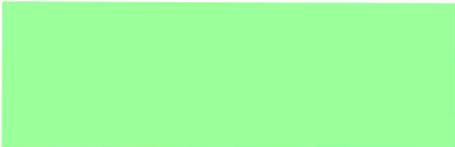
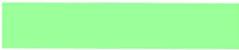


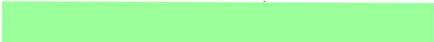


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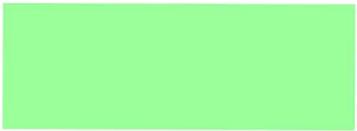


DATE: **MAR 18 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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.

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, 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 Delaware corporation, is an electronic equipment manufacturer. The petitioner is the parent company of [REDACTED] located in Bangalore, India. The petitioner seeks to employ the beneficiary as an Electrical Engineer- Applications for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge and that he has been, and 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 asserts that the director erred in concluding that the beneficiary does not possess 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.

II. The Issues on Appeal

The issues to be addressed are whether the petitioner established that the beneficiary possesses specialized knowledge, and whether the beneficiary has been, and will be, employed in the United States in a specialized knowledge capacity.

The petitioner is an electronic equipment manufacturer, employing 2,800 persons in the United States and earning a gross annual income of \$337 million. The petitioner designs and manufactures two broad ranges of products: electronic connectors for the electronics industry, and devices for the transportation industry, particularly automotive manufacturers.

The petitioner provided a description of the beneficiary's work experience with the foreign entity. The petitioner described the beneficiary as having worked for the foreign entity since May 2009 until present in the position of Senior Project Engineer. The petitioner described the beneficiary's core responsibilities as: defining scope document as per customer requirement; performing Systems level planning and finding solutions; performing Systems level planning and requirement mapping to provide best solutions; Electrical Hardware Design; Component Selection and Procurement; Mathematical/Simulation analysis of circuits to verify worst case performance; guide the PCB engineer/Coordinate with mechanical team for PCB design; and coordinate with software team to define software scope document and prepare the test plans for PCB

board validation and design validation and prepare [REDACTED]. The petitioner also described the beneficiary's project duties as: holding review meetings to monitor the progress of projects as per schedule and to ensure timely completion; ensure project delivery as per scheduled deadline and planning for extended support; and define the process to make the environment more productive and less repetitive. The petitioner asserted that the beneficiary's "advanced formal education in the engineering field and his experience . . . have qualified [the beneficiary] to be considered for his new role in the United States." The petitioner concluded:

[The beneficiary] is very technically familiar with [the petitioner's] client projects, and has the ability to travel to India to meet and work with [the petitioner's] India based team. His knowledge and experience with [the petitioner's] products and its clients is unique. His deep understanding of the engineering design and production life cycle combined with his education and experience make him a unique asset to [the petitioner].

The petitioner described the beneficiary's proposed position in the United States as an Electrical Engineer, Applications. The petitioner described the beneficiary's position as entailing: performing testing and calibration of the magnetic sensors and magnetometer circuits to optimize performance; validating sensor products against automotive standards and generating temperature compensation algorithms; working closely with physicists and mechanical engineers to integrate field sensor configuration and design aspects with the application; board level and component level trouble shooting of magnetometer circuits and conduct EMC tests with outside testing agencies; generate schematics and guide PCB designers to generate board layouts at overseas facilities; verify electrical design aspects of the applications and provide guidance to the overseas development team; and communicate with customers to understand requirements and other technical aspects of the application. The petitioner described the proposed position as "an extremely important one, which requires high engineering skills" and "highly specialized knowledge of the company's products, procedures and customers."

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary was employed in a specialized knowledge capacity abroad, evidence that the beneficiary has specialized knowledge, and evidence of the beneficiary's proposed specialized knowledge position in the United States. The RFE specifically requested the petitioner to indicate whether the beneficiary was involved in the "design" or "development" of any of its tools, services, processes, or procedures, and if so, to provide evidence of his work.

