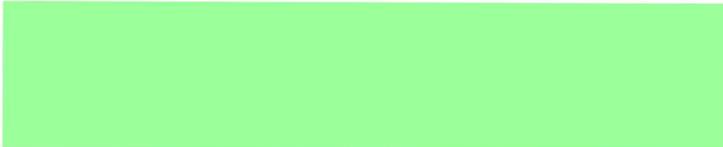
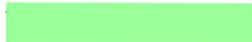


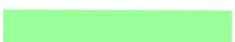
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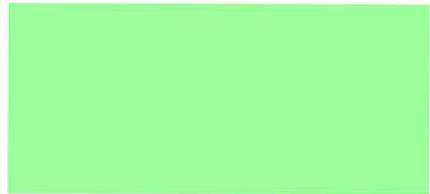


DATE: **MAR 18 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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:

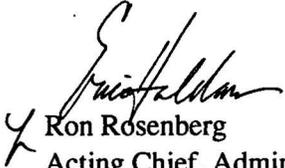


INSTRUCTIONS:

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.

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation incorporated in 2001, provides information technology engineering services, employs 115 personnel, and reported a gross annual income of \$32,184,337 when the petition was filed. The petitioner is affiliated with [REDACTED] an Indian organization. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity, as a technical resources manager, for a two year period.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or had been or would be employed in a capacity that requires 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. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary will be employed in the United States in a specialized knowledge capacity.

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, Petition for a Nonimmigrant, 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

In a letter appended to the petition, the petitioner stated that it and the affiliated foreign entity had "combined experience of over 19 years supporting Fortune 500 clients with software business solutions" and their "professionals around the world deliver comprehensive services in enterprise and mission critical applications and quality assurance for software processes." In a separate letter, the foreign entity stated that the beneficiary had worked for it from October 2008 in a specialized knowledge capacity performing technical recruiting. The foreign entity described the beneficiary's duties as:

- Technical recruiting role (role performed with special concentration on our client eBay; eBay is one of our largest clients): 50 percent
 - Interact with the account manager and technical resource manager to understand their staffing needs and job orders in particular.
 - Understand job requirements as well as technical recruitment specifications.
 - Use job boards, social media and networking to source suitable skills.

- Utilize engineering skills to technically screen the candidates and identify suitable candidates for the client.
 - Execute the full recruiting lifecycle inclusive of but not limited to rate negotiation, salary design, new hire paperwork, on-boarding, induction, etc.
 - Use other mediums like social media websites (facebook), professional networking sites (Linkedin) to effectively reach out to prospective candidates, expand the candidate base.
 - Run referral campaigns with existing consultants.
 - Meet the performance metrics in terms of submissions, interviews and placements.
- **Systems Analysis and testing: 30 percent**
 - [The beneficiary] is also a key member of core technology team that is responsible for the migration of our existing applications including Applicant Tracking System/Sales Management system – both developed on Force.com platform offered by Salesforce –MaxHire – a commercially available product for CRM and applicant tracking purposes. [The beneficiary] has used MaxHire extensively in the past and she is a current user of our application based on Salesforce.com. Her knowledge of both applications puts her in a unique position to help us in the migration.
 - [The beneficiary] uses her functional knowledge and technical skills in studying the old applications (ROI Recruit – based on SalesForce.com), identifying the requirements and enhancements for the new systems, documenting requirements, work with the technical team in the design phase, perform thorough application testing to ensure requirement mapping, etc.
 - [The beneficiary] has unique knowledge of the old systems that were used in [the foreign entity] earlier and new systems being developed on Force.com platform.
 - [The beneficiary] is an expert in internal processes and quality standard followed in [the foreign entity] and has gathered extensive knowledge during her time with the company.
 - We also expect [the beneficiary] to be a key contributor on the new intranet initiative that [the foreign entity] is evaluating.
 - **Mentoring, Training and Leadership: 20 percent**
 - [The beneficiary] has been a leader in our Pune office. She has been actively involved in recruiting new team members, mentoring new team members and providing leadership.
 - She has been actively involved in designing training material for new recruiters and conducting training sessions.

In the petitioner's letter appended to the petition, the petitioner indicated that the beneficiary would "utilize the specialized knowledge of [the petitioner's] services and our proprietary recruitment techniques, processes and procedures and how they apply to the requirements of our clients, in particular eBay." The petitioner listed the proposed duties of the proffered position as:

- Technical Recruiting Role: 65 percent
 - Use specialized knowledge of [the petitioner's] services and client needs to increase revenue from Ebay [*sic*];
 - Use specialized knowledge of [the petitioner's] proprietary recruitment model & processes to work with the Account Managers and Business Development managers in strategically formulating [the petitioner's] service offerings to clients in the US, eBay in particular;
 - Interact with the Client hiring managers to understand their staffing needs;
 - Convert the staging needs into recruiting specifications;
 - Work with technical recruiters in sourcing suitable candidates for the job;
 - Conduct technical interviews for the candidates sourced by the recruiting team;
 - Present suitable candidates to the hiring managers and facilitate hiring cycle;
 - Meet hiring managers and client managers in person to present [the petitioner's] capabilities;
 - Lead the efforts in responding to RFPs and RFQs from prospective clients for their IT services needs.

