**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 2 8 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 and dismissed the petitioner's subsequent motion to reconsider. 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, a California corporation, is wholesaler and retailer of boxing and gym equipment. It claims to be an affiliate of [redacted] located in Mexico. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a Development and Strategic Planning Specialist, for a period of approximately three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary has specialized knowledge, that she would be employed in a position requiring specialized knowledge, or that the petitioner and foreign employer have a qualifying relationship for L-1 purposes.

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 establish that the beneficiary possesses specialized knowledge, that she will be employed in a specialized knowledge capacity, and that the petitioner and foreign entity have a qualifying relationship.

## 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 United States 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.

Finally, 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 primary issue addressed by the director is whether the beneficiary has specialized knowledge and whether she has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner is a wholesaler and retailer of boxing and gym equipment, with two employees in the United States and a gross income of approximately $354,472 for the first six months of 2011. The petitioner provided evidence that some of the largest boxing stars in the world wear [redacted] including [redacted] and [redacted] The United States office was established in 2010.

The petitioner stated the beneficiary will be working as a Development and Strategic Planning Specialist. In the letter submitted in support of the initial petition, the petitioner provided a description of the beneficiary's duties with the foreign employer, a three-page description of the duties to be performed in the United States,

and an explanation of the nature of the beneficiary's specialized knowledge of the company's products and processes.

The petitioner stated that the beneficiary has been with the foreign employer since 1997 and has been on the board of directors since 2001. The petitioner explained the beneficiary's history with the company including the following achievements: accomplished a 20% yearly sales increase; instituted a 35-day complete inventory turn-around; obtained and maintained distributor relationships with 12 countries; and was instrumental to the construction and establishment of a second manufacturing facility, doubling the company's full-time staff.

The director issued a request for evidence ("RFE"). 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. Specifically, the director requested: (1) a more detailed explanation of the specialized knowledge; (2) the total number of employees in the United States with the same knowledge as the beneficiary; (3) a description of any proprietary or patent knowledge; and (4) the petitioner's United States organization chart.

In response to the RFE, the petitioner submitted a four-page description of the specialized knowledge held by the beneficiary, explaining the three main components of the petitioner's closely-held and proprietary knowledge. The petitioner also provided a more detailed description of the beneficiary's duties in the United States, and the requested organizational chart for the foreign entity, showing that no other employee holds the same or similar position as the beneficiary.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she would be employed in a specialized knowledge capacity in the United States. In denying the petition, the director noted the beneficiary, as a result of her knowledge, education, and employment, does not have knowledge or experience that is significantly different from that possessed by similarly employed workers in the same business activity. Furthermore, the director found that there was insufficient evidence to establish that the proffered position involves a special or advanced level of knowledge in the wholesale and retail industry. The director affirmed this decision on motion.

On appeal, counsel for the petitioner asserts that the beneficiary has been, and will be, employed in a specialized knowledge position. The petitioner contends that the RFE response establishes that the beneficiary holds specialized knowledge relating to the petitioner's closely-held knowledge and trade secrets; confidential client lists and relationships; manufacturing capabilities; high-level strategic goals of the company; and protocols dealing with foreign customers, government agencies, and client companies. Counsel further contends that the duties to be performed cannot be performed by a U.S. worker, as no other industry employee would have the experience as a member of the foreign affiliate's Executive Advisory Board or would have access to the petitioner's strategic planning and trade secrets necessary to fulfill the responsibilities of the position.

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possess specialized knowledge and that she will be employed in the United States in a specialized knowledge position 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 second prong of the statutory definition, asserting that the beneficiary has an advanced knowledge of the company's processes and procedures. The petitioner asserts that the beneficiary is one of a selected few employees that has acquired a highly-specialized knowledge of the petitioner's closely-held knowledge and trade secrets; confidential client lists and relationships; manufacturing capabilities; high-level strategic goals of the company; and protocols dealing with foreign customers, government agencies, and client companies. The petitioner points to the beneficiary's long period of employment and membership on the Board of Director as the primary source of her specialized knowledge.

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 product. 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.

The remaining issue addressed by the director is whether the petitioner established a qualifying relationship with the foreign employer. In response to the director's RFE, the petitioner submitted articles of incorporation, stock certificates, bylaws, stock ledger, meeting minutes, articles of incorporation for the

foreign entity, and meeting minutes of the foreign entity, and its IRS Form 1120, U.S. Corporation Income Tax Return, confirming the qualifying relationship. This evidence is sufficient to meet the petitioner's burden of proof to show that the petitioner and the foreign employer have a qualifying relationship.

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. Further, the petitioner established that it has a qualifying affiliate relationship with the beneficiary's foreign employer. Accordingly, the appeal will be sustained.

## 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. Here the petitioner has met that burden.

**ORDER:** The appeal is sustained.