In response to the RFE's request to explain why the beneficiary possesses specialized knowledge and the beneficiary's employment abroad in a specialized employment capacity, the petitioner described the difference between a "regular" engineer and a Senior Project Engineer employed by the company. The petitioner described how Senior Project Engineers have "the ability to propose, plan, design, lead and most especially tutor other engineers regarding the specific needs of customers" and have the ability to "anticipate a client's engineering need, design the engineering product, and meet with the clients to discuss these products." In contrast, the petitioner described "regular" engineers as "simply assist[ing] in the design and are not required to have the visionary abilities as Senior Project Engineers." The petitioner described the job

¹ The petitioner did not explain any of the above acronyms.

duties of “regular” engineers as “perform[ing] routine tasks under close supervision or from detailed procedures and assemble equipment or parts requiring simple wiring, soldering, or connecting.” Further, the petitioner described how Senior Project Engineers have other responsibilities that “regular” engineers do not, such as conducting tests or experiments, analyzing results, redesigning, or modifying equipment to improve performance. The petitioner described how in the United States there are only seven Electrical Engineers and one an Electrical Engineer, Applications. The petitioner asserted that there are no Electrical Engineers, Applications working in its Southfield, Michigan office, and that overall, the petitioner is short of Electrical Engineers, Applications in the United States. The petitioner described how the beneficiary quickly rose to become a Senior Project Manager instead of waiting the usual five-year period. The petitioner asserted that the beneficiary’s quick promotion demonstrates how “his knowledge as a Senior Project Engineer is not only special but also advanced because [of] his highly developed engineering ability to grasp the company’s products, processes and engineering systems.”

The petitioner specified that the beneficiary spends 35% of his time in design and development, 35% of his time leading the construction of devices, 10% of his time conducting tests, 10% of his time constructing devices, and 10% of his time interacting and meeting with clients. The petitioner specified that the beneficiary has been involved in “visionary designing of touch sensors, tracking system for mobile, oil sensor and light sensors and has led teams to demonstrate these products to our clients.” The petitioner described how the beneficiary’s responsibility of meeting with clients is “something only a very qualified engineer with superior knowledge of the company’s products is even authorized to do.”

The petitioner described the beneficiary’s project history with the company, including an ongoing project (since 2009) for the design and production of Linear Position Sensor Development for [REDACTED]. The petitioner asserted that the beneficiary “uniquely, performed the hardware design and analysis, defining the scope of the firmware development.” The petitioner asserted that “[r]egular engineers at [the company] do not perform defining the scope of firmware development this making it special knowledge [sic],” and that “[t]hese responsibilities required only employees with knowledge of design skills surpassing the normal engineer at [the company] to accomplish as well as superior knowledge of the needs of the client, General Motors.”

In addition, the petitioner described the U.S. position as “requir[ing] specialized knowledge of [the company’s] engineering systems, products and processes.” Specifically, the petitioner described the duties of the U.S. position as involving “performing testing and calibration of the magnetic sensors and magnetometer circuits to optimize performance, validating sensor products against automotive standards and generating temperature compensation algorithms for our automotive clients such as [REDACTED].” The petitioner emphasized the beneficiary’s proposed duty to meet with and interface with clients, stating that it “trusts this position to employees who have the demonstrated experience and ability to properly represent the company at highly technical meetings with our clients.”

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and that he has been, and will be, employed in a position requiring specialized knowledge. In denying the petition, the director found that the petitioner submitted insufficient evidence to establish that the position of Senior Project Engineer and the proposed position of

Electrical Engineer, Applications involve a special or advanced level of knowledge in the electronic equipment manufacturing field or related occupation, as the duties the beneficiary performed and will perform are typical of electrical engineers or related occupations in the same field.

