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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 10 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, Vermont Service Center, revoked the approval of the nonimmigrant visa petition. 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 Maryland corporation, is an information technology consulting firm. It claims to be a branch office of [REDACTED] located in Mumbai, India. The petitioner seeks to extend the beneficiary's L-1B status so that he may continue to serve in a specialized knowledge capacity as Analyst Programmer, for a period of approximately two years. The petitioner indicates that the beneficiary will be stationed primarily offsite at the Charlotte, NC worksite of its client, [REDACTED]

The director initially approved the petition. Upon subsequent review, the director issued a notice of intent to revoke and ultimately revoked the approval of the petition, concluding that the petitioner failed to establish the beneficiary has specialized knowledge or that he had been or would 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. On appeal, counsel asserts that the evidence of record is sufficient to establish that the beneficiary possesses specialized knowledge and that he has been and will be employed in a specialized knowledge capacity. Counsel submits a brief and new evidence in support of the appeal.

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 United States 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.

Section 412 of the L-1 Visa Reform Act of 2004 states the following:

- (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
 - (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
 - (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge to the petitioning employer is necessary.

Finally, 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.

The regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A) provides that the director may revoke a petition on notice at any time, even after the expiration of the petition, if he or she finds any of the following:

- (1) One or more entities are no longer qualifying organizations;
- (2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
- (3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;
- (4) The statement of facts contained in the petition was not true and correct;
- (5) Approval of the petition involved gross error; or
- (6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

II. The Issue on Appeal

The sole issue addressed by the director is whether the beneficiary has specialized knowledge and whether he has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Facts and Procedural History

The petitioner is an IT consulting firm, with over 141,962 employees worldwide, and a gross income of approximately \$6 billion. The petitioner stated the beneficiary will be working as an Analyst Programmer. In a letter submitted in support of the initial petition, the petitioner states that the beneficiary will be placed at its client site in Charlotte, NC. The petitioner wishes to continue to employ the beneficiary in the position of Analyst Programmer at the unaffiliated employer's work location. The specific project to which the beneficiary will be assigned is described by the petitioner as requiring the "manipulation and modification of several of [the unaffiliated employer's] business critical systems." The project, according to the petitioner, also requires employees "to anticipate and prevent technical problems and to quickly and skillfully resolve problem that do arise." Specifically, the petitioner stated that the beneficiary's duties would continue to be as follows:

- Gathering requirements and interpreting them into technical specifications using [the petitioner's] **MAPAgile** Tool.- 15%
- Facilitating implementation and integration using [the petitioner's] **MasterCraft**TM tool. – 5%
- Preparing system documents and maintaining project metrics. – 10%
- Using [the petitioner's] **REVINE** tool to extract Business Rules; analyzing requirements; and seeking functional clarifications. – 10%
- Designing and developing the technical framework for system integration. – 10%
- Creating the Design and Test Plan/Result Documents; and evaluating testing coverage using [the petitioner's] **TCA** tool. – 5%
- Transmitting the programs/documentation to offshore for development. – 10%
- Monitoring system performance using [the petitioner's] **SCRUTINET** tool. – 5%

- Following up with the client for change requests/application upgrade/new version/architecture and technology changes and providing these to [REDACTED] offshore project team. – 5%
- Reporting the on-site status to offshore Project Manager and onsite Account Manager; providing early warning for any issues or concerns that may affect the overall schedule. – 5%
- Capturing the application issues and providing resolution for it in an efficient manner using [REDACTED] CONSULT tool. – 10%
- Testing the offshore deliverables and verifying that the standards set by the client are being followed. – 10%

The petitioner stated that in executing his duties, the beneficiary will utilize his knowledge of the petitioner's proprietary tools MAPAgile, MasterCraft, Revine, Test Coverage Analyzer (TCA), Transaction Profiling Solution, and Consult. The petitioner further described the nature of the specialized knowledge required for the position, stating that the proprietary tools the beneficiary is required to use are not available in the public domain, but only to the petitioner's clients through deployment of services. The petitioner stated that knowledge of the tools can only be obtained through working with the petitioner as follows: "Furthermore, unapplied knowledge of the tools does not guarantee proficiency in the client setting. Therefore, the incumbent must have proficient theoretical and practical knowledge of these tools *as applied in the client's operations*" (Emphasis in original).

