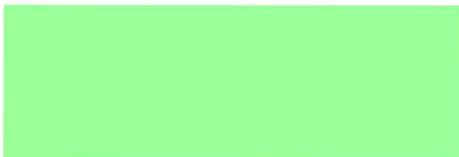




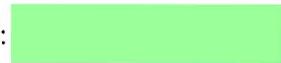
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: JUN 21 2013

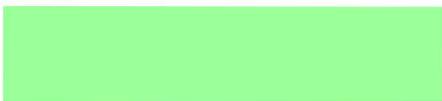
OFFICE: CALIFORNIA SERVICE CENTER FILE:



IN RE:

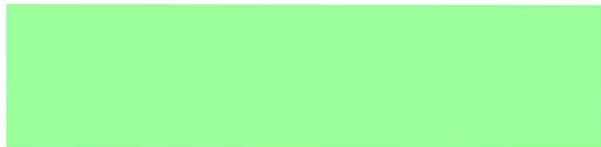
Petitioner:

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.

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 sustain 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, an Illinois corporation, is an electronics manufacturing company. The petitioner is an affiliate of [REDACTED] located in Taiwan. The petitioner seeks to employ the beneficiary as a Regional Applications Engineer for an initial period of three years.

The director denied the petition, concluding the petitioner failed to establish that 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 for the petitioner contends that it has submitted sufficient evidence to establish the requisite specialized knowledge and that the Service Center misapplied the relevant legal standard in its denial.

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 Issues on Appeal

The issues on appeal are whether the petitioner established that the beneficiary possesses specialized knowledge and that it will employ him in a specialized knowledge capacity.

The petitioner is an electronics manufacturing company founded in [REDACTED]. The petitioner and the foreign entity are owned 100% by [REDACTED] which currently has over 4,500 employees worldwide and a gross annual income of \$275,000,000.

At the time of filing, the beneficiary had approximately four years of experience with the petitioning company. The beneficiary began working for the foreign affiliate in 2005 as a Field Application Engineer in the company's acoustics division. According to the petitioner, he has worked in product design related to:

- [REDACTED] known as the [REDACTED] line, for wireless telephone manufacturers;
- Specialty Transducers for manufacturers of headsets, radios, general communications devices, and professional audio equipment; and
- [REDACTED] Microphones used by manufacturers of a range of consumer products, including traditional telephones.

According to the record, the [REDACTED] silicon microphone line in particular uses a unique technology introduced by the petitioner in 2003. The petitioner states that the process is revealed on a need-to-know basis and is kept confidential within the company.

The petitioner explained that it currently designs its products in the United States, while overseas affiliates coordinate sales, marketing, and manufacturing with Asian electronics manufacturer customers. As a Field Applications Engineer, the beneficiary's job duties include: promoting the petitioner's products and recommending the proper products to clients; assisting customers' R&D personnel with the engineering of microphone circuits, protective rubber boots, and acoustic designs; preparing product samples and measuring performance; working with customers and engineers to resolve product failures; and documenting failure information for Quality Insurance.

In a letter accompanying the initial petition, the petitioner gave the following example of the beneficiary's work:

[The beneficiary]'s work has been involved with design and quality assurance in connection with, for example, a new [REDACTED] cell phone project, including, to review their circuit, coordinate design and measure frequency response curve, and consider total harmonic distortion with the customer. To address and solve these issues and a particular matter involving the product, [the beneficiary] integrated internal . . . resources (including sales, QA) and coordinated with the customer component engineer.

The petitioner's [REDACTED] line of microphones is now in production in China and the petitioner is developing several new products designed to meet the needs of international mobile phone makers. The petitioner seeks to hire the beneficiary as a Regional Applications Engineer so that he can serve as a technical interface between Asian customers and the company's research and development department in the United States. According to the petitioner, the beneficiary would evaluate new products and make modifications to existing products. The petitioner stated the position requires someone with knowledge of the proprietary details of its [REDACTED] product line, as well as knowledge derived from ongoing interaction with key Asian customers and their engineering departments.

