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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 14 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Michigan corporation, is a software development, systems integration, and consulting company. The petitioner is an affiliate of located in Italy. The petitioner seeks to employ the beneficiary as a Senior Consultant for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary possesses specialized knowledge, that he was employed in a position requiring specialized knowledge abroad, and that he will be employed in a position requiring specialized knowledge in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends that the beneficiary meets all requirements for the L-1B visa category. Counsel submits a brief 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 U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in

international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. Facts and Procedural History

The issues to be addressed are whether the petitioner established that the beneficiary possesses specialized knowledge, was employed in a position requiring specialized knowledge abroad, and will be employed in a position requiring specialized knowledge in the United States

The petitioner is a software development, systems integration, and consulting company. It was first established in the United States in June 2012 as the wholly owned subsidiary of the parent company of numerous companies employing more than 3,400 people around the world. The parent company has transferred its contracts for services to be rendered in the United States to the petitioner, including contracts with

The petitioner stated on Form I-129 that the beneficiary will be working in the United States as a Senior Consultant. The petitioner described the beneficiary's duties as: being responsible for developing the Business Blueprint composition, which is a document that states all the requirements and parameters of a implementation; participating in general analysis meetings with the plant business representatives and third party software representatives involved in the project; working with the development team in order to complete the analysis and detail the technical activities; and participating in the testing phase and all the go-live activities.

The petitioner provided a description of the beneficiary's duties with the foreign entity. The beneficiary was previously employed abroad by also a wholly owned subsidiary of since March 2011 as a Senior Consultant and Technical Leader of the project team. The petitioner described the beneficiary's overall responsibility as to implement the successful rollout of the software in three warehouses around the world. The beneficiary's particular duties included: developing customizations and third party software integration; working towards the initial software installation; participating in on-site activities, support trainings performed by functional experts and preparing final configuration; supporting the general inventory assessment activity of the clients' plants; participating in the start-up of the implementation; supporting plant during the post go-live phase; and developing resources within his team, including coordination and training.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia,* evidence that the beneficiary has specialized knowledge, evidence that the beneficiary's employment abroad required specialized knowledge, and evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner clarified that the beneficiary has specialized knowledge of the company's proprietary product, a supply chain management software geared towards process management for inventory, warehousing, transportation, and order fulfillment. The petitioner explained that the beneficiary is currently the Senior Consultant and Team Leader for the company's significant account, and that his position involves specialized knowledge because the software is proprietary. The petitioner emphasized that because is a proprietary software, "no other worker worldwide in the industry has the knowledge necessary to develop and customize this product," and "only [the company] can offer the related training in order to build the required experience to become an expert." Counsel added that the beneficiary's knowledge is: (1) special because he has already taken part in the deployment of this product in three customer plants; (2) uncommon because he works with a proprietary product; and (3) noteworthy because no other employee in the U.S. or abroad has the same knowledge and experience leading a product deployment for

The petitioner submitted a letter from the beneficiary's foreign employer explaining that the whole process of deployment requires highly specialized knowledge relating to the company's processes and product, as well as to the customers' needs. The letter listed some of the beneficiary's particular duties requiring specialized knowledge as including the following:

1. Analysis of customer requirements. The petitioner explained that this duty required "understanding the practical meanings of a new requirement raised by the customer compared with the existing functionalities of the software";

2. Software installation and configuration. The petitioner explained that the suite is comprised of five different proprietary software modules: core database engine web interface engine printing application service mobile devices application service and electronic data interchange application service . The petitioner also

asserted that "[e]ach of these modules requires specialized knowledge that only [company] employees can acquire through training and work experience."

3. Development of new customization. The petitioner explained that this "requires specialized knowledge of the software structure and development guidelines."

4. Training to customer. The petitioner explained that instructors need to have "good comprehension of the software" and can give better service if they have had past working experiences.

5. Integration tests. The petitioner explained that implementation tests are made to verify the interfaces between with other software, which "requires deep knowledge of both the requirement definitions and the implementation and test phases."

6. User Acceptance Tests (UATs). The petitioner asserted that the list of the UATs "is built by the analyst and requires specialized, thorough knowledge of the whole suite that is being deployed."

7. Cutover. The petitioner explained that this is the "preparation phase of the go-live," and that "[s]pecific experience here is the key to successfully overcoming all the difficulties.

8. Go-live. The petitioner asserted that this "implies a lot of frenetic on-site activity, and experience is key to promptly reacting to all the urgent issues that may arise and to successfully driving this phase to its completion."

9. General post go-live support and bugfix. The petitioner explained that "general periodic support is required . . . [which] may include additional training, new developments, tests, and bug fixes."

The letter concluded that the beneficiary has all of the above skills, and is special within the company because he is "the only one who has been the Technical Leader for the past year and who has already participated as a main figure in the deployment of s Inbound plants around the world."

