



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 12 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, ("the director") denied the petition. 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 Washington corporation, is a seafood processing company. It is an affiliate of [REDACTED], located in Japan. The petitioner seeks to employ the beneficiary as a seafood processing technical advisor for a period of three years.

The director denied the petitioner, concluding that the petitioner failed to establish that: (1) the beneficiary's employment abroad was in a specialized knowledge capacity; and (2) that the beneficiary would be employed in the United States in a specialized knowledge capacity.

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 record contains ample evidence establishing that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity. Counsel submits a brief and additional documentation in support of the appeal.

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 parent, subsidiary, or affiliate of the foreign employer.

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 to be addressed are whether the petitioner established that the beneficiary was employed abroad and will be employed in the United States in a specialized knowledge capacity.

The petitioner engages in vessel management and purchase and sale of seafood products produced on factory vessels. The petitioner has 21 direct employees and 300 indirect employees, and earned a gross annual income of \$78 million. The petitioner is a wholly owned subsidiary of [REDACTED], which is the largest Japanese corporation in the marine products industry. [REDACTED] has a number of U.S. subsidiaries and joint ventures engaged in the U.S. seafood processing business in Washington and Alaska, including the petitioner, [REDACTED]

The petitioner indicated that the beneficiary will be employed as a seafood processing technician on board the [REDACTED] seafood processing vessel, which is exclusively managed by the petitioner. Previously, the beneficiary was employed by the parent company's [REDACTED] in Japan for approximately one year as a deputy senior analyst. Prior to that, the beneficiary spent several years on the [REDACTED] vessel as a seafood processing technician.

The petitioner described the beneficiary's proposed role as seafood processing technical advisor for the U.S. company as follows:

[The beneficiary] will provide technical advice and assistance in connection with the fish roe (fish eggs) and surimi processing operations on the [REDACTED] vessel. He will be responsible to make sure the seafood processing operation runs as smoothly and efficiently as possible and produces the best quality seafood products for the Japanese market. This is an important position that has a direct impact on the success of [the petitioner's] seafood processing operations on board the [REDACTED] vessel. His main duties will continue to be as follows:

- Conduct quality control of pollack roe and surimi processing operations on board the [REDACTED] vessel.
- Supervise and train the seafood factory workers on the vessel.
- Fine-tune the processing equipment and troubleshoot any problems which arise during the seafood processing operation.
- Recommend changes and improvements to the seafood processing operation.
- Responsible for quality control of the seafood products destined for the Japanese market.

The petitioner provided a description of the processing operations for its surimi, fish roe, fishmeal, head & gutted ("H&G"), and changran production lines carried out on board the [REDACTED] vessel. The petitioner asserted that it needs three Japanese technical advisors during each day and night shift to make sure that the surimi, pollock roe, and fish meal products are produced in accordance with the specifications and quality control standards of the Japanese market. The petitioner explained that if it does not employ these Japanese technicians, it could "adversely affect the price we receive for millions of dollars of exports to Japan." The petitioner also made clear that the H&G and changran production lines are done entirely by U.S. workers, and that no Japanese technical advisors are needed for these daily operations.

Finally, the petitioner described the beneficiary's "specialized knowledge and experience" as follows:

[The beneficiary] has very specialized knowledge and experience with seafood processing operations on factory vessels. He began working on seafood processing on board Japanese vessels owned by [REDACTED] in 1971. He served as a Junior Seafood Processing Technician from 1971 to 1985, and then Senior Seafood Processing Technician from 1985 to 1990. He was transferred to [REDACTED] as a Technical Advisor for the surimi processing operation on the surimi factory vessel owned by [REDACTED]. In 2003, he joined [REDACTED] which is now known as [REDACTED]. From 2003 to 2009, he served as a technical advisor on board the [REDACTED] supervising and directing local workers on the fishmeal, pollack roe and surimi processing lines. Thus, he has about 30 years experience working on these types of factory trawlers, which far exceeds the experience most any other processing workers [sic].

[The beneficiary] was selected for the position of Technical Advisor on the [redacted] vessel because of his advanced level of knowledge about the processes and procedures necessary to produce high quality pollock roe and fishmeal for the Japanese market. He has an advanced level of knowledge about the particular equipment on board the [redacted] since he was previously employed on the [redacted] as a Technical Advisor from January 2003 to June 2009. His role was to supervise the operation of the processing equipment at each critical process and to perform quality control inspection of the final products in order to maintain and improve the high level of product quality, yielding ration, and productivity, while at the same time ensuring the safety of the processing operation.

The petitioner submitted, *inter alia*: (1) a print-out from the parent company's website, reflecting that it is comprised of 204 companies, including nine companies (including the petitioner) specializing in marine products; (2) staffing charts for the petitioner, the [redacted] vessels, and [redacted] [redacted] (3) the management and technical services agreements between the petitioner and [redacted] the owner of the [redacted] vessels; (4) job description of the beneficiary's job duties abroad; (5) a timeline of the beneficiary's employment history; and (6) the beneficiary's resume.