In support of the beneficiary's unique qualifications for this position, the petitioner stated in its original submission:

[The beneficiary] is the only . . . Field Applications Engineer concentrating on his area, so he has specialized knowledge of the needs of customers in the region. He has specialized knowledge regarding customer cell phone products, processes, and procedures. His duties of direct support in this region are unique. He has acted as a technical support and contact window to customers in the region, to support sales and promote . . . products to customers, and has dealt with customers' manufacturing and production test issues and problems and as a liaison with customers, to communicate their new ideas and applications and handle requests to [the petitioner] for research and development, sales and marketing.

The petitioner also emphasized the beneficiary's education and experience prior to working with its foreign affiliate. Prior to starting with the petitioner, the beneficiary worked for three years in cell phone design with a major electronics manufacturer, the type of company that the beneficiary now deals with as clients. Due to this experience, the petitioner asserts that he is familiar with clients' operations and is able to communicate well with them and their engineering departments.

Regarding the proposed position, the petitioner stated that the beneficiary will design and develop new products, modify existing products, test and evaluate new model samples, research new materials and processes, issue technical reports to sales, assist the sales and QA departments in solving problems with products, and perform electro-acoustic modeling. According to the petitioner, the beneficiary will concentrate on projects that have application in Asia. The beneficiary's knowledge of the Asian market and customers will benefit the United States team in both designing products for the customers and communicating with the foreign affiliate. At the same time, the beneficiary will receive training and experience with the research and development team in the United States that will be beneficial when he returns.

The director issued a lengthy Request for Evidence ("RFE") and requested that the petitioner provide, *inter alia*, more detailed descriptions of the beneficiary's job duties with the foreign entity and the petitioner in order to demonstrate the requisite specialized knowledge, and details regarding the petitioner's product, including whether comparable products exist in the marketplace.

In response to the RFE, the petitioner submitted further information regarding the organization of the foreign entity. This included a chart and list of employees. The petitioner also submitted a list of the beneficiary's paychecks and a letter from the overseas entity's human resources confirming that the beneficiary was hired in 2005 and that he has an assignment in the United States to "cultivate acoustics talent."

The director ultimately denied the petition, concluding that the petitioner failed to establish the beneficiary has specialized knowledge and would be employed in a specialized knowledge position. In denying the

petition, the director found the petitioner did not demonstrate that the beneficiary's level of knowledge surpassed that of other company employees or other electronics engineers.

On appeal, the petitioner asserts it has shown that the beneficiary has specialized knowledge and that the proposed position requires an individual with specialized knowledge. It submits a supporting brief and additional evidence, including a list of internal trainings received by the beneficiary, abstracts of relevant patents held by the petitioner, information regarding the petitioner's products' specifications, and charts showing the products and geographical areas which the beneficiary covers.

III. 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.

In the present case, the petitioner's claims are based on the first prong of the statutory definition. It asserts the beneficiary has a special knowledge of the company's products and their application in international markets. The petitioner focused on and established that the beneficiary has significant knowledge and experience with its proprietary microphone designs. The petitioner submitted numerous patents and technical documents to show the proprietary nature of its products' technical specifications. On appeal, the petitioner also submits evidence regarding the internal training that the beneficiary received and the projects he executed. The

petitioner also submits a chart and personnel documents showing the beneficiary is the only individual that maintains responsibility for promoting the petitioner's products and assisting the customers with the engineering of microphone circuits in his specific region or area. The petitioner also established that in 2009, sales to international customers for whom the beneficiary is responsible resulted in revenue of over \$20,000,000 for the company.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of the petitioner's products and their application in international markets. The petitioner established that knowledge of the SiSonic line is special as the product itself is patented, proprietary, or otherwise exclusive to the petitioner, such that it is not widely known in the industry. The petitioner submitted evidence that beneficiary's level of knowledge of the product and its application in international markets is the result of the combination of his technical background, and the experience he gained working with clients for over four years. As a result, the beneficiary's knowledge is of significant enough complexity that it is not easily transferrable to others in the field. Finally, the petitioner explained in detail why the proffered position requires the beneficiary's special knowledge.

The AAO notes that the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. *Cf.* 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988). However, the petitioner might satisfy the current standard by establishing that the beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. In the present matter, the petitioner has established that the beneficiary possesses special knowledge of the company's proprietary product.

For the reasons discussed above, the evidence submitted establishes 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 sustained.

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 met that burden.

ORDER: The appeal is sustained.