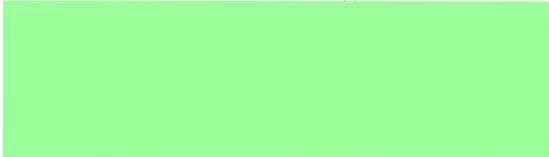


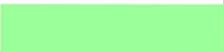
(b)(6)

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



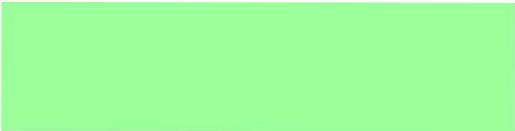
U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 28 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)

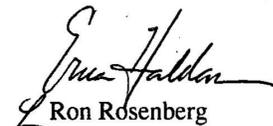
ON BEHALF OF PETITIONER:  


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 Texas corporation, is a cargo courier. The petitioner claims to be an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary as its manager for a period of three years.

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.

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 incorrectly applied an overly restrictive definition of specialized knowledge. Counsel also claims the evidence of the beneficiary's extensive experience in the international delivery of funds and cargo establishes that the beneficiary qualifies as specialized knowledge required for an L-1B visa.

### 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 addressed by the director 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, a Texas corporation engaged in international courier services, has three employees in the United States and a gross annual income of \$113,584.00. The petitioner claims to be affiliated with the beneficiary's previous employer, a Guatemalan company, through a common majority shareholder.

The petitioner states the beneficiary will be working for the U.S. company as a manager. In a letter submitted in support of the petition, the petitioner stated that the beneficiary will be responsible for auditing the operations of the U.S. office, making or implementing any changes to improve services, hiring and training new employees in the rules and regulations governing the business, and assuring that new offices are properly positioned and structured within the market. The letter claims that the beneficiary has "twenty plus years of experience in international courier services" and that his presence is "extremely important and necessary" in Houston.

With respect to the beneficiary's education, training, and experience, the petitioner stated on the Form I-129, Petition for Nonimmigrant Worker that the beneficiary, for the past three years, "has been in charge of the day to day operations of [the foreign] company, including supervising the sending and receiving of international funds and cargo," and has been in charge of training new personnel. The petitioner's initial evidence included no further information or evidence related to the current or proposed employment.

With the petition, the petitioner submitted tax documents, articles of incorporation from the state of Texas, a registration document for the foreign entity, U.S. business licenses, the final page of a lease agreement, bank statements from May 2011-June 2011, and a telephone bill from March 2010.

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 (1) detailed descriptions of the beneficiary's actions and duties on a daily basis including a list of the proposed duties that require specialized knowledge; (2) the reason that specialized knowledge is required to perform the duties; (3) the processes, procedures, tools and/or methods the beneficiary will use for each duty and whether such processes and procedures were developed by the petitioner; (4) the amount of time it takes to train an employee to use the specific tools, procedures, tools and/or methods utilized and whether there are other similarly employed workers with the same knowledge within the organization; and (5) an explanation of how the beneficiary's training differs from that of others within the company. The director further requested a letter from the foreign entity explaining the nature of the beneficiary's employment, including a complete description of his current position and an outline of all positions he has held. The director advised the petitioner that the evidence submitted should establish that the beneficiary's knowledge is not general knowledge held commonly throughout the industry, but is truly special or advanced.

In response to the RFE, the petitioner submitted a letter from counsel, who stated:

The beneficiary specialized duties are those that required working knowledge of international loans and bonds for exporting and importing goods and financial documents which is done by the owner of [the petitioner], [the beneficiary] in Guatemala. The company office in Houston, Texas is run by someone other than the owner, but it is the owner [the beneficiary] who started the business in Guatemala and expanded to Houston and now wants to come and run and oversee the Houston office and use this office as a base to further expand his business to other cities with high concentrations of Central and South American immigrants.

