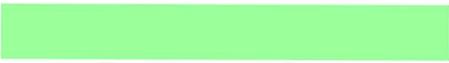


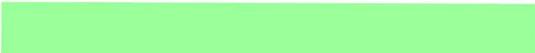


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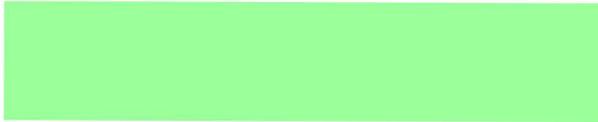


DATE: **JUN 27 2013** OFFICE: CALIFORNIA SERVICE CENTER 

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,


for 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 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 Michigan corporation, is a machine tool installation, maintenance, and repair company. The petitioner claims to be a wholly owned subsidiary of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as its service engineer 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. In denying the petition, the director noted that the position involves the installation and service of a third-party product.

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 asserts that the service engineer position requires specialized knowledge due to the highly intricate and sensitive nature of the profiling machinery and that the beneficiary possesses advanced knowledge of the third-party machinery beyond what is commonly found in the industry.

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 possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity.

The petitioner is machine tool service company. More specifically, the petitioner offers sales, installation, maintenance and repair services to users of [REDACTED] profiling machinery used to cut metal in commercial manufacturing or construction operations. The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it has one employee and a gross annual income of \$100,000.

The petitioner indicates that the beneficiary has been employed by the petitioner and its United Kingdom parent company for approximately 10 years, and that he previously spent five years in the United States in L-1B status before returning to the United Kingdom for the year preceding the filing of the instant petition.

In a letter submitted with the initial filing, the petitioner described the beneficiary's responsibilities as a service engineer as follows:

[The beneficiary] has been responsible for installing and providing service on proprietary product lines as well as on integration of outside equipment; training customers and manufacturing personnel in all aspects of equipment maintenance and in-house inspection, troubleshooting [the company's] customers' mechanical, electronic, and software problems with the product and its software in a timely and cost effective manner; assisting [the petitioner] in service buyoff procedures; preparing proprietary company documentation and conducting follow-up with appropriate departments on all product problems and inquiries; complying with company specific technical strategies and service policies to be used to achieve maximum profit; assisting sales and service staff with the procurement of any equipment or parts required by [the company's] customers; supervising field service engineers as required both on site and via telephone, fax, and e-mail; developing systems for improving the efficiency and effectiveness of [the petitioner's] service to end users; developing company programs, products, and strategies to attract more service to end users; developing company programs, products, and strategies to attract more service revenue, part sales and ancillary income to [the petitioner]; developing a system to record [the petitioner's] customer feedback and satisfaction in [the petitioner's] products and services and develop appropriate response strategies; preparing and updating proprietary service manuals, providing technical support; assisting with technical aspects of contract management through the time of order to completion of installation; overseeing sales application support; preparing proprietary time studies; organizing and overseeing performance of software demos; managing the technical aspects of contract management between the time of order and the completion of installation; preparation of time studies; and preparing sample parts for customers.

[The beneficiary] has also assisted in negotiations and strategic short-term and long-term planning in connection with [the petitioner's] start-up, day-to-day management of [the petitioner's] operations and overseeing [the petitioner's] financial decisions and negotiating contracts with additional US customers.

The petitioner indicated that the beneficiary holds a degree in Electrical and Electronic Engineering from [redacted] machinery, and has worked for the petitioner or foreign parent for over ten years.

The petitioner claimed that the beneficiary has specialized knowledge in servicing [redacted] gained through his work with the petitioner and foreign entity, and through his prior experience working at [redacted] a manufacturer of one type of profiling machine serviced by the petitioner. The petitioner stated that the beneficiary worked for [redacted] as a software support engineer, technical manager, and senior project manager. The petitioner claimed that it would take at least one year of

training for an engineer to perform duties required for the proffered position and that even after this time period the engineer would need to be closely supervised for a significant period of time.

As evidence of the beneficiary's education, training, and work experience, the petitioner submitted letters from the petitioner's clients and email correspondence documenting the work performed by the petitioner and the beneficiary.

This evidence included a letter from the operations manager of [REDACTED] who stated that profiling machines are highly specialized and can only be serviced by a fully trained technician. The letter further stated that although [REDACTED] has its own maintenance team, none of the workers have the degree of training or experience necessary to perform service and calibration on the machinery and that the beneficiary "is the only technician that we are aware of who has been available full time in the United States for these particular machines." Finally, the letter stated that without the beneficiary's services, [REDACTED] is forced to rely on the foreign parent company, and that the company has been forced to stop production since due to the difficulty of getting the necessary help if the machines are out of commission.

