

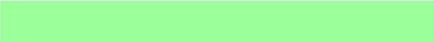
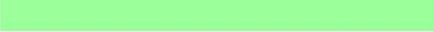


U.S. Citizenship
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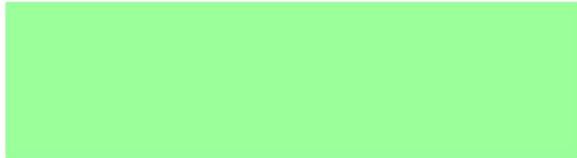


DATE: **JUN 17 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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.

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, 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 extend the beneficiary's status 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 an international trade and investment consulting company. The petitioner is a subsidiary of [REDACTED] located in China. The petitioner seeks to extend the beneficiary's status so that he may continue to serve as its Representative for two additional years.

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 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 beneficiary's knowledge of the company's product, processes and procedures is sufficiently advanced, complex and rare that it constitutes specialized knowledge and that this knowledge is necessary for the proposed position in the United States.

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 thereof.

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 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.

TEDA, the Tianjin Economic-technical Development Area, is a 39-square-mile zone surrounding the city of Tianjin, China. It was established in 1984 as one of China's first national development zones. As of 2009, 4,734 foreign-funded enterprises from 74 countries and regions had business operations in TEDA, and 76 Fortune Global 500 companies had invested in 158 projects there.

The petitioner, a Texas corporation, operates an international trade and investment business. It was founded in 2001 to facilitate investment and expansion by American companies into TEDA. It is the subsidiary of [REDACTED] based in China. The petitioner currently employs two employees, including the beneficiary, who serves in the position of Representative.

The beneficiary received a Bachelor's degree in Machinery in 1993 from the [REDACTED] and a Master's degree in Business Administration in 2006 from [REDACTED]. The beneficiary has spent three years in the United States working for the petitioner in the proffered position. Prior to this, he worked as a Senior Project Manager of [REDACTED] where he provided consultation to American businesses interested in setting up production plants in China.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner listed the beneficiary's proposed job duties in the position of Representative as follows:

- 1) Providing professional consultation services to American business;
- 2) Organizing business promotion events to promote investment and trade between American enterprises and business in China;
- 3) Helping Chinese companies which want to do investment and trading in USA get local connection[;]
- 4) Assist and coordinate TEDA and Tianjin City government and commercial delegations' visit to USA.

The beneficiary's training while working for the foreign company included: 1) training on corporate registration, foreign currency exchange, intellectual property protection, brand management, and the local tax code from Tianjin City's Industrial and Commercial Bureau; 2) yearly updated trainings of TEDA and Tianjin city's taxes and regulations, and investment requirements; and 3) training on TEDA administration's special foreign investment incentive policies and regulations.

Accompanying the initial submission, the petitioner submitted a letter from its parent company that explains the need for the petitioner's services:

[I]n order to keep the leading position among all economic zones in China, TEDA has also constituted [sic] many complex and complicated local rules and regulations on helping investors getting in to China's market faster and easier and at much lower cost, such as regulations on one step company registration, land and factory construction, utilities, tax issues, customs, human resources, environment protection, foreign exchanges, etc. and many related preferential policies.

Other documents submitted with the petition included a letter from the parent company that emphasizes the beneficiary's excellent work performance and gives examples of the beneficiary's specific projects. The petitioner provided organizational charts that show the parent company, the parent's parent company, and the many related subsidiaries and ventures. The petitioner also submitted a copy of the beneficiary's resume, proof of his academic credentials, and certificates of completion for continuing education credits. It also

included color photographs of the beneficiary and other TEDA representatives at numerous business conferences and meetings, as well as numerous letters from contacts the beneficiary presumably established at these conferences. Lastly, the petitioner provided several informational booklets and brochures on TEDA.