The director issued a request for evidence ("RFE"), in which she instructed the petitioner to submit, *inter alia*, the following: (1) documentation of training received; (2) a detailed comparison of the company's equipment, system, product, technique, research, service, or processes or procedures, to others in the industry; (3) copies of any patents held by the company; and (4) a more detailed description of the specialized knowledge involved in the beneficiary's position abroad and in the United States, clearly identifying how the beneficiary's knowledge of the company's equipment, system, product, technique, or service is "special" and will be applied to the international market, or an description of how the beneficiary's knowledge is of an "advanced" level.

In its response to the RFE, the petitioner provided the following explanation regarding the specialized knowledge involved in the beneficiary's employment abroad and in the United States:

[The beneficiary] Has a Very Advanced Level of Specialized Knowledge About [redacted] and [redacted] Which is Not Commonly Held by Others in Our Company or in the Industry.

[The beneficiary] has nearly 40 years of experience in the Japanese seafood processing industry. He has special knowledge and expertise about how to produce surimi and pollock roe, which are specialty products produced primarily for the Japanese market. There are very few people in our company or in the industry who have as much specialized knowledge and advanced level of knowledge as [the beneficiary] . . .

[The beneficiary] Has Specialized Knowledge and Experience that is Not Generally Available in the United States.

[The beneficiary] has specialized knowledge, training and experience on how to set up, operate, adjust, fine-tune, service, maintain and repair all of the surimi processing equipment. The adjustment of the equipment must be done based on the minute-by-minute change in the raw material and work in progress. There are few employees

within our company of the industry who can do what [the beneficiary] does. There certainly are no U.S. workers on the [REDACTED] vessel who have such advanced level of specialized knowledge and experience. [The beneficiary] also has specialized and advanced level of knowledge regarding pollack roe processing. He knows how to judge the maturity of the fish roe (fish eggs) based on the size, color, feel and taste. Based on his experience he can estimate the value of the end product and he can recommend fishing locations that may produce fish with higher quality and quantity of fish roe . . .

There are very few workers in the world who have in-depth knowledge like [the beneficiary] about the type of surimi equipment currently used on board the [REDACTED] since he has been working with this type of surimi plant on factory trawlers for nearly 40 years

The petitioner went on to describe, *inter alia*, the beneficiary's prior work experience, the beneficiary's role at the [REDACTED] the importance of the [REDACTED] to the parent company's competitiveness in international markets, the various equipment used by [REDACTED] and on board the [REDACTED] to produce surimi, the parent company's proprietary surimi quality control standards, the improvements the beneficiary recommended from 2003-2009, the reason the beneficiary was selected for the position, and his importance to the company. Finally, the petitioner emphasized the beneficiary will provide advanced technical services, not ordinary seafood processing work. The petitioner emphasized that it has plenty of U.S. workers to perform the ordinary processing work, and that the beneficiary is only one of four Japanese specialists who will be sent to the [REDACTED] vessel to provide technical advice and assistance.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary's employment abroad was in a specialized knowledge capacity, and that the beneficiary would be employed in the United States in a specialized knowledge capacity.

On appeal, counsel incorporates all previously submitted statements provided by the petitioner into his brief and asserts that such statements provide ample evidence supporting the approval of the petition. Counsel contends that the director "misunderstood the nature of the beneficiary's specialized knowledge and its importance to the petitioner's surimi and pollock roe processing operations." Counsel contends that the director erred in concluding that the beneficiary is "no different from other seafood processing advisors" and by concluding that the beneficiary's knowledge "is not advanced knowledge relative to the industry at large or the rest of the petitioner's workforce." Finally, counsel asserts that the denial is inconsistent with two prior approvals by USCIS involving substantially the same facts and circumstances.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The AAO finds insufficient evidence to establish that the beneficiary has been or will be employed in a specialized knowledge position.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and 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.

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.*

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.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

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.* Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

The petitioner in this matter has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated or documented any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced seafood processing specialists employed in the petitioner's industry. Going on record without 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

The petitioner claims that the beneficiary has an "advanced" knowledge of the equipment aboard the [REDACTED] vessel, the parent company's seafood processing systems/techniques and quality control standards, and the special requirements of the Japanese market. However, the petitioner has not differentiated the equipment used on the [REDACTED] vessel, its processing methods, or quality standards from those of any other seafood company.

It is reasonable to believe that the petitioner's industry is highly regulated in the United States and Japan, with quality control standards that must be met by any licensed and accredited seafood processor. While the petitioner provided a fairly detailed description of the steps that occur during the surimi, pollock roe, and fishmeal processing on board the [REDACTED] the petitioner failed to explain and distinguish what specialized knowledge particular to the petitioner is required to supervise these operations, as compared to the operations on similar vessels operated by other similar companies. The AAO emphasizes that the petitioner's parent company, alone, has 240 subsidiaries, including nine different subsidiaries (including the petitioner) specializing in marine products. It is reasonable to believe that each seafood processing company must undergo their own quality control process, and therefore, employ technical advisors such as the beneficiary who have knowledge particular to each company's quality control requirements and equipment. Thus, merely claiming that the beneficiary is familiar with internal processes, standards, and equipment is insufficient if those standards are not materially different from those that are generally known and used by similarly experienced workers in the industry.