The petitioner also provided a letter from the Vice President of [REDACTED] who stated that [REDACTED] used the petitioner's services for repairs and maintenance and for retrofitting of sheet and plate cutting machines. The letter stated that [REDACTED] has found it impossible to replace the beneficiary with a suitably qualified U.S. technician, and that it has been impossible to find help that is needed in case of an emergency resulting in production stoppages and decreased work for [REDACTED] employees.

The numerous examples of email correspondence between the petitioner and its clients demonstrate that the service engineer provides routine maintenance, identifies the problems affecting the machinery, proposes solutions for problems, provides parts, suggests improvements to the machinery, tests machinery after the provided service, provides price quotations for services, and trains clients' employees to perform maintenance and simple repairs to the machinery.

The director issued a Request for Evidence ("RFE"). The director requested that the petitioner provide, in relevant part: (1) evidence that the beneficiary has specialized knowledge and (2) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner submitted, *inter alia*, the following evidence: the beneficiary's degree and education equivalency evaluation from the [REDACTED] a letter from the petitioner describing duties of the proffered position and the amount of training required to perform the position's duties; letters and a contract from [REDACTED] a training certificate for the beneficiary in [REDACTED] webpage indicating that the company has 75 patents on its products; and client letters from 2006 stating that the petitioner provided repair, maintenance, and retrofit services to three U.S. companies.

In response to the RFE, the petitioner stated that duties of service engineer involve advising the customer with respect to machine-purchasing decisions, installation of the machinery, regularly-scheduled and emergency maintenance, and providing basic training in routine maintenance and minor repairs to customers' in-house engineers. The petitioner stated that servicing the machines properly requires at least three years of training, and noted that the beneficiary acquired the specialized knowledge necessary to fill the position through his several years of experience working for [REDACTED] and several years working with the foreign parent company at which time he received training from [REDACTED]. The petitioner stated that the beneficiary is the U.S. company's sole employee and that although its clients employ engineers, none of the clients' engineers have the training required to maintain the equipment.

The petitioner submitted a letter from [REDACTED] a manufacturer of the profiling machinery it services, explaining that profiling machinery must be accurate within .015 of an inch and requires thousands of dollars of maintenance and repair services annually. The letter stated that engineers who install, maintain, and repair the profiling machines must be specially trained, and must have at least three years of supervised experience working with the machines before they work independently. The company states that it is highly selective when it chooses engineers who are authorized to sell and service its equipment because the reputation of its products is dependent on the installation and repairs performed by the service engineers. The letter stated that [REDACTED] provided training to the beneficiary.

The petitioner also provided letters from [REDACTED] in response to the RFE. The letters indicate that the petitioner worked as a contractor for Farley Laserlab from 2003 through 2006 providing specialized services "including but not limited to service, support, emergency breakdown assistance, and project management in connection with the sheet and plate cutting machines and applications software systems." A contract valid from November 17, 2003 through December 31, 2005 states that the only suitably qualified person to perform services, at the time of contract, is the beneficiary and that while working under the contract with [REDACTED] customers the beneficiary represented himself as a [REDACTED] employee.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position or that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the position description failed to establish that the duties the beneficiary would perform in the United States are special or advanced. The director noted that the beneficiary would be working with third-party machinery and that the beneficiary's claimed specialized knowledge is not specific to the petitioner. The director also found that the petitioner failed to provide evidence that the beneficiary's training is more advanced than what is typically completed by similarly employed professionals in the industry.

On appeal, counsel for the petitioner asserts that the director's decision denying the petition was arbitrary and capricious because USCIS had previously approved four virtually identical petitions for the beneficiary. Counsel also claims that the director violated USCIS policy by ignoring or mischaracterizing evidence of the beneficiary's specialized knowledge and by failing to issue a denial that adequately discussed the reasons the evidence failed to establish eligibility.

III. Analysis

Upon review, counsel'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.

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 the present case, the petitioner's claims are based on both the first and second prongs of the statutory definition. The petitioner asserts that "[the beneficiary]'s proposed position in the U.S. and his current position require specialized knowledge of [the petitioner]'s products and services, equipment and techniques and the application thereof in the international markets, as well a[s] an advanced level of knowledge and expertise in the organizations [*sic*] processes and procedures."