On appeal, counsel specifies that the beneficiary has "unique knowledge of [the petitioner's] product line and their application on the international market [REDACTED] account." In a new letter accompanying the appeal, the petitioner states the following:

[The beneficiary] has performed and led the design of touch sensors, tracking system for mobile, oil sensor and light sensors. To design and develop new sensor products at [REDACTED] division requires specialized knowledge in magnetometer circuits and in the theory of magneto elasticity. Understanding magnetics and designing electrical circuits to measure small changes in the strength of magnetic fields using highly sensitive inductive coils is a specialized skill and is not a commonly available skill set. In addition, electrical engineers at [REDACTED] need to understand the interplay of electrical science and magnetics to a higher degree than a regular design or application engineer. A regular electrical engineer does not possess these skills as they can only be acquired by working for the product development at [REDACTED] division. This acquired specialized knowledge enables [the beneficiary] to design and apply appropriate signal conditioning and monitoring circuitry to effectively integrate the [REDACTED] technology with several customer applications and cannot be performed with same dexterity by an ordinary engineer who is not trained in this field of engineering."

The petitioner emphasizes that the beneficiary has "unique specialized knowledge compared with other Senior Engineers" because he has "unique knowledge of [the petitioner's] extensive product line of products that [the petitioner] designs and manufactures for use by [REDACTED] one of [the petitioner's] most important clients. The petitioner asserts that from May 2009 until present, the beneficiary has been "the only Senior Engineer at [the foreign entity] in India engaged in the specialized process for the design and production of Linear Position Sensor Development for [REDACTED] and that he "uniquely performs the [REDACTED] unique hardware design and analysis and defining the scope of the firmware development."

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge, and that he has been, and will 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 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 or prongs. 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.

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 product and its application in international markets. However, the petitioner has failed to articulate with specificity how the beneficiary's knowledge is special, or why the beneficiary's positions abroad and in the United States require an employee with specialized knowledge. Therefore, the petitioner's claims fail on an evidentiary basis.

At the time of filing, the petitioner made broad and vague claims regarding the beneficiary's "unique" knowledge of the petitioner's products. The petitioner failed to articulate how the beneficiary's knowledge is "unique" compared to others within the company or the general industry. 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 documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)

Accordingly, the director reasonably requested further evidence to establish that the beneficiary's knowledge is not generally known by practitioners in the field, and an explanation as to what distinguishes the petitioner's products from others that are similar in the industry. In response to the RFE, the petitioner explained how the beneficiary, as a Senior Project Engineer, has been involved in "visionary designing of touch sensors, tracking system for mobile, oil sensor and light sensors and has led teams to demonstrate these products to our clients," as opposed to "regular" engineers who "simply assist in the design and are not required to have the visionary abilities as Senior Project Engineers." The petitioner also explained how the beneficiary, as a

Senior Project Engineer, is involved in testing and modifying products, unlike “regular” engineers who are limited to simpler, supervised tasks. However, other than providing comparisons between the duties of “regular” engineers and Senior Project Engineers within the company, the petitioner failed to describe with any specificity how the beneficiary’s level of knowledge of its products is truly special. The fact that the petitioning organization delegates limited responsibilities to its “regular” engineers and gives more responsibilities to its Senior Project Engineers does not establish that the beneficiary possesses specialized knowledge or that he was employed in a specialized knowledge capacity. As stated above, the petitioner’s conclusory descriptions of the beneficiary’s “special,” “unique,” and “visionary” knowledge and ability, without more, is insufficient to meet the burden of proof. 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.

The petitioner described the beneficiary’s advanced duties as consisting of designing, developing, and testing products. Furthermore, the petitioner described the beneficiary’s advanced duty of interfacing and meeting with clients, emphasizing how it does not trust just any “regular” engineer to meet with clients. However, the duties of designing, developing, testing, and meeting with clients, do not establish that the beneficiary possesses specialized knowledge and was employed in a specialized knowledge capacity. As noted by the director, typical duties of electrical engineers or related occupations commonly involve the design, development, and testing of electrical equipment. In addition, the petitioner failed to establish how the beneficiary’s duty of meeting with clients, which does not appear atypical for similarly employed engineers, establishes that he possesses specialized knowledge particular to the petitioning organization. The beneficiary’s duties might reasonably describe the general duties of any successful engineer working in the petitioner’s industry.