The director issued a lengthy Request for Evidence (RFE) and instructed the petitioner to provide, *inter alia*, evidence that the beneficiary will be working in a specialized knowledge capacity, including more information regarding the petitioner's employees, a more detailed description of the beneficiary's proposed job duties, and an explanation of why those duties are special or advanced. The RFE further requested more information regarding the petitioner's product or services, the beneficiary's training and experience, and whether other individuals hold the same or similar positions.

In response to the RFE, the petitioner submitted a brief and numerous supporting documents. Counsel stated that the petitioner's product is the professional consulting it provides to American businesses regarding investment and expansion into [REDACTED]. Counsel explained that the petitioner's consultation services include the latest laws, rules, policies, regulations, and incentives for investing in China. The services also include consultation for Chinese companies wishing to invest or expand into the United States.

The petitioner explained that another individual previously held the beneficiary's position within the petitioner's organization until his visa expired. The beneficiary was initially brought to the United States to replace this individual.

The director denied the petition, concluding that the petitioner failed to adequately articulate the basis for the beneficiary's claimed specialized knowledge. The director stated that the petitioner failed to demonstrate that the beneficiary's knowledge surpassed that of similarly situated individuals such that it should be considered specialized.

On appeal, counsel for the petitioner provides a more detailed explanation of the nature of the consulting services the petitioner provides. Counsel explains that American businesses seeking to set up operations in TEDA require assistance with the following steps:

- 1) Company Name's inquire and registration. Investor should get a new name for its Chinese entity and receive approval.
- 2) Documents examination and approval. Investor should submit documents like: Name registration notice, Letter of Guarantee, Application for registration of enterprise with foreign investment, project proposal, feasibility study and import equipment, contract of the enterprise, article of association, list of members of the Board of Directors, list of general manager and vice general manager of the enterprise, legal representative registration form, liaison person registration form, certification of the registration in the country or region where investor incorporates, certificate of Credit Position of Chinese

partner (Audit report), certificate of credit position of foreign partner issued by a bank, approval of environment department, certification of the availability of site or factory for the enterprise, power of Attorney to the person of gaining business license, the investor may entrust a Chinese citizen or consulting agency with the application on his behalf, and a signed letter of commitment is required.

- 3) Business license issue. After all documents are reviewed and approved, a business license is issued to the newly established company. Then the following post-license procedure will be performed:
- 4) Company seal engraving.
- 5) Enterprise legal person code.
- 6) Registration of foreign exchange.
- 7) Tax registration.
- 8) Opening bank accounts. Like foreign exchange account, RMB basic account, RMB general account, state tax payment account.
- 9) Customs 10-digit code and customs registration.
- 10) Enterprise statistics registration.
- 11) Financial registration.

Counsel explains that foreign businesses may get confused by the complex rules and regulations associated with accomplishing the above steps, and asserts that the beneficiary is able to assist clients in navigating these processes. The petitioner submits a letter on appeal from the [REDACTED] which indicates that that the beneficiary is particularly well-qualified for the proffered position:

[The beneficiary] has global experiences in China, Africa and the U.S. He can speak fluent Chinese and English. Particularly, from 2001 to 2005, as a project manager in [REDACTED] he beneficiary] handled many important overseas investment projects in [REDACTED] such as projects of Motorola, Owens Corning, etc. Over the years, [the beneficiary] accumulated tremendous knowledge and experience on overseas investment and trade, and his MBA study at [REDACTED] further helped him to understand the operation mechanism of U.S. and multinational Corporations and their global business development.

The petitioner submits additional letters from the [REDACTED] and the Director General/Senior Vice President of the petitioner. According to the Vice Chairman, the Administrative Commission owns a majority interest in the petitioner's parent company. Counsel asserts the Administrative Commission is controlled by the [REDACTED] Municipal Government and reasons that this links the petitioner directly to the [REDACTED] Municipal Government. The parent company further emphasizes the beneficiary's history with the parent company, such as his work in [REDACTED] Economic Development Bureau as a project manager from 2001 to 2005 where his main responsibility was to help foreign companies obtain licenses and establish business operations in [REDACTED]. The petitioner also submits additional informational booklets on [REDACTED] and the [REDACTED] area.

