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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAR 25 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

(b)(6)

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 stated on the Form I-129 (Petition for a Nonimmigrant Worker) that it was established in 1991, that it employs 25 personnel, and that it had a gross annual income of $3,000,000 when the petition was filed. The petitioner indicated it is engaged in industrial/commercial recycling and is the parent company of , a company incorporated in Mexico. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity, as an electro-mechanic technician/specialist, 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 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 a qualifying relationship between the petitioner and the foreign entity and that the beneficiary possesses specialized knowledge and 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 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.
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> (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.
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> (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 possesses specialized knowledge and has been and will be employed in a specialized knowledge capacity

In the initial letter submitted in support of the petition, the petitioner described the beneficiary's work experience with the foreign entity. The petitioner indicated that the beneficiary had worked as a hydraulic technician/welder from 2004 to 2006 and as an equipment maintenance specialist since 2009. The petitioner noted that in his capacity as an equipment maintenance specialist, the beneficiary had installed different types of compaction equipment at the Mexican subsidiary facilities and those of its customers. The petitioner stated that as each customer had unique qualifications for power usage and density of compacted materials, the beneficiary had been modifying the original factory equipment to meet the demands of the customers. The petitioner indicated that the beneficiary "had been redesigning and improving the power units of our baling and compaction machines in order to make them more efficient and comply with customer

requirements." The petitioner indicated further that the beneficiary "calculates the hydraulic valves, hoses and electrical circuitry as the new modification requires it."

The petitioner described the responsibilities of the proposed position as:

- Research, design, and develop our various recycling equipment;
- Customize the structure of specialized recycling and compaction equipment to meet the company's business needs;
- Classify the metal by analyzing its chemical components and decide the combination of materials and metal, depending on the resistance of metal;
- Calculate the proper pressure for recycling and compaction equipment, make design modification based on the calculation, and reinforce the structure of equipment;
- Redesign and improve the equipment based on calculating complex data of the cylinder, the pumps, the horse power, hydraulic valves, and electrical circuitry;
- Develop unique designs that improve the structure of compaction machines to make them more efficient and cost effective;
- Install different types of compaction equipment at our facilities and our customer companies;
- Train employees on activities of workers engaged in machining and assembling electric motors, generators and control and switch gear apparatus;
- Work on improving recycling and compaction equipment and control change of models as needed; and
- Consult with other employees of our company and customers and make recommendations for equipment improvements.

Bullet points added.

The petitioner added that the beneficiary will be "responsible for machining and assembling electric motors, generators and control and switch gear apparatus" and will "inspect machine parts and assembled units for conformance to specification, using micrometers and other measuring instruments." The petitioner noted the beneficiary would use his knowledge of mechanics, shop mathematics, metal properties, layout and machining procedures in fabricating, modifying and repairing mechanical equipment. The petitioner also provided the beneficiary's certificates for training completed in 1986 including: (1) five weeks of training and practical workshop skills in electric arc welding in vertical position and overhead; (2) 12 weeks of training and practical workshop skills in blacksmithing; and (3) six weeks of training and practical workshop skills in electric arc welding in flat and horizontal position.

The director issued a request for evidence (RFE) requesting additional information regarding: the beneficiary's duties for the foreign entity; the beneficiary's specialized knowledge; and the beneficiary's proposed duties in the United States.

In response, the petitioner provided a letter from the production manager of the foreign entity regarding the beneficiary's work experience for the previous two years. The production manager noted that the beneficiary and a second individual designed a new "mini-baler" to bale and recycle

stretch wrap and LDPE films from large industrial distribution centers and retail outlets. He noted that the foreign entity has gone through seven prototype machines and the machines had been placed with many U.S. customers. The production manager listed the beneficiary's duties for the foreign entity as:

- Design and install different types of compaction equipment;
- Determine different power usage and density of compacted materials;
- Build and design the structure of different types of balers;
- Calculate and design the structure of the equipment depending of [*sic*] the type of use for the equipment in order to properly work and safely operate;
- Calculate and choose the kind of welding and metal needed depending of [*sic*] the force;
- Identify [how] the Hydraulic power unit is going to be applied to the structure of the baler;
- Select metal and other material depending of [*sic*] the grade of strength;
- Chose [*sic*] the right material to fabricate a piece of equipment and support the force strength applied;
- Apply a series of formulas to calculate the type of metal hardness that has to be used;
- Determine the accurate of [*sic*] amount of carbon, zinc and other alloys from which metals are composed for machine building.

The production manager further noted that since the petitioner's machines are not made available to purchase in the open market; the machines must be designed and customized to fit the needs of the customers and that the beneficiary had been modifying the original factory equipment to meet the demands of the customers.

The petitioner, in a separate letter in response to the RFE, stated that the beneficiary and a second employee would focus primarily on research and design of specialized or custom recycling equipment and would oversee the building of the custom equipment to fit each customer's need. The petitioner referenced the seven machine prototypes used to bale and recycle stretch wrap and plastic LDPE films and noted that these prototypes were currently in use at several U.S. companies. The petitioner stated that it planned to introduce this "new machine" to the Southern California marketplace and that the beneficiary would be instrumental in making custom modifications on the equipment at individual customers.

The petitioner asserted that the difference in the beneficiary and its other employees is the specialization and creativity involved in designing the equipment. The petitioner claimed that the beneficiary had been building and designing the structure of different types of balers. The petitioner also paraphrased the beneficiary's duties performed at the foreign entity as duties that would be performed in the United States. The petitioner averred that the beneficiary's position requires specialized knowledge of the technical engineering aspects of the company that is not available in the U.S. company or the U.S. market. The petitioner asserted further that it is impossible to bestow the beneficiary's knowledge in any new or existing worker since the beneficiary is the one who designed the balers. The petitioner also noted that it "would take years of experience in the recycling industry with working knowledge of the needs of each of [its] customers before [a worker]

is able to understand a fraction of what [the beneficiary] possesses." The petitioner reiterated further that since the beneficiary designed the customized equipment he has specialized knowledge that no one else has and accordingly will provide continued servicing of the recycling equipment for the petitioner's customers.