The petitioner explained that the beneficiary's direct participation in three deployments gives him "an edge about the ongoing projects," in that the beneficiary has "very specialized knowledge of the customization of the product and the specific needs of the plants." The petitioner also explained that the beneficiary has a "consolidated work relationship with representatives . . . [which is] essential to the creation of personalized solutions for our customer." The petitioner explained that the beneficiary obtained his specialized knowledge through a combination of education, training, and employment, including on-the-job training at and through his previous employer. The petitioner asserted that to successfully perform the duties of the beneficiary's position, an employee needs at least a college education in Computer Science or a related field, a minimum of

5 years' work experience in the case logistics field, a minimum of 4 months training on the suite, and an additional year of working experience with In another letter, the petitioner described the minimum requirements as including "5+ years employment in the automotive industry in order to acquire background experience in the field." The petitioner asserted that out of the company's 3,400 employees, only a dozen or so have a similar education and general background involving as the beneficiary, and the beneficiary is "special" because he is the only one who has been the Technical Leader for the past year and because he has already participated in the major deployments of

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that he was employed in a position requiring specialized knowledge abroad, and that he will be employed in a position requiring specialized knowledge in the United States. In denying the petition, the director found that the beneficiary's past and proposed duties are similar and typical of the duties of a Computer Systems Analyst or a similarly employed worker in the same field. The director also found that the petitioner failed to establish that the proffered position involves a body of specialized knowledge, and the petitioner failed to establish how the processes, methodologies, products, and procedures used are different from those used and applied by any other Senior Consultant or similar position working in the same industry.

On appeal, counsel asserts that the beneficiary has special and advanced knowledge of the parent company's products and processes, as he spent over a year analyzing, developing, customizing, coordinating, and monitoring unique solutions for using his expertise with the suite. Counsel asserts that each project requires specialized knowledge attained through experience and internal training, and that the suite itself consists of five proprietary modules, each of which also requires its own unique group of skills and knowledge that can only be acquired through internal training. Counsel asserts that the beneficiary is developing a unique system for a unique client using a proprietary software, as well as third-party software, that he is specifically tailoring.

Counsel emphasizes that because the system is proprietary to the company, the beneficiary's knowledge of it is, therefore, not generally found within the industry. Counsel asserts that "proprietary knowledge, by its very nature is 'specialized knowledge' and therefore meets the 'special' and 'advanced' requirements of 8 CFR 214.2(l)(1)(ii)(D)." Counsel emphasizes that the beneficiary is one of the few employees within the company who has knowledge of Finally, counsel asserts that it would take the foreign company over one year for any expert computer consultant to learn the company's systems and proprietary products, but it would be "impossible to impart the Beneficiary's knowledge to another worker in a fast enough way so as to not disrupt the functioning of the projects" or cause loss of profit and undue hardship upon the U.S. company.

III. Analysis

Upon review of the record, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge, that he was employed abroad in a specialized knowledge capacity, and that he will be employed in the United States in a specialized knowledge capacity.

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.

USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge. Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others in the petitioning company and/or against others holding comparable positions in the industry. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.

In the present case, the petitioner's claims are based on both prongs of the statutory definition, asserting that the beneficiary has both a special knowledge of the company's products and their application in international markets, and an advanced level of knowledge of the company's processes and procedures. In particular, the petitioner indicates that the beneficiary has special and advanced knowledge of its suite, as well as the processes and procedures needed to customize and deploy the suite with regards to one of the company's major clients.

The petitioner repeatedly asserts that the beneficiary has special and advanced knowledge of its suite because of the proprietary nature of the software system. The petitioner asserts that because is a proprietary product, the beneficiary's knowledge of it constitutes specialized knowledge. Similarly, the petitioner asserts that the beneficiary's prior, current, and proposed work with establishes that the beneficiary has been and will be employed in a specialized knowledge capacity. On appeal, counsel makes the blanket assertion that proprietary knowledge, by its very nature, is specialized knowledge and therefore that the beneficiary's proprietary knowledge "must be defined as 'special knowledge possessed by an individual of the petitioning organization's product."

Similarly, the petitioner asserts that the beneficiary has special knowledge of the processes and procedures needed to customize and deploy the suite. The petitioner asserts that the suite is comprised of five different proprietary software modules, each of which requires specialized knowledge because of the proprietary nature of the software modules.

However, counsel and the petitioner's assertions are unpersuasive and unsupported by citations to any legal authority. The fact that is a proprietary product and utilizes proprietary processes, and that the beneficiary has knowledge of this proprietary product and its processes, is insufficient to establish that the beneficiary's knowledge is specialized. *See Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982) (holding that, by itself, work experience and knowledge of a firm's technically complex or proprietary products will not rise to the level of "special knowledge"). Most software developing companies, such as the petitioner, can be said to develop and offer products that are different in some way from their competitor's products. Likewise, most companies can be said to utilize internal methodologies and processes that are different in some way from their competitor's methodologies and processes. Therefore, most software developing companies can be said to have unique or proprietary products and processes. Moreover, most employees with experience within the petitioning organization would reasonably be familiar with the company's unique products and processes. By the petitioner's logic, anyone employed at the petitioning organization with any work experience and knowledge of a company's proprietary products and processes would be considered to have "special knowledge." Such an interpretation strips the statutory language of any efficacy. In other words, specialized knowledge requires more than experience and familiarity with the petitioner's proprietary products; otherwise, specialized knowledge would include almost every experienced employee in a software development company or similar organization. If everyone in an organization is specialized, then no one can be considered truly specialized.

Here, the petitioner fails to differentiate its product suite and related processes from other similar products and processes offered and utilized by similar companies. The AAO observes that the petitioner submitted a Warehouse Management System Directory listing more than ninety different warehouse management system software companies, as well as the different software systems that each company offers and/or utilizes. The petitioner also submitted several documents describing the general features of its software system. However, the petitioner submitted no documentation providing any detailed technical explanation as to how the product suite is different from other similar products. Without such information, the petitioner failed to provide any evidentiary basis to support its claim that knowledge of product suite and its related processes is truly specialized knowledge.

In addition, the petitioner repeatedly asserts that the beneficiary's job duties abroad and in the United States require specialized knowledge, but the petitioner has neither adequately articulated nor documented any basis to support its claim. The petitioner has not sufficiently explained what specialized or advanced body of knowledge the beneficiary needs