- Systems Analysis and Testing: 30 percent
 - Utilize specialized knowledge of [the petitioner's] older recruitment applications software and specialized knowledge of our transition to newer systems to work with the IT team on in-house projects that involve introduction of new support systems and enhancements to existing systems by being the Functional Analyst for MaxHire, ROI Recruit and MIS;
 - Use the knowledge of Recruitment and resourcing industry in building suitable tools for the internal team to give them competitive advantage over competition.

- Mentoring, Training, and Leadership: 5 percent
 - Utilize specialized knowledge of our recruitment model & process, our recruitment software, our services, and knowledge of our India staff's strengths & weaknesses to act as a bridge between our India office and our US office to continue to streamline our recruitment processes;
 - Assist director of global recruitment in formulating and implementing growth strategies;
 - Provided [*sic*] leadership to offshore recruitment team;
 - Train and manage a team of recruiters in India;
 - Function as a resource manager for the assigned team;
 - Work with individual recruiters to help them understand the requirements and help them find the right candidates for those requirements.

The petitioner claimed that all the duties to be performed are within the context of a dynamic and rapidly expanding organization and accordingly, a more advanced level of understanding is required to perform the duties within the organization.

The director issued a request for further evidence (RFE), requesting, *inter alia* evidence of the specialized knowledge position in the United States. Among other items, the director specifically requested more detailed information regarding the beneficiary's duties abroad, more detailed information to establish that the beneficiary possessed specialized knowledge, and more detailed information regarding the beneficiary's proposed duties in the United States.

In response, the petitioner repeated the foreign entity's description of the beneficiary's duties abroad and noted that the beneficiary's knowledge is specialized because her work had been concentrated around eBay, one of the company's largest clients. The petitioner explained that the beneficiary had more in-depth knowledge of eBay's staffing needs, technical requirements, and previous work done for eBay than other recruiters within the company. The petitioner also noted that because of the beneficiary's work as a key member of the core technology team, she had unique knowledge of old systems used by the foreign entity and new systems being developed on Force.com, and that such knowledge was not common among the recruiters at the foreign entity. The petitioner also claimed that the beneficiary's knowledge is specialized from others in the industry due to: the complexity of the company's rapidly changing environment; its Fortune 500 clientele base; and its proprietary recruiting process and methodology. The petitioner noted that its recruiting process and methodology takes into account all of the performance criteria specified by clients, tracks requirements by client, and matches the personnel needs with potential employees' backgrounds.

The petitioner also repeated the beneficiary's proposed duties in the United States and reiterated that the beneficiary would use specialized knowledge of the company's proprietary recruitment techniques, processes and procedures and how they apply to the requirements of eBay. The petitioner also provided its contract with eBay and a document describing the functional and non-functional requirements for ROIRecruit, an applicant tracking system used to automate the day-to-day processes of a staffing firm. The petitioner's organizational chart indicated the petitioner employed three technical resource managers and wanted to hire the beneficiary as the fourth individual to occupy the same titled position.

Upon review of the evidence in the record, the director denied the petition. On appeal, counsel for the petitioner asserts that the beneficiary had advanced and special knowledge of the company's proprietary recruiting process and methodology, of one of its largest clients, and of the company's internal recruitment technology. Counsel contends that the director failed to consider that the beneficiary in this matter, not only performs duties involving technical recruiting, but also performed and performs systems analysis duties. Accordingly, counsel avers that the beneficiary possesses two different skill sets that are not easily transferred to another individual. Counsel reiterates that the beneficiary's knowledge is specialized from others in the industry due to the complexity of the company's rapidly changing environment, its Fortune 500 clientele base, and its proprietary recruiting process and methodology.

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that she 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 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 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.

United States Citizenship and Immigration Services (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. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its products or processes require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

In the present matter, the petitioner does not clearly state whether its claim is based on either the first or second prong of the statutory definition of specialized knowledge. The petitioner asserts generally that the beneficiary has specialized knowledge of the company's proprietary recruitment techniques, processes and procedures and how they apply to the requirements of eBay and that the beneficiary's knowledge is specialized from others in the industry because of the complexity due to the company's rapidly changing environment, its Fortune 500 clientele base, and its proprietary recruiting process and methodology. Counsel on appeal emphasizes that the beneficiary's knowledge of the processes and procedures of the company is advanced when noting that the beneficiary's skill set incorporates not only recruitment knowledge but also system analysis knowledge. The petitioner, however, has not provided probative evidence establishing either of the two prongs of the statutory definition.