As the company was started by [the beneficiary] in the nineties, [the beneficiary] has the special knowledge of the company product and its application in international markets. This knowledge, as set out above, is what makes his company work. As the Hispanic market has and continues to expand in Texas . . . the beneficiary, now needs to expand his offices to such cities to remain competitive in this market. His specialized knowledge is knowledge of the needs of the Central and South American immigrants in the United States and how to facilitate and meet the needs of these immigrants.

The petitioner's response included evidence related to the physical premises of the U.S. entity, the ownership of the foreign entity, and evidence related to the business activities of both companies, which had also been requested by the director. The petitioner did not provide the requested letter from the foreign entity describing the beneficiary's specific duties and experience abroad; a more detailed description of the proposed duties in the United States and the specialized knowledge required to perform each duty; the specific processes, procedures or methods the beneficiary will use to carry out his duties and whether the petitioner

developed these processes; or any further information regarding the beneficiary's education, training, or employment.

The director ultimately denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge or would be employed in a specialized knowledge position. In denying the petition, the director found the beneficiary's knowledge, as described in the record, is common among others in the field of international funds or cargo transfer, and that the beneficiary's position as manager does not establish his employment in a specialized knowledge capacity. The director emphasized that mere familiarity with the company's processes and services does not constitute specialized knowledge under section 214(c)(2)(B) of the Act.

On appeal, counsel for the petitioner asserts that the beneficiary's lengthy experience with the foreign entity is sufficient to qualify him as an employee with specialized knowledge in "the rules and regulations in receiving and sending of cargo and monetary funds on an international level," "the necessary steps to make the business profitable," and licensing and bonding with federal agencies and banks. Counsel also claims that the beneficiary's specialized knowledge includes his personal relationships with the government officials in the various countries where he works.

Finally, counsel claims that the director erred in applying an overly restrictive and narrowly interpreted definition of specialized knowledge to conclude that there is a distinction between skilled employees and intracompany transferees employed in a specialized knowledge capacity. *Matter of Sandoz Crop Protection Corp.*, 19 I&N Dec. 666 (Comm. 1988). Counsel claims that *Matter of Sandoz Crop Protection Corp.* was "overruled and effectively eliminated" by the 1988 Norton Memorandum.<sup>1</sup>

### III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. 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.

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<sup>1</sup> See Memo. of Richard Norton, *Interpretation of Specialized Knowledge Under the L Classification*, (Oct. 27, 1988), reproduced in 65 Interpreter Releases 1170, 1194 (November 7, 1988).

In the present case, the petitioner claims "[the beneficiary] has the special knowledge of the company product and its application in international markets." Specifically, the petitioner claims the beneficiary's working knowledge of international loans and bonds for exporting and importing goods and financial documents, personal connections with government officials, and knowledge of the needs of the Central and South American immigrants in the United States qualify as specialized knowledge, and that he gained such knowledge by virtue of his lengthy period of employment with the foreign entity.

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 examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The evidence initially provided with the petition was insufficient as it failed to include a detailed description of the beneficiary's proposed duties in the United States, a detailed description of the beneficiary's current role abroad or any other information regarding his education, training and experience, and failed to articulate or document the nature of any claimed specialized knowledge. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases, and, the director put the petitioner on notice of the required evidence and gave a reasonable opportunity for the evidence to be provided for the record before the visa petition was adjudicated. *See* 8 C.F.R. § 103.2(b)(8).

As noted above, while the petitioner submitted a response to the RFE, its response did not include the requested letter from the foreign entity describing the beneficiary's specific duties and experience abroad; a more detailed description of the proposed duties in the United States and the specialized knowledge required to perform each duty; the specific processes, procedures or methods the beneficiary will use to carry out his duties and whether these processes are generally known in the industry; or any further information regarding the beneficiary's education, training or employment experience. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The director appropriately denied the petition, in part, for failure to submit requested evidence.