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 petitioner must articulate with specificity the nature of

the claimed specialized knowledge. Merely asserting that the beneficiary possess “special” or “advanced” knowledge will not suffice to meet the petitioner’s burden of proof

The petitioner states that the beneficiary will provide installation services and routine and emergency maintenance to commercial users of proprietary profiling machinery; however, the petitioner’s description failed to include the details necessary to establish that the position required specialized knowledge. For example, the petitioner stated that the beneficiary’s duties include: installing and providing service on product lines; training customers; troubleshooting mechanical, electronic, and software problems; preparing company documentation; assisting in procurement of equipment or parts; supervising field service agents; providing technical support; integrating outside equipment; and preparing company documentation. The petitioner does not provide the type of technical details that would support the petitioner's claim that this individual beneficiary's knowledge is either specialized or advanced within the industry. There are no details regarding the mechanical, electrical, or computer systems to indicate that it is substantially different or more complex compared to other types of equipment used in the industry. Likewise, the petitioner has not provided sufficient detail about the processes used to maintain, service, or install the machinery to explain how its processes and methodologies differ significantly from those utilized by other service companies or to demonstrate that these generally stated duties require specialized knowledge. 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. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without detailed information about the product or processes, it is impossible to affirmatively determine that the duties of the proffered position require specialized knowledge.

Because the beneficiary is the petitioner’s sole employee, in determining whether the beneficiary possesses specialized knowledge the AAO must compare the beneficiary’s knowledge to that of other service engineers working in the same area of specialization. All employees can be said to possess unique skill or experience to some degree. The petitioner must establish that the process or product requires this employee to have knowledge beyond what is common in the industry. The petitioner claims that the position requires at least one year of training followed by at least three years of closely supervised work experience and submits a letter from the manufacturer that also states the duties require specialized training followed by several years of supervised experience. However, the record is devoid of evidence to indicate the type or duration of training provided by the petitioner or the manufacturer, the requirements to receive such training, or the number of companies or engineers that have training similar to the beneficiary. Again, 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. Without details of the training or the number of engineers or companies with such training, it cannot be concluded that the processes are particularly complex or that it would take a significant amount of time to train a service engineer who had no prior experience with the petitioner to perform the job duties.

The petitioner indicates that it mainly provides service for profiling machinery patented and produced by several unaffiliated third-party manufacturers and indicates that the position requires specialized knowledge

because it involves proprietary product lines, proprietary documentation, and proprietary time studies. Generally, a beneficiary's familiarity with a third-party company's products, systems and requirements, while valuable to the petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that he possesses specialized knowledge. The critical issue is whether the knowledge itself is specific to the petitioning organization and not general knowledge that is common among similarly employed workers in the industry. Although the equipment manufacturer claims that it is highly selective in training and authorizing engineers and companies to provide services for its products, it has not provided any indication as to the number of engineers or servicing companies trained by the manufacturer. There are also no agreements or other evidence in the record to explain how the knowledge of an unaffiliated manufacturer's product is specific to the petitioner. Without evidence that the process or procedure is specific to the petitioner, the knowledge of a third-party's proprietary machinery does not establish that specialized knowledge is required for the position.

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. This is especially true when the beneficiary's proprietary knowledge pertains to products that are not proprietary to the petitioning company.

Even if the petitioner had demonstrated that the position required specialized knowledge, it has failed to establish that the beneficiary possesses specialized knowledge. The petitioner claims that an engineer would require a year of training followed by several years of supervised work experience to perform the duties of the position unsupervised; however, there is no documentation to show the beneficiary or any employees received extensive training in the company's tools, methodologies, and/or procedures. As evidence of the beneficiary's education, training, and experience, the record contains the beneficiary's bachelor degree in engineering, pay stubs demonstrating the beneficiary's employment with the foreign parent for the previous year, and the beneficiary's training certificate in Hypertherm Automation. The training certificate fails to indicate the duration, hours, the requirements for participation and completion, or any additional information to demonstrate that the training was extensive or exclusive. Moreover, the certificate is dated March 11, 2009, six months before the filing of the instant petition. The record indicates that the beneficiary worked as the sole employee of the petitioning entity performing the same duties prior to the completion of the documented training. The petitioner failed to provide further evidence of the beneficiary's training, and, consequently, failed to explain how the training certificate is evidence that the beneficiary possesses the required one year of training followed by work experience. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No additional evidence of the beneficiary's training was provided.

Counsel for the petitioner asserts that the director's decision is erroneous because USCIS approved other petitions that had been previously filed on behalf of the beneficiary. However, each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. 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). Further, if the previous nonimmigrant petitions were approved based on the same unsupported assertions contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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.