team of developers. However, again, the petitioner failed to provide any meaningful detail to support its claims of the beneficiary's "significant expertise" in the European applications, or to distinguish him as a "key professional" among his team. Instead, the petitioner emphasized that it seeks to relocate the beneficiary's entire team as well as their entire team function to the United States.

The petitioner emphasized that the beneficiary has multilingual competence, which "can help in analyzing more easily bugs on the website." However, the fact that the beneficiary is multilingual or that his language skills "can help" him perform his jobs "more easily" does not establish that the beneficiary possesses advanced or specialized knowledge. Notably, the petitioner indicated that it provides services in many languages, including German, English, Spanish, French, and Russian. The beneficiary's resume indicates that he is fluent in Italian and English, with basic French skills.

The petitioner asserted that the beneficiary has an advanced knowledge of the company's "different policies, procedures and processes used to deliver of [sic] a project properly." However, the petitioner failed to specifically identify and document what policies, procedures, and processes it is referring to, and establish why the beneficiary's knowledge of these policies, procedures, and processes is more advanced than someone else who has worked for the foreign entity. The petitioner asserts that the beneficiary "already knows the departments and the people who are involved in the development process, and have contacts with the different teams involved

in the projects.” However, mere familiarity and prior contact with other employees within the company does not rise to the level of specialized or advanced knowledge in a company’s processes or procedures.

The petitioner made broad references to the beneficiary’s “distinct combination of experience and knowledge in computer science and financial security,” and his “technical knowledge” of payment flows and different payment methods among various European countries. The petitioner asserted that the beneficiary has “unique expertise” with ██████████ for Germany, Austria, Netherlands, and Spain, ██████████ transfers for Germany and Netherlands, ██████████ for German, and WebMoney for Russia. However, other than naming the different payment applications the beneficiary has experience in, the petitioner failed to explain the nature and scope of the beneficiary’s knowledge and experience, and why this knowledge and experience makes him “unique” or “distinct.” While the beneficiary’s resume and list of past projects establishes that the beneficiary has prior experience with various payment methods and financial institutions, these documents do not explain or establish why the beneficiary’s prior experience and knowledge is specialized or advanced.

Overall, the petitioner’s vague and unsupported claims are insufficient to establish that the beneficiary possesses specialized or advanced knowledge. 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)).

In addition, with respect to the beneficiary’s duties in the United States, the petitioner largely repeated the same description of the beneficiary’s foreign job duties and qualifications as discussed above. The petitioner did not provide any more detail regarding what the beneficiary’s actual job duties would be in the United States. Without such information, USCIS cannot determine whether the beneficiary will be employed in the United States in a specialized knowledge capacity.

On appeal, counsel asserts that the beneficiary’s job duty of “designing a unique database structure with new modules for software security account management and online platforms of payment to prevent computer bugs and security breaches” is “exceptional and so unique that implementation of the duties requires specialized knowledge.” However, other than this bare assertion, counsel failed to explain why the beneficiary’s job duty is “exceptional and so unique” as to require specialized knowledge. The job duty of designing a unique database, alone, is not inherently exceptional or unique from the duties of other computer software engineers. Notably, the petitioner submitted a copy of the Department of Labor’s Occupational Outlook Handbook, 2008-2009 Edition, which describes the nature of a computer software engineer’s work as to design and develop software, and to ensure security across the systems they configure.

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 Obaighena*, 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).

Lastly, on appeal, counsel asserts that the director erred by failing to compare the beneficiary with the petitioner's workforce and the general industry. In specific, counsel asserts that the beneficiary is one of only three associate software engineers, out of the French office's 626 total employees, who are employed "to develop and execute the company's central software security account management and online platforms of payment." However, the director's failure to consider this factor is only precipitated by the petitioner's failure to assert this factor before the director. Prior to the appeal, the petitioner never expressly asserted that the beneficiary is one out of only three employees worldwide with specialized or advanced knowledge. Rather, prior to the appeal, the petitioner made constant references to its plan to relocate the beneficiary and his entire team of *nine* employees to the United States. While the petitioner previously submitted the foreign entity's organizational chart showing three persons employed as associate web software engineers, this chart did not state or in any way suggest that only these three associate web software engineers possess specialized or advanced knowledge.

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 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

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.