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

DATE: MAR 15 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

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 is a publicly-traded U.S. corporation established in 1990. The beneficiary's foreign employer, [redacted] l. is its wholly-owned subsidiary. The petitioner and its subsidiaries design, develop, and license micro-chip interface technologies. The petitioner seeks to employ the beneficiary in the position of Senior Principal Engineer - Product Engineering for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he 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 director disregarded the petitioner's evidence and inappropriately denied the petition based on the petitioner's failure to submit evidence that was neither required nor requested. Further, counsel asserts that the director applied a standard for specialized knowledge that is not supported by statute, regulation or case law. The petitioner maintains that the beneficiary possesses specialized knowledge based on his unique knowledge related to the petitioner's [redacted] technology, his master's level education in technology, his vast experience in technology development projects and his four patents filed with the United States Patent Office.

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

The petitioner is a publicly traded company specializing in creating technology to speed data transfers between microchips and garners revenues from the licensing of its patents and products. The petitioner employs 271 employees in the United States and earned $142 million in revenue in 2008. The petitioner offers that the beneficiary will work as a Senior Principal Engineer - Product Engineering responsible for ensuring the successful integration of the petitioner's [redacted] technologies in customer products. The petitioner states that the beneficiary will using his proprietary knowledge of circuit design principles and

methodologies pertaining to [redacted] technologies in Silicon-on-Insulator (SOI) process to test new technology implementation into customer products, and develop internal product engineering processes and tools through experimentation. The petitioner states the beneficiary has worked in the position of Manager - Engineering Research and Technology for its subsidiary since December 2006, managing a group of technology design engineers in India. The petitioner provided a lengthy description of the beneficiary's duties with the foreign employer, where he is responsible for managing design teams for the development of the petitioner's products and patents. Further, the petitioner explains that the beneficiary earned a Masters in Technology degree from the Indian Institute of Technology in 2000, soon after began work as a design engineer, and has been working with the foreign employer since 2005 in a technology design engineer capacity.

The petitioner described the beneficiary's specialized knowledge as follows:

> The unique combination of knowledge and experience in the company's proprietary [redacted] technologies which the Sr. Principal Engineer- Product Engineering must possess is not readily available in the United States labor market. An individual would not gain such knowledge and expertise without working directly at [the petitioner] or one of its international subsidiary offices. Only an individual who has extensive experience in the company's proprietary technologies will be able to successfully perform the duties of the Sr. Principal Engineer - Product Engineering.

The director subsequently issued a request for additional evidence ("RFE") requesting that the petitioner provide, *inter alia*: (1) a detailed organization chart including the beneficiary's place therein; (2) information on how the beneficiary's abilities were unique in relation to his U.S. colleagues; (3) a more detailed explanation of the product and process involved and whether such is utilized by other employers in the field; (4) and an explanation of the beneficiary's training and experience and how it is unique to the beneficiary's field.

In response, the petitioner provided a detailed organizational chart of the petitioner's whole organization, and relevant portions of the foreign employer's operation, including the beneficiary's place within each organization. The petitioner explained that the beneficiary leads a team in [redacted] design in India and that there are no engineers in the United States with sufficient knowledge in the technology, whether inside or outside the petitioner's organization. The petitioner further explained the beneficiary's specialized knowledge as follows:

> [The beneficiary] has over five years' experience at [the foreign employer]. [The beneficiary] has gained and used proprietary knowledge to deliver [redacted] SOI solutions. This knowledge includes but is not limited to: a. [the petitioner's] circuit design principals; b. [the petitioner's] design methodologies; and c. [the petitioner's] proprietary design tools. As previously discussed, other employers in the U.S. do not have access to [the petitioner's] proprietary technologies.

Additionally, on appeal, the petitioner provides information on four separate patents for which the beneficiary is responsible related to increasing circuit speed; scholarly publications the beneficiary has contributed to in the field of circuit design; a press release confirming the proprietary nature and development of technology into IBM products; and further detailed explanations of the knowledge possessed by the beneficiary's colleagues in the United States, none of which have the expertise in .

III. Conclusion

Upon review, the petitioner's assertions are persuasive. The AAO finds sufficient evidence to establish that the beneficiary will be employed in a specialized knowledge position.

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 the present matter, the director's adverse determination appears to be based in part on the director's conclusion that a beneficiary must have been responsible for developing the product or technology in which he is claimed to have specialized knowledge in order to qualify as having "special" knowledge. However, there is no such requirement. In fact, section 214(c)(2)(B) of the Act states that specialized knowledge can be based upon "special knowledge of the company product and its application in international markets" or "an advanced level of knowledge of processes and procedures of the company." Although a beneficiary's development of a particular proprietary technology could represent compelling evidence of the beneficiary's qualification for specialized knowledge, this is not offered in the Act or regulations as a requirement. Therefore, basing the decision solely on whether the beneficiary developed the technology was improper. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding.

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.

Here, the petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of the petitioner's technology and its application in international markets. The petitioner's assertions are supported by independent evidence, such as the press release confirming that the

petitioner will be implementing this proprietary technology into customer products. The evidence presented also establishes that the beneficiary has intimate knowledge of the petitioner's technology based on: the petitioner's detailed explanation of technology and the beneficiary's involvement with the product; the beneficiary's five plus years of experience with the foreign employer related to product design; the beneficiary's leadership of a team of design engineers focusing on technology with the foreign employer; his four patents in the field of circuit design; and his other contributions to the field of circuit design in the form of publications.

The petitioner established that the knowledge is special as the product itself is patented and exclusive to the petitioner, such that it is not widely known in the industry. The petitioner also submitted evidence that technology is not only exclusive to the petitioner, but that it is of significant complexity, requires a substantial period experience to perform at the beneficiary's senior technical level, and that it is otherwise not easily transferrable to others in the beneficiary's field. In addition, the evidence establishes that the beneficiary's knowledge of the product is "special" within the company, such that not everyone possesses the beneficiary's level of knowledge and experience with the product.

The petitioner also submitted evidence of the beneficiary's educational background and work experience that contributes to his special knowledge of the technology. *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.
In conclusion, 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.

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 sustained that burden. Accordingly, the director's decision dated June 10, 2010 is withdrawn.

ORDER: The appeal is sustained.