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 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(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.

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.*

In the present case, the petitioner claims the beneficiary has both special knowledge of the company's product and an advanced level of knowledge of the company's processes and procedures.

The director found the petitioner's descriptions regarding the beneficiary's knowledge to be inadequate. She stated that they do not sufficiently support the petitioner's assertion that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity.

At the time of filing, the petitioner described the beneficiary's knowledge in broad and conclusory terms. In both its initial submission and in response to the RFE, the petitioner listed the petitioner's duties as: assisting Chinese and American companies and business people in setting up operations in American and China, respectively; promoting [REDACTED] to American investors and generally promoting trade between the United States and China; and arranging for trips to the United States for [REDACTED] delegations. The petitioner provided no explanation regarding why specialized knowledge was needed to perform these functions. While some consulting services may require specialized knowledge, significantly more detail would be required to determine whether the petitioner's consulting services fall within that category. Further, the petitioner has not explained why the beneficiary's claimed specialized knowledge of [REDACTED] investment requirements and applicable regulations would actually be required to assist Chinese companies with investment in the United States, to generally promote the [REDACTED] region and trade between the United States and China, or to arrange and coordinate visits to the United States for [REDACTED] officials, the duties which comprise the majority of the beneficiary's position description.

The director's decision was based on the evidence in the record at that time. In response to the RFE's request for a more detailed job description and explanation of how the beneficiary's knowledge is special or advanced, the petitioner resubmitted previously provided documents and explanations. The director therefore concluded that the lack of a specific explanation of the beneficiary's knowledge precluded a finding that he has specialized knowledge.

On appeal, however, the petitioner provides a more detailed list of actual procedures with which the beneficiary is familiar, including company name registration, company document registration, etc. This more specific list was not provided earlier, despite the RFE's explicit request for more details regarding the company product or procedure about which the beneficiary possesses specialized knowledge.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

It was not until its brief on appeal that the petitioner provided a detailed description of the nature of its consulting services. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should

have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

However, even when considering the more detailed list submitted on appeal, the evidence is still insufficient to demonstrate that the beneficiary possesses or that the proposed position requires, specialized 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 special or advanced, and that the beneficiary's position requires such knowledge.

The petitioner claims that its "product" is:

to provide professional consulting service to U.S. companies which want to do business in the City of [REDACTED] and China. These consulting service [sic] include the latest laws, rules, policies, regulations, incentives, etc. for trade and investment in China, [REDACTED] and/or [REDACTED] as well as helping Chinese companies to do trade and investment in the U.S.

The petitioner itself emphasizes that thousands of foreign businesses operate in [REDACTED]. The regulations regarding establishing businesses are focused on encouraging such investment. The petitioner submitted numerous brochures and booklets that provide information on [REDACTED] to potential new businesses. These circumstances conflict with the petitioner's contention that the beneficiary's knowledge regarding the procedures for starting a business in [REDACTED] is special, advanced, or difficult to obtain. On the contrary, it appears that such knowledge is specifically designed to be readily attainable to foreign investors and consulting firms that specialize in assisting clients with foreign investment.

On appeal, the petitioner asserts that the Chinese parent company has 20,000 employees and that the beneficiary is 1 of fewer than 100 employees who possess his level of specialized knowledge. The petitioner does not explain how it came to this conclusion. Conclusory assertions are not sufficient to meet the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Furthermore, even if the petitioner had established that the beneficiary possesses an advanced degree of knowledge, it is not clear that the performance of the beneficiary's duties requires more than basic familiarity with the relevant regulations.

The petitioner repeatedly emphasizes the beneficiary's education and experience to demonstrate why he is qualified to provide these services. The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. However, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the parent organization or by workers employed elsewhere in the industry. The

beneficiary's education, while impressive, demonstrates that he possesses knowledge typically possessed in the petitioner's industry.

Therefore, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced or that it has resulted in his possession of knowledge that is substantially different from that held by other international investment consultants specializing in the Chinese market.

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.