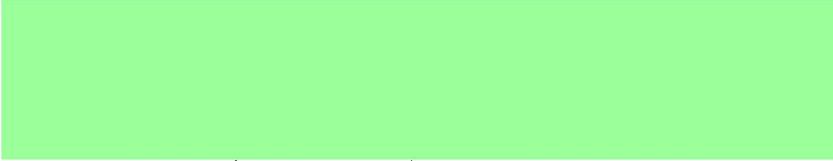


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

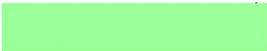


U.S. Citizenship
and Immigration
Services



DATE: **MAR 01 2013**

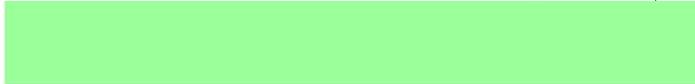
OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

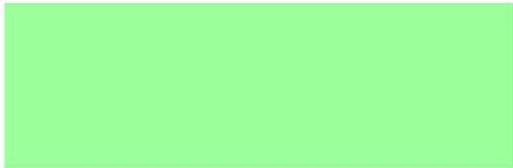
Petitioner:

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 engages in the business of custom manufacturing of aluminum and composite structures, utilizing a unique fabrication process known as superplastic forming. The petitioner, a division of [REDACTED] (a California corporation), claims to be an affiliate of [REDACTED] a division of [REDACTED] located in [REDACTED], United Kingdom. The petitioner seeks to employ the beneficiary as its senior sales engineer 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.

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 contends that the evidence of record establishes that the beneficiary possesses specialized knowledge, and will be employed in a position requiring specialized knowledge.

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.

I. 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 engages in the business of custom manufacturing of aluminum and composite structures, utilizing a unique fabrication process known as superplastic forming. The petitioner explained that superforming is a nonconventional sheet forming method that allows elegant "one piece" solutions, which differ from traditional sheet metal forming methods that normally involve welding, riveting, and various other fastening methods. The petitioner explained that superforming technologies are not generally known in the metal forming industry. The petitioner explained that it is the only U.S. based business that designs and custom forms superformed components for its customers, and is the only company in the world that has the expertise and capacity to design and produce custom superformed components for the specialized use of major aerospace and rail customers. The petitioner employs approximately 51 employees in the United States and has a gross annual income of \$12 million.

The petitioner stated the beneficiary will be working as a senior sales engineer. The petitioner provided a description of the beneficiary's duties with the foreign entity and in the United States. The petitioner

described how the beneficiary was the sole employee at the foreign entity who was responsible for creating and managing accounts with rail and automotive customers in particular. The petitioner explained that the beneficiary will be responsible for leading the petitioner's efforts to penetrate the rail market in North America, targeting passenger rail car manufacturers. The petitioner further described how the rail industry faces its own specific engineering challenges and issues, such as specific crush zones to meet crashworthiness tests and interior space design.

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.

In response to the RFE, the petitioner submitted a more detailed explanation of its exclusive, proprietary superforming process, as well as the beneficiary's advanced knowledge of the company's superforming process and its application to the rail market. The petitioner emphasized that the beneficiary has been the company's only employee with project management responsibility for large scale complex train projects. The petitioner explained that through his extensive work experience with rail customers in the design and development of passenger train fronts and interiors, the beneficiary has acquired extensive knowledge of the unique engineering and design requirements in the rail industry.

The petitioner also explained that the North American rail market will be a new market for the company, and that no employees have performed the beneficiary's proposed responsibilities in the United States. The petitioner stated that it has not been able to enter the key North American rail market yet because the company does not have any employees with the requisite combination of advanced knowledge of its products and processes, as well as expertise in the exacting engineering requirements of the rail industry. Finally, the petitioner explained that the foreign entity's only other sales engineer focuses on the aerospace industry, while the petitioner's only sales engineer was recently hired in 2009 and does not have the requisite advanced knowledge of the superforming process or its application to the rail industry.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or would be employed in a specialized knowledge position. In denying the petition, the director found that the petitioner failed to distinguish the beneficiary's knowledge from the company's other similarly employed workers. The director concluded that petitioner's proffered position does not appear to require knowledge exceeding that of any other sales engineer in this field.

On appeal, counsel asserts that the previously submitted evidence was sufficient to show that the beneficiary possesses specialized knowledge, and that he will be employed in the United States in a specialized knowledge capacity. Counsel asserts that the company's superforming technologies are complex and exclusive to the company, and therefore expertise cannot be gained from employment outside the company. Counsel emphasizes the beneficiary's sixteen years of employment with the foreign entity, noting that his experience included ten years specifically developing the company's business with the rail industry in Europe. Counsel asserts that the beneficiary has acquired comprehensive, specialized knowledge of the company's forming technologies and products, as well as an advanced knowledge of the unique engineering challenges

and requirements of designing these products for the rail industry, that no one else in the company possesses. Finally, counsel emphasizes the petitioner's desire to establish its business within the North American rail industry, and how the beneficiary will lead the petitioner's market development efforts into this significant market using his advanced knowledge of the company's products and his expertise in engineering requirements peculiar to the rail industry.

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, asserting that the beneficiary has a special knowledge of the company's products and their application in international products.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of the company's superforming technologies and products, particularly as it relates to the international rail industry. The petitioner established that the knowledge 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 also submitted evidence that its technologies and products are not only exclusive to the company, but that they are of significant complexity, such that the knowledge required to perform the beneficiary's duties is not easily transferrable to others in the field. In addition, the petitioner established that the knowledge is "special" within the company, such that not everyone possesses the beneficiary's level of

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knowledge, training or experience with the product. The petitioner also submitted evidence of the beneficiary's work experience with major rail customers that contributes to his special knowledge of the product's application to the rail industry. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires the beneficiary's special knowledge.

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.