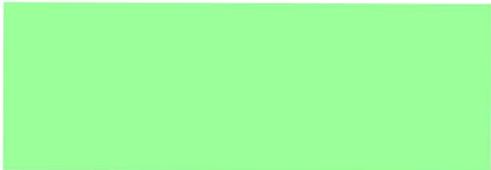




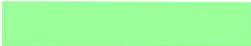
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **JUN 12 2013**

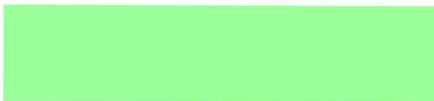
Office: CALIFORNIA SERVICE CENTER

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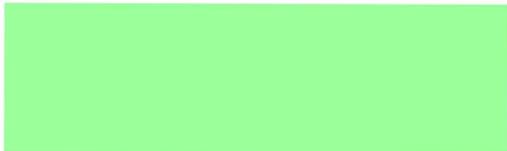
Petitioner:

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 L-1B visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a California corporation engaged in providing manufacturing solutions to technology companies worldwide. It seeks to employ the beneficiary in the classification as an L-1B 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 director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he will be employed in a capacity involving specialized knowledge.

On appeal, counsel disputes the director's conclusion, asserting that the director did not properly assess the description of the beneficiary's job duties and improperly referenced a definition of reengineering that was outside the current record of proceedings.

As a preliminary matter, counsel objects to the director's reliance on Wikipedia for a definition of the term "process engineering," asserting that reliance on information found in Wikipedia is contrary to 8 C.F.R. § 103.2(b)(16). This provision prohibits U.S. Citizenship and Immigration Services (USCIS) from making adverse findings on the basis of derogatory information of which the petitioner is unaware. Counsel's argument, however, is not persuasive. It is well established that administrative agencies may take administrative notice of commonly known facts. *See Matter of R-R-*, 20 I&N Dec. 547, 551 n.3 (BIA 1992) (citing *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U.S. 292 (1937)). While the petitioner must be afforded an opportunity to review all derogatory information considered by the director before a decision is rendered, the director used the Wikipedia information in an informational and not a derogatory manner. *See* 8 C.F.R. § 103.2(b)(16)(i); *Matter of Cuello*, 20 I&N Dec. 94, 96-98 (BIA 1989).¹

Even if the director committed a procedural error by failing to advise the petitioner of a definition of a term and providing it with an opportunity to rebut or offer an alternate definition, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner, through this denial and appeal, has now been advised of this information and given an opportunity to supplement the record on appeal with a rebuttal or alternate definition before a final administrative decision is rendered. As such, the error was harmless and it would serve no useful purpose to remand the case simply to afford the petitioner an additional opportunity to respond to this information.

Regardless, upon review, the AAO finds that the petitioner has established by a preponderance of the evidence that the beneficiary does possess specialized knowledge, which he will use during his prospective employment in a specialized knowledge capacity.

¹ Regarding the actual information from Wikipedia, there are no assurances about the reliability of the content from an open, user-edited internet site. *See Lamilem Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

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.

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. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

II. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and 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 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 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.

Upon review, the petitioner in this case has established that the beneficiary's position in the United States requires an employee with specialized knowledge and that the beneficiary possesses the requisite specialized knowledge. First, the record shows that the beneficiary does possess proprietary knowledge of various systems tools that are specific to the petitioning entity. However, it is important to emphasize that proprietary knowledge is not a prerequisite for possessing specialized knowledge, as one can possibly possess the latter without having possession of the

former type of knowledge. Nor is mere possession of proprietary knowledge in and of itself sufficient to establish that one's knowledge is specialized, as many employees company wide can possess proprietary knowledge of a company's products or tools just by virtue of working for that company.

In the present matter, the beneficiary is one of five individuals in the petitioner's internal process engineering and compliance (PE&C) department. By virtue of being among the few employees in the PE&C department, the beneficiary possesses proprietary knowledge of Oracle-based tools devised by the company's IT department. The main objective of the beneficiary's specific position as a business analyst within the PE&C department is to apply his knowledge of proprietary tools to improve the function of the petitioner's internal business practices of which the beneficiary also possesses a unique and specialized knowledge. Thus, it appears that the beneficiary possesses the requisite IT knowledge of various key software tools and their actual applications in the petitioner's financial processes. The beneficiary's combined knowledge of IT and business components puts him in the unique position of being able to establish a need for certain tools or applications and act as a liaison between the software engineers who create the tools and those who create the specialized procedures in which the tools would be implemented. The beneficiary's proprietary knowledge of the software and business aspects enable him to help improve software tools in a way that will best serve the petitioner's business needs.

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 company's internal process engineering and compliance methodologies. The petitioner also established that such knowledge cannot be gained outside the organization. The petitioner also submitted evidence of the beneficiary's educational background and work experience that contributes to an advanced level of knowledge regarding 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 requires this advanced level of knowledge.

III. 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. The petitioner in the instant case has sustained that burden.

ORDER: The appeal is sustained.