The beneficiary's resume shows that he has been assigned to work for the petitioner at the unaffiliated employer's worksite since June 2009 as a Test Lead. From March 2008 to June 2009, the resume shows that the beneficiary worked as a Test Analyst and Project Lead for two projects for a different U.S. client, [REDACTED]. Prior to his transfer to the United States in L-1B status, the beneficiary was assigned to two different projects for [REDACTED]. The beneficiary stated that these projects involved the following technology: Quality Center, DB2, File-Aid, ISPF, TSO, CICS Online, Easytrieve, Endeavor, JCL, COBOL, SQL, QMF and Spufi.

The beneficiary's resume also listed training he had attended for the period 2006 through 2010. This training included an "Initial Learning Programme" completed with the foreign entity at the time of his hiring in February 2006, and additional training that included: iCalms, Introduction to QTP Programming, SQL Training, Mainframe Training, iQMS and iPMS Training, CMMi Training, Performance Testing, IBM – Rational Performance Tester, and IBM – Rational Service Tester.

The petitioner's initial evidence included the Form I-129, the petitioner's letter, the beneficiary's resume and evidence of his educational qualifications, and a copy of the petitioner's annual report. The director approved the petition without requesting additional evidence.

Subsequent to the approval, the director issued a Notice of Intent to Revoke ("NOIR"). The director advised the petitioner that, upon further review, the evidence of record did not establish that the beneficiary possesses specialized knowledge or that he would be employed in a specialized knowledge capacity. Accordingly, the director requested that the petitioner provide: (1) a detailed descriptions of the beneficiary duties on a daily basis; (2) a list of duties that require specialized knowledge; (3) a description of how long it takes to train an employee to use the specific tools, procedures, and/or methods utilized and how many workers possess this

knowledge and are similarly employed by the organization; (4) an explanation of how the beneficiary's training differs from the training provided to other employees; and (5) a letter from the human resources department detailing the manner in which the beneficiary gained his specialized knowledge, as well as certificates of completion for any training courses the beneficiary completed.

In response to the NOIR, the petitioner submitted a letter from the foreign entity's Manager – Human Resources, which provided the titles and completion dates of training courses the beneficiary attended since joining the company. The record showed that the beneficiary received a total of 19 days of training in Mapagile, Mastercraft, Test Coverage Analyzer, SCRUTINET, and CONSULT in Charlotte, NC between [REDACTED]. The beneficiary received 16 hours of training in Revine in India immediately after joining the foreign company in [REDACTED]. The training record further states that the beneficiary had been using the relevant in-house tools, including Mastercraft, Consult, Mapagile, Scrutinet, and REVINE for the unaffiliated employer project for a timeframe of 17 to 19 months.

The letter stated that the beneficiary has used these in-house tools extensively "in various activities like analysis, system documentation, design, development and unit testing and project management." The human resource manager noted that knowledge of these tools is unknown outside of the petitioner's organization.

In a letter accompanying the response, counsel provided the same list of list of job duties as submitted with the initial petition. The letter included an additional set of duties that included gathering requirements; facilitating implementation and integration; preparing system documents; extracting business rules and analyzing requirements; and designing and developing the technical framework for systems to be integrated. With respect to the beneficiary's specialized knowledge, counsel states that the beneficiary has been working on the same project for the unaffiliated employer for more than two years and eight months, and "as a result has gained expertise in [the unaffiliated employer's] EPI." Counsel also stated that as a result of the beneficiary's work on the unaffiliated employer's project, the petitioner "revamped its proprietary tools and processes." Counsel's letter included descriptions of MAPAgile, MasterCraft, Revine, TCA, Scrutinet and Consult, including the purpose, uses and benefits of each tool.

Finally, the letter described the required training for the position as "approximately six months to one year of classroom and on-the-job training." Counsel stated that, while other employees may be engaged in this training currently, the beneficiary is "the only person" in the petitioner's organization that has knowledge of the proprietary tools, procedures, and methodologies for the current project.