The director denied the petition, determining that the petitioner had not established the beneficiary possessed specialized knowledge or had been or would be working in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserts that the beneficiary and one other key employee were the two employees who researched and designed the new machines for the petitioner's plastic wrap recycling business and that the beneficiary was in charge of the structural design aspect of the mini baler. Counsel contends that as such the beneficiary possesses knowledge no other person possesses. Counsel repeats the petitioner's claim that it is impossible to bestow the beneficiary's knowledge on other workers.

III. Analysis

Upon review, of the record including counsel's assertions on appeal, the record does not establish that the beneficiary possesses specialized knowledge or that he has been or 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 the unique process or product require this employee to have knowledge beyond what is common in the industry and knowledge that is not commonplace within the company itself.

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.* In this matter, the petitioner initially provided a broad overview of the beneficiary's work for the foreign entity. The petitioner noted that the beneficiary had modified the original factory equipment and "had been redesigning and improving the power units of our baling and compaction machines in order to make them more efficient and comply with customer requirements." The petitioner did not state that the beneficiary had designed the foreign entity's balers or had designed the mini-baler that the petitioner was marketing. At most, the initial record shows that the beneficiary participated in customizing factory equipment and improving the structure of the petitioner's mini-baler.

In response to the RFE, the foreign entity confirmed that the beneficiary had been modifying the original factory equipment to meet the demands of the customers. The foreign entity added that the beneficiary had built and designed the structure of different types of balers by selecting the proper metal and materials and welding in order for the machine to properly work and safely operate. However, in neither the initial description of the beneficiary's work for the foreign entity nor the information provided in response to the RFE, does the petitioner or the foreign entity provide the technical details that support the petitioner's claim that this individual beneficiary's knowledge is specialized within the industry or advanced within the organization.

The petitioner fails to clearly state whether its claim is based on either the first or second prong of the statutory definition. The petitioner asserts generally that the beneficiary has special knowledge of the company's mini-baler machine because he assisted in the structural design and has knowledge of the needs of the U.S. based customers so he can customize the machine for their needs. The petitioner also asserts that the beneficiary's knowledge of the mini-baler machine is advanced as he is one of only two employees out of the petitioner and the foreign entity's combined 90 workers that assisted in the structural design and can customize the machine for individual customers. Upon review however, as will be discussed below, the record does not satisfy either prong of the definition.

When analyzing whether the petitioner has established that the beneficiary has a special knowledge of the company product and its application in international markets, we find that the petitioner has not articulated the nature of the specific product involved in this matter. It appears from the record that the petitioner and the foreign entity customize pre-manufactured recycling equipment. The beneficiary has provided his general knowledge and technical skills related to the knowledge of metals and welding to assist the foreign entity in customizing the equipment. However, the petitioner has not identified what

aspect of the beneficiary's training or specific work experience supports a finding that the beneficiary's knowledge is specialized within the industry. Rather the record demonstrates at best that the beneficiary's knowledge is knowledge generally held by similarly experienced and qualified mechanic technician/specialists. Although the petitioner claims that the beneficiary has specific knowledge of the customization of the mini-baler, the petitioner has not demonstrated that the customization of this machine or other equipment requires more than the use of best practices of mechanical/technical standards in the recycling industry. Moreover the beneficiary's creativity in designing the structure of the specialized or custom recycling equipment, does not explain why the beneficiary's assignment in the United States would require specialized or advanced knowledge of the customized equipment. The petitioner in this matter clearly indicates that the "new machine has been developed (seven prototypes) and has already been installed at several customers' worksites. The petitioner does not establish what specific knowledge is necessary to install the designed and customized equipment or what specific distinguishable knowledge regarding the installation of this equipment could not be conveyed to similarly experienced mechanics.

The petitioner also failed to describe how advanced knowledge is typically gained within its organization. Although the petitioner references the beneficiary's background, the petitioner does not indicate that the beneficiary attended specific training provided by the foreign entity on how to customize the structure of pre-manufactured recycling equipment or that the foreign entity even provided such training. Upon review of the petitioner's claim that only two of the foreign entity and petitioner's combined 90 employees had specific experience with customizing the mini-baler machine, this claim is not developed in the record. The petitioner does not identify with specificity how the beneficiary and the second employee obtained their knowledge or how long it took for them to obtain this knowledge. 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)). It is not possible to discern from the record that the customization of recycling machinery is of such significant complexity that this knowledge could not be regularly and routinely transferred to all of the foreign entity and petitioner's mechanics.

Counsel emphasizes the petitioner's claim that the beneficiary's direct experience in customizing the structure of the mini-baler establishes that the beneficiary's knowledge is special or advanced. However, the petitioner has not identified with any specificity what aspects of creating a structure for a baler and customizing the baler to fit a customer's needs is different from installing any machinery at a client site or at the petitioner's U.S. facility. Any experienced mechanic within the petitioning organization, as observed above, would reasonably be familiar with the petitioner's internal equipment and would be capable of properly installing the equipment as needed. The fact that the beneficiary possesses experience with the petitioning organization's machinery does not alone establish that the beneficiary's knowledge is special or advanced. USCIS cannot find that an employee's general knowledge of manufactured equipment coupled with the necessity to customize the equipment for specific purposes at client sites is sufficient to establish that the employee has specialized knowledge. Such an interpretation would essentially open the L-1B classification to any qualified mechanic/technician in possession of general knowledge of manufactured equipment.

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 has been or 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.