The petitioner has not articulated the nature of the claimed specialized knowledge. Rather, the petitioner claims that because it is rapidly growing its business is complex and due to this factor the

beneficiary's knowledge is specialized. However, this assertion does not provide evidence of how the rapid growth of the company resulted in the beneficiary's claimed specialized knowledge or how the beneficiary's employment during this period contributed to this growth. We do not discount that the beneficiary may be an exceptional and skilled employee, however, without probative evidence establishing her specific contribution and explaining in detail how her skill contributed to the growth, the petitioner does not establish that the beneficiary possesses specialized knowledge simply because its business is growing and complex. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The record includes a broad overview of the beneficiary's past and proposed duties that pertain primarily to recruitment practices and some subject matter expertise regarding particular commercially available software. The record does not include detailed information establishing the nature of the claimed specialized knowledge.

Similarly, the petitioner's claim that because it serves Fortune 500 clientele the beneficiary possesses specialized knowledge is not persuasive. Although the petitioner repeatedly emphasizes the beneficiary's involvement with eBay, the fact that the beneficiary possesses very specific experience with a particular client's recruitment policies does not establish that the beneficiary's knowledge is indeed special or advanced. The petitioner has not identified with any specificity the aspects of the eBay recruitment contract that distinguishes it from any other recruitment assignments. Any experienced technical recruiter within the petitioning organization would reasonably be familiar with the petitioner's internal processes and methodologies for carrying out client projects. We observe that the petitioner in this matter already employs three technical resource managers and although the other technical resource managers may not have an established relationship with eBay, it is reasonable to believe that they have the basic knowledge of the petitioner's methodologies regarding recruitment for similarly large Fortune 500 clients. USCIS cannot find that an employee's knowledge of a particular client project, and the relationships established through working on such a project, without more, are sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any information technology recruiter in possession of experience focused on a particular client.

Further, the petitioner has not established its claim that the beneficiary has knowledge of its proprietary recruiting process and methodology greater than other technical recruiters within the company or that its claimed proprietary process and methodology is different from what is generally used in the industry. The petitioner does not identify any specific staffing software developed by the petitioner or the foreign entity and only describes the beneficiary's knowledge of several commercially available staffing software platforms. Although the petitioner attaches a document describing the functional and non-functional requirements for ROIRecruit, an applicant tracking system used to automate the day-to-day processes of a staffing firm, the petitioner does not identify that the use of this software incorporates its proprietary methodology. Moreover, if ROIRecruit has been customized for the petitioner's employees' use, the record does not include the necessary underlying detail to establish that the methodology involves more than the use of the best practices and standards in the recruiting industry. 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, supra*.

Furthermore, the record does not include probative evidence establishing how any of the petitioner's undefined recruitment methodologies are different than those used by other recruiters for staffing providers. Again, it is reasonable to believe that other successful staffing companies have also encapsulated their recruitment processes and best practices into similar methodologies to ensure successful recruitment for their clients. Although the petitioner asserts that the beneficiary's knowledge could not be conveyed to similarly trained and experienced recruiting professionals, the petitioner does not specify the beneficiary's particular training that resulted in her knowledge. The petitioner appears to rely on the beneficiary's more than two years of experience working for the foreign entity using its recruiting methodologies and establishing a relationship with eBay to establish that the beneficiary's knowledge is special and advanced. However, the petitioner does not describe the beneficiary's training, work experience and support responsibilities with probative technical details sufficient to establish that this individual beneficiary's knowledge is either specialized within the industry or advanced within the petitioner's organization. Again, the petitioner has not demonstrated that its "proprietary" methodologies and tools, while effective and valuable to the petitioner, are more than customized versions of best practices standards used in the industry. Likewise, as the petitioner has not provided evidence of any specific training available within its organization, other than experience, it is not possible to conclude that the beneficiary's knowledge of the petitioner's product (recruitment), methodologies, or tools is advanced within its organization. The evidence of record reflects that technical resources managers employed by the foreign entity and the petitioner require general technical recruitment expertise and general knowledge of the constantly changing commercial staffing software applications.

On appeal, counsel emphasizes that the beneficiary spent 30 percent of her time on system analysis duties abroad and will spend 30 percent of her time on system analysis for the petitioner. Although referenced above, we reiterate that the foreign entity's description of the beneficiary's system analysis duties pertains generally to the use of commercially available software and the migration of enhancements to new systems. The description does not include probative detailed information highlighting how the beneficiary's use of these systems and applications resulted in her specialized or advanced knowledge. Similarly, from the petitioner's brief description of the beneficiary's proposed duties it appears that the beneficiary as a user of various recruitment applications will provide input to the IT team to upgrade the petitioner's applications and tools. The record does not include sufficient probative evidence of her actual "system analysis" duties, if any, to conclude that her knowledge as a user involves specialized or advanced knowledge. Moreover, the petitioner has not made any attempt to distinguish between an "advanced" user and a regular user of the petitioner's methodologies or of the commercially available software. Neither has the petitioner explained why the beneficiary's assignment in the United States would require advanced knowledge of the methodology or software. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

For the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence 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 dismissed.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.