The director ultimately revoked the approval of the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge capacity in the United States. In denying the petition, the director noted that the petitioner's claims that the beneficiary possesses specialized knowledge were not adequately supported by documentary evidence, and that it did not appear that he possesses knowledge not held by similarly employed workers within the organization. Furthermore, director found that the beneficiary's total training does not appear to be inordinate for other software developers working for information technology consulting firms. Finally, the director stated that the petitioner's Level 5 SEI-CMM status does not establish that all of its employees consequently possess specialized knowledge.

On appeal, asserts that the beneficiary has been, and will be, employed in a specialized knowledge position. The petitioner contends that the director overlooked the beneficiary's role as it relates to the petitioner's

products, the structure of the petitioner's organization, and the beneficiary's specialized knowledge acquired abroad. Furthermore, counsel states that the director incorrectly concluded that the Level 5 SEI-CMM rating compromises the complexity of the petitioner's proprietary tools.

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in a specialized knowledge position with the United States petitioner 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),(iv). 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.

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. 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.

The petitioner's description of the beneficiary's specialized knowledge training calls into question whether the specialized knowledge is in fact a requirement for the position. First, the record reflects that the beneficiary received training on almost all of the petitioner's proprietary in-house software tools and methodologies required for the proffered position after his transfer to the United States in L-1B status. In fact, although the beneficiary listed internal training in his detailed resume submitted at the time of filing, and included training completed through 2010, he did not list any formal training in Mapagile, Mastercraft, TCA, Scrutinet or Consult, despite the fact that the petitioner later indicated that he completed this training in 2009. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Assuming that the beneficiary did in fact completed the training in in-house tools between July 2009 and September 2009, the AAO emphasizes that the petitioner is requesting an extension of stay for the beneficiary and therefore, the record should reflect that the beneficiary gained the claimed specialized knowledge during his employment with the foreign employer and possessed this knowledge at the time he was transferred to the United States. However, with the exception of completing 16 hours of training in Revine in 2006, the

beneficiary received training for the five other tools relevant to the proffered position while on assignment in the specialized knowledge position at the unaffiliated employers' site.

Second, the petitioner states that the specialized knowledge can only be gained through on the job experience with the particular client to which the beneficiary is assigned. Specifically, the petitioner stated in the initial petition that the beneficiary's project assignment requires that he "must have proficient theoretical and practical knowledge of these tools *as applied in the client's operations*." Here, the beneficiary did not work with the client until after his first transfer to the United States in L-1B status. While the beneficiary previously worked with another client, the petitioner has not claimed that his previous project experience with CIGNA resulted in his acquisition of the claimed specialized knowledge. Again, there is no evidence that the beneficiary was trained in or utilized the in-house tools that are claimed to comprise his specialized knowledge prior to June or July of 2009. The beneficiary was initially granted an L-1B visa in December 2007 under the petitioner's Blanket L petition.

The fact that the beneficiary appears to have received all of the training for the specialized knowledge position, while he was already in specialized knowledge status for the same position, calls into question whether the specialized knowledge is actually a requirement. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Even *assuming arguendo* that the beneficiary's classroom training was required to commence the specialized knowledge position, the petitioner failed to evidence that the training received by the beneficiary establishes that he possesses specialized knowledge. The training record submitted in response to the NOIR shows a total of 21 days of classroom training. The brief period of training required to learn the petitioner's technology does not evidence that his knowledge of these proprietary technologies is either advanced in relation to other employees of the company, or that it provided the beneficiary with knowledge that is special among similarly employed workers in the petitioner's industry. Furthermore, the petitioner failed to provide any evidence of the training required in the initial petition other than the petitioner's letter, generally stating that six months of classroom and on the job training was required.

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.

For the reasons discussed above, the petitioner has not submitted probative, credible evidence to establish that the beneficiary was employed abroad in position involving the claimed specialized knowledge, and therefore, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary has been, and will be, employed in a specialized knowledge position. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

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 had not met that burden.

ORDER: The appeal is dismissed.