Critically, the petitioner offered little information to distinguish its products from other similar products manufactured by other companies. Without this evidence, the AAO is unable to evaluate the petitioner’s claims that knowledge of the petitioning company’s products is truly specialized knowledge. The only explanation the petitioner provided to somewhat distinguish its products from other similar products was the following, asserted for the first time on appeal:

To design and develop new sensor products at [redacted] division requires specialized knowledge in magnetometer circuits and in the theory of magneto elasticity. Understanding magnetics and designing electrical circuits to measure small changes in the strength of magnetic fields using highly sensitive inductive coils is a specialized skill and is not a commonly available skill set. In addition, electrical engineers at [redacted] need to understand the interplay of electrical science and magnetics to a higher degree than a regular design or application engineer. A regular electrical engineer does not possess these skills as they can only be acquired by working for the product development at [redacted] division. This acquired specialized knowledge enables [the beneficiary] to design and apply appropriate signal conditioning and monitoring circuitry to effectively integrate the [redacted] technology with several customer applications and cannot be performed with same dexterity by an ordinary engineer who is not trained in this field of engineering.

While the above explanation provides some clarification as to the petitioner's claims, it is still insufficient to establish that the beneficiary's knowledge of its products constitutes specialized knowledge. The petitioner failed to provide any evidentiary basis for its claim that "[a] regular electrical engineer does not possess these skills [in magnetometer circuits and in the theory of magneto elasticity] as they can only be acquired by working for the product development at [redacted] division." The petitioner provided no evidence to establish that the body of knowledge related to magnetometer circuits and the theory of magneto elasticity is exclusive to the petitioner, or even narrowly held within the general industry. Notably, the petitioner stated that "[t]his acquired specialized knowledge . . . cannot be performed with same dexterity by an ordinary engineer who is not trained in this field of engineering," therefore indicating that there is an entire field of engineering dedicated to magnetometer circuits and the theory of magneto elasticity, and that an engineer trained in this particular field could perform similar duties as the beneficiary. In short, the petitioner's claim that the beneficiary possesses specialized knowledge is not entirely credible or supported by the record. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

The petitioner consistently referenced the beneficiary's unique involvement in the Linear Position Sensor Development project for [redacted]. Specifically, in response to the RFE, the petitioner asserted that the beneficiary "uniquely, performed the hardware design and analysis, defining the scope of the firmware development" for the petitioner's client, [redacted]. On appeal, the petitioner asserts that the beneficiary is the "only Senior Engineer at [the foreign entity] in India engaged in the specialized process for the design and production of Linear Position Sensor Development for [redacted]. Counsel asserts on appeal that the beneficiary's knowledge of the petitioner's [redacted] accounts products and his exclusive role in their design constitutes specialized knowledge.

However, the petitioner failed to provide any documentary evidence to support these assertions. The RFE specifically requested the petitioner to indicate whether the beneficiary was involved in the "design" or "development" of any of its tools, services, processes, or procedures, and if so, to provide evidence of his work. The petitioner failed to provide any evidence to support its assertion that the beneficiary is the "only" engineer involved in the design and production of this particular product. Without supporting documentary evidence, the petitioner's bare assertion that the beneficiary was the "only" designer involved in the Linear Position Sensor Development project for [redacted] is insufficient to meet the burden of proof in these proceedings. *See id.* Similarly, counsel's bare assertion that the beneficiary has specialized knowledge of the petitioner's [redacted] account products is insufficient.

Assuming *arguendo* that the beneficiary is the only engineer involved in the design and development for the Linear Position Sensor Development for [redacted] and has specialized knowledge regarding the petitioner's [redacted] products, the petitioner still failed to explain how the beneficiary would utilize this particular knowledge for the proposed position in the United States. The petitioner made only passing references to [redacted] as one of its major clients, and that the beneficiary would be working on projects for its automotive clients "such as [redacted]. Specifically, the petitioner stated that the beneficiary would be involved in "performing testing and calibration of the magnetic sensors and magnetometer circuits to optimize performance, validating sensor products against automotive standards and generating temperature compensation algorithms for our automotive clients such as [redacted]. The

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petitioner failed to specifically identify the projects that the beneficiary would be working on in the United States, and how these projects would require the beneficiary to utilize his specific knowledge of design and development in Linear Position Sensor Development. Therefore, the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge capacity in the United States.

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge, and has been, 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.

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.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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.