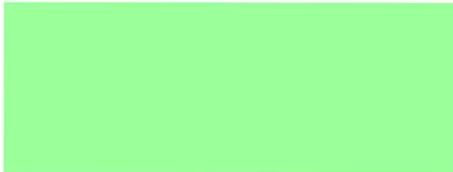


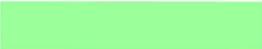
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 07 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.

The petitioner seeks 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 Michigan corporation established in 2002. It is the subsidiary of [REDACTED] based in France, a leading manufacturer and supplier of injection testing equipment for the automotive industry. The petitioner has employed the beneficiary in L-1B status for three years and seeks to extend his employment as Manager of North American Operations for an additional two years.

The director denied the petition, finding the petitioner failed to establish that the beneficiary has specialized knowledge and that it would employ him 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 for the petitioner submits a brief and additional supporting evidence including several United States Citizenship and Immigration Services (USCIS) interoffice memos, as well as two letters from clients of the petitioner attesting to the nature of the beneficiary's work. Counsel asserts that the evidence of record satisfies the petitioner's burden of proof and establishes that the beneficiary possesses specialized knowledge and would be employed 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 three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof.

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 on appeal are whether the petitioner has demonstrated that the beneficiary has specialized knowledge and will be employed in a specialized knowledge capacity.

The petitioner sells and distributes products that tests diesel fuel equipment for the automotive industry. The products are developed and manufactured by the petitioner's parent company in France, which employs over 70 employees.

The beneficiary has worked for the French parent company for sixteen years. According to the beneficiary's resume, he initially worked in the design and development of electronic boards used in the company's testing equipment, as well as design of the foreign entity's diesel injection testing products and processes. The petitioner further described the beneficiary's experience abroad as follows:

During his tenure with [the foreign entity], [the beneficiary] worked as a designer of power, analogue and digital electronic equipment. More specifically, [the beneficiary] was responsible for the design of electronic boards for a variety of measurement sensors as well as diesel injection products. [The beneficiary] was also responsible for the testing of [the foreign entity's] injection products and acted as project manager for several injection power

tests and for [the foreign entity's] PC5000 (an embedded PC workstation for the brake system of Renault trucks). Because [the beneficiary] was intricately involved with the design, production and testing of [the foreign entity's] products, our parent company deemed him uniquely well-qualified to assist with the pre-sale and post-sale concerns of its customers in the United States.

In a letter submitted with the Form I-129 Petition for a Nonimmigrant Worker, the petitioner explained that the beneficiary will provide pre-sales technical information to prospective customers and post-sale support to existing clients:

Specifically, [the beneficiary] will continue to evaluate customer orders vis-à-vis the technical capabilities of our products and test equipment. He will continue to conduct comprehensive implementation studies regarding the design of our products and test equipment in order to best comply with our customers' technical requirements. Utilizing his extensive technical knowledge of our products and test equipment, [the beneficiary] will continue to ensure their integration to our customers' technical needs. [He] will also provide design support to our company's engineers.

The director issued a Request for Evidence (RFE) instructing the petitioner to provide, *inter alia*, more information regarding the employees and organizational structures of the companies and additional details regarding the products of which the beneficiary has specialized knowledge.

In response, the petitioner submitted an organizational chart for the foreign parent company, the beneficiary's resume, website pages containing descriptions of the petitioner's products, the foreign parent company's financial statement and registry, and 2007 and 2008 tax returns for the petitioner. The petitioner also provided a letter in which it further explained the beneficiary duties with the foreign and U.S. companies.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has specialized knowledge and would be employed in a specialized knowledge capacity. The director emphasized that the evaluation, testing, and calibration of the petitioner's products could not be considered specialized knowledge, as the petitioner had not established that these tasks could not be easily learned by someone else in the same field.

On appeal, the petitioner submits a letter stating:

From his transfer to the United States in September 2006 until his departure in December 2009, [the beneficiary] was responsible for the sale, maintenance, repairs and calibration of over 20 different pieces of [the petitioner]'s equipment including various coil injectors, power drivers, synchronization devices, low pressure flowmeters, and calibration test benches. [The beneficiary] was able to perform these services because of the specialized knowledge of our company's products (some of which he designed) and procedures (some of which he instuted [*sic*] acquired during his 16 years of service with our parent company in France, [redacted])

* * *

[The beneficiary's] presence in the United States allowed for fast delivery, installation, maintenance and repair of [the petitioner's] equipment purchased by our United States customers.

The petitioner also submits a letter from its client [REDACTED] a joint venture owned by [REDACTED] as well as a letter from [REDACTED] to support its claims regarding the nature of the services provided by the beneficiary. The latter client recalls receiving the beneficiary's assistance:

As an example, [the beneficiary] was highly involved in our decision to purchase a PSG, Power Rack and IPOD system for our production test bench. His expert knowledge of [the petitioner's] products and diesel injection systems led us to purchase the correct hardware package. After we received the [the petitioner's] equipment, he was called upon to assist us in the integration of this equipment into our existing bench at our machine supplier. Upon final run-off of the machine in our facility, it became apparent there were additional complications related to the [the petitioner's] hardware. I again contacted [the beneficiary] and he agreed to come to our factory. The visit was a complete success. The problems were identified and eliminated that very day, releasing our bench for production. Certainly, the convenient office location and [the beneficiary]'s knowledge were critical factors in the timely success of our hardware integration project.

Counsel emphasizes that the petitioner manufactures highly sophisticated injection testing equipment that is significantly different from other equipment available to the American automotive industry. Counsel states that the beneficiary's sixteen years with the parent company, in addition to the fact that he himself designed some of the products, has resulted in an advanced knowledge of the products and a unique ability to sell, maintain, and repair the equipment for American clients.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he 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 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 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. 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.

In the present case, the petitioner's claims are based on the first prong of the statutory definition. The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of the petitioner's products and their application in international markets which is required for the technical consulting role he fulfills for the company's U.S.-based customers. While the beneficiary's job title is "manager," the record reflects that his role involves the application of specialized knowledge gained with the petitioner's parent company, which designs and manufactures the products sold in the United States.

The petitioner established that the knowledge is special as the fuel injection testing products and equipment manufactured by the foreign entity, while not unique, are nevertheless highly sophisticated, designed by the parent company's own employees in France, and developed for a specialized purpose. The beneficiary, as the sole employee based in the United States on a full-time basis, works independently and is required to have a comprehensive knowledge of all aspects of these highly sophisticated products, including knowledge of their design, capabilities, installation, integration, calibration, and maintenance, to enable him to assist U.S. customers with choosing the correct products and ensuring their correct installation and support. The record support a conclusion that the level of knowledge required for the position rises to the level of specialized knowledge, as the knowledge is of significant complexity and it would reasonably require a substantial period of time in order to impart the same expertise with the petitioner's product line to another employee. The petitioner also submitted evidence of the beneficiary's work experience that contributes to his special knowledge. The beneficiary has a total of 19 years of progressive experience within the petitioner's group of companies and has contributed to the design of its automotive testing products and to the development of procedures for their installation and maintenance.

For the reasons discussed above, 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.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has met that burden.

ORDER: The appeal is sustained.