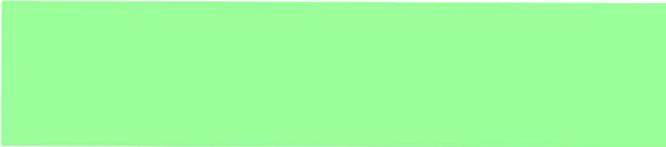




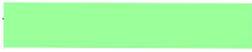
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 16 2013**

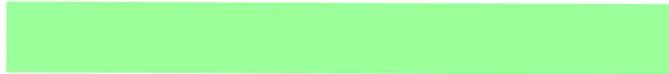
Office: CALIFORNIA SERVICE CENTER

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 was formed as a limited partnership under the laws of the State of Delaware in 1999, and is an agricultural commodities production and trading firm. It is an affiliate of [REDACTED]. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as the firm's Compliance Officer, 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 the trading of agricultural commodities throughout the world. Specifically, the petitioner is a subsidiary of [REDACTED]. The petitioner's United States operations alone had assets in excess of \$96 million and revenues in excess of \$32 million in the year prior to filing. The [REDACTED] employed between 3,500 and 4,000 person at all offices worldwide. The U.S. petitioner employs a staff of 44 persons in the United States.

The petitioner stated the beneficiary will be working as the Compliance Officer for the company's operations in Chicago, Illinois. The petitioner provided a lengthy description of the beneficiary's duties with the foreign entity. The petitioner described how the beneficiary is responsible for registering the company's biofuels with the EPA for importation into the United States. The petitioner explained that the EPA promulgated new regulations in 2010 revising the National Renewable Fuel Standards and how their unique product blending both American and Canadian biofuels is considerably affected by these revised regulations for purposes of exporting the product to the United States.

The petitioner described the beneficiary's specialized knowledge as follows:

[S]he not only had special knowledge of our product (renewable fuel) and our organizations compliance with governmental regulations, but she is presently the only individual within our organization with such in-depth knowledge of our renewable energy activities operating in this industry across borders while meeting standards and goals (both internal and government mandated).

The director issued a request for additional evidence ("RFE") on April 22, 2011. 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 a multi-page detailed explanation of the beneficiary's job duties as Compliance Officer. The petitioner expanded upon the previous explanation of the specialized knowledge position. The petitioner summarized the specialized knowledge of the beneficiary as follows:

No one within our organization has such a high level of knowledge and expertise in the regulations of the RFS and use of RINs, and no one from outside our organization has any knowledge of our internal procedures in compliance of these regulations further to our merchandising activities.

The petitioner documented that the beneficiary's educational background combined with her on the job experience with the foreign affiliate provided her the training necessary for the specialized knowledge position. The petitioner provided a letter from the beneficiary's supervisor in Canada describing her specialized knowledge and her specialized knowledge position abroad. The petitioner also provided an organizational chart for the Chicago office, showing the proposed position for the beneficiary reporting to the Administration Head who in turn reports to the VP/General Manager.

The director denied the petition on May 23, 2011, 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 because the petitioner failed to specifically identify the renewable fuel standards passed by Congress, it cannot be concluded that duties related to these fuel standards surpass the ordinary or usual knowledge held by a person in the same field. The director also determined that the beneficiary is not employed at "a higher level of hierarchy" in the specialized knowledge position. Finally, the director stated that the petitioner failed to provide evidence that the beneficiary received training involving specialized knowledge of the petitioner's products.

On appeal, counsel asserts that the evidence establishes that the beneficiary's role is in a specialized knowledge position pursuant to section 101(a)(44)(A) 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 and related application to the Renewable Fuel Standards; the beneficiary's prior on the job training and experience with the petitioner's affiliate in Canada; and the beneficiary's position in the company's overall hierarchy.

III. Conclusion

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 compliance officers in the United States renewable fuel industry. 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.

Furthermore, there is no requirement that a specialized knowledge employee fill a position "at a higher level of hierarchy" within the organization. *See e.g. Matter of Vaillancourt*, 13 I&N Dec. 654 (Assoc. Comm'r 1970) (noting the beneficiary's experience and training was obtained through work experience as a shipping and receiving clerk, sales correspondent, and then as a sales assistant). The petitioner must simply demonstrate that the alien's prior education, training, and employment qualifies him or her to perform the intended services in the United States; the work in the United States need not be the same work which the alien performed abroad. 8 C.F.R. § 214.2(l)(3)(iv).

Prior to reaching the beneficiary's qualifications, however, the petitioner must establish 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 company's processes and procedures. The petitioner explained that the EPA regulations and the National Renewable Fuel Standards directly impact the organization's product, a blending of U.S. and Canadian biofuels for consumption in the United States. In response to the director's RFE, the petitioner explained the fundamental elements of the Renewable Fuel Standards and Renewable Identification Number (RIN) classifications. In short, the petitioner asserts that the

beneficiary is the only individual within the organization with the specific knowledge of the organization's transnational renewable energy operations and the application of government-mandated standards.

The petitioner plainly conceded that general knowledge of EPA regulations and RIN classification is not, in and of itself, specialized knowledge. But when combined with knowledge of the petitioner's unique and well-documented internal operations - the transnational production, blending, and import of biofuels - the petitioner asserts that the knowledge is truly "advanced" and dictates the firm's efficiency and profitability. The petitioner's assertions are persuasive.

The petitioner submitted evidence to demonstrate that the beneficiary is one of the few employees, if not the sole staff member, that possesses this knowledge in Canada or the United States. The petitioner also submitted evidence of the beneficiary's educational background and work experience that contributes to her advanced knowledge of the processes and procedures of the company. *See* 8 C.F.R. § 214.2(l)(3)(iv).

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.

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 dated December 15, 2009 is withdrawn.

ORDER: The appeal is sustained.