The petitioner also failed to establish what differences exist between the Japanese market and other markets in terms of seafood processing, appearance and quality control. The petitioner emphasized the need for Japanese technical advisors who have knowledge about the specifications and quality control standards of the Japanese market, but failed to provide any technical detail as to the actual specifications and requirements of the Japanese market, compared to the actual specifications and requirements of the U.S. and other markets. Notably, the petitioner describes surimi as a "traditional" Japanese product, but also indicates that the product has "become increasingly popular" in the United States and Canada.

Even if the petitioner could establish that knowledge of Japanese market requirements constitutes specialized knowledge for the purposes of employment in the United States, the petitioner is also required to establish that the beneficiary's qualifying period of employment abroad involved specialized knowledge. The petitioner has not claimed that Japanese seafood processing specialists working in Japan are unfamiliar with Japanese market requirements, and the AAO assumes that such knowledge is in fact commonly held among the foreign entity's workforce. From the record as presently constituted, it cannot be concluded that the petitioner's processes are particularly complex or different compared to those utilized by other companies in the industry, or that it would take a significant amount of time to train an experienced seafood processing specialist who is familiar with the Japanese seafood industry.

Overall, the evidence submitted does not establish that knowledge of the petitioner's processing or quality control techniques or familiarity with the Japanese seafood market constitutes specialized knowledge, or that this knowledge is so complex that it could not be readily transferred to similarly trained and experienced employees from outside the petitioning organization.

To establish eligibility in this proceeding, the petitioner may alternatively establish that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes and procedures and that the position requires such knowledge. See 8 C.F.R. § 214.2(l)(1)(ii)(D).

In this regard, the petitioner relies on the beneficiary's nearly 40 years of experience in the Japanese seafood processing industry. However, the length of the beneficiary's experience in the industry, alone, is not sufficient to establish that the beneficiary's knowledge is considered "special" or "advanced." It is unclear at what point in the beneficiary's nearly 40-year tenure he was considered to have acquired specialized knowledge. The petitioner has also not provided any information that would assist USCIS in comparing the beneficiary's skills and knowledge to that of other similarly employed workers within the organization, many of which appear to also have a similarly long tenure with the company.

Although it is accurate to say that the statute does not require that the advanced knowledge be narrowly held throughout the company, it is equally true to state that knowledge will not be considered "special" or "advanced" if it is universally or even widely held throughout a company. Here, the petitioner's argued standard for advanced knowledge appears to require nothing more than an extended period of service performing duties related to the U.S. position, qualifications that may be widely held by the petitioner's Japanese workforce.

Here, the petitioner, through counsel, continually claims that Japanese seafood processing technicians like the beneficiary are of crucial importance to the petitioner's business. However, the petitioner has not distinguished the beneficiary's knowledge, work experience, or training from other similarly employed workers, other than to broadly assert that his knowledge is more advanced than others in the industry. While the petitioner continually seeks to distinguish the beneficiary from ordinary seafood processing workers, it does not attempt to distinguish his knowledge or duties from those possessed by other higher-level personnel such as the quality control specialists or managers. Without such evidence, the AAO cannot conclude that the beneficiary's knowledge is "advanced" and, for the reasons discussed above, cannot accept the blanket assertion that all Japanese processing specialists employed by the foreign entity possess "advanced knowledge" of the petitioner's processes and procedures.

It appears that the petitioner's business thrives on providing high quality seafood to the Japanese market. Its practice of providing a small number of native Japanese specialists to U.S.-based seafood processing operations may assist the company in reaching its objectives. However, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of processing surimi and fish roe for the Japanese market is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be a skilled and important employee of the organization. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his duties for many years. However, the successful completion of one's job duties does not distinguish the

beneficiary as an employee possessing advanced knowledge of the petitioner's processes and procedures, nor does it establish employment in a specialized knowledge capacity with the foreign entity.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. While the position of seafood processing technical advisor may require a comprehensive knowledge of the manner in which to process surimi products in a manner which conforms to the requirements of the Japanese export market and the petitioner's quality standards, the petitioner has not established that this position requires "specialized knowledge" as defined in the regulations and the Act. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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. The record does not establish that the beneficiary has specialized knowledge or that the position offered with the United States entity requires specialized knowledge.

Finally, the AAO acknowledges counsel's claim that USCIS has approved two similar petitions filed by the petitioning company on behalf of Japanese seafood processing specialists in the past. However, as observed and conceded by counsel, the AAO is not bound by its prior unpublished decisions. Furthermore, 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. 1988). If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director.

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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.