Additionally, based on the petitioner's failure to fully respond to the director's requests, the record of proceeding contains little explanation or evidence to support the petitioner's claim that the beneficiary possesses specialized knowledge or that the proposed position requires specialized knowledge. While the position of manager may require a comprehensive knowledge of the industry and the petitioner's operations, the petitioner has not provided a sufficient explanation of the beneficiary's duties to establish that the position requires knowledge specific to the petitioner's company, rather than knowledge that would generally be known by a manager in the petitioner's field. Further, the petitioner provides no details regarding any aspects of its business which would distinguish the petitioner's services from those offered by any other company in its industry.

The petitioner states that the beneficiary's specialized knowledge includes the rules and regulations governing international transfer of cargo and monetary funds, knowledge of "licensing and bonding with federal agencies and banks," "knowledge of the needs of the Central and South American immigrants in the United States," and "the steps to make the business profitable." The petitioner did not explain how the possession of this knowledge would distinguish the beneficiary from having knowledge that is different or unusual, or otherwise specialized, compared to other companies providing similar services, which would reasonably be required to adhere to the same rules, regulations, licensing and bonding requirements. While the beneficiary is undoubtedly familiar with the company's internal operations, the petitioner has not established that such knowledge is of significant complexity, requires a period of training or experience, or that it is otherwise different from what is generally known in the field.

Based on the minimal explanation submitted and the petitioner's failure to submit any evidence beyond vague assertions, the petitioner has not established that the beneficiary possesses special knowledge of the company's products and services and its application in international markets.

The petitioner has also failed to establish that the beneficiary possesses an advanced knowledge of the company's processes and procedures, as it has failed to provide a sufficient evidence of his education, training and employment experience. In fact, there is no documentation of training, education, or experience, other than the petitioner's and counsel's assertions that the beneficiary must possess advanced, "special knowledge" as defined by the regulations and the Act because of his ten plus years of experience with the company. Without documentary evidence the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The only knowledge the petitioner identified as "special" or "advanced" can be readily gained outside the petitioner's organization. Accordingly, the petitioner has not established that the beneficiary possesses specialized knowledge based on his advanced knowledge of company processes or procedures.

Although the appeal will be dismissed, the AAO notes that the director based his decision, in part, on an improper standard. The director incorrectly considers previous denials to make unfounded assumptions that the beneficiary is primarily employed in a managerial capacity, and that his employment in a managerial capacity precludes his employment in a specialized knowledge capacity. These comments are unsupported. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS

is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). For this reason, the director's decision will be withdrawn, in part, as it relates to employment in managerial capacity precluding employment in a specialized knowledge capacity.

Finally, counsel contends the director used an overly restrictive and narrowly interpreted definition of the specialized knowledge from *Matter of Sandoz Crop Protection Corp.* Counsel claims that the definition was overruled and effectively eliminated by the above-referenced Norton Memorandum. It is noted that while the memorandum stated that INS had often used a "too literal" definition of the term "proprietary knowledge" and included new characteristics for consideration, it does not overrule AAO's finding in *Matter of Sandoz Crop Protection Corp.* and other precedent decisions that there is a distinction between skilled workers and intracompany transferees coming to perform services in a specialized knowledge capacity.

Regardless, as discussed above, the petition cannot be approved because the petitioner has failed to articulate or document the nature of the claimed specialized knowledge, the nature of the beneficiary's duties in the United States and abroad, or the nature of the beneficiary's education, training and experience. The petition was not denied based solely on a finding that the beneficiary is a mere skilled worker. The AAO agrees with the director's determination that the initial evidence and the petitioner's incomplete response to the request for evidence do not support a finding that the beneficiary will be employed in a specialized knowledge capacity. The petitioner did not submit all of the requested evidence and the unsupported assertions and explanations provided are insufficient to overcome the evidentiary deficiencies noted in the director's decision. As previously mentioned, 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. at 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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. Here, for the reasons discussed, the petitioner did not submit relevant or probative evidence in support of its claims that the beneficiary is qualified for the requested classification.

For the reasons discussed above, the evidence submitted fails to establish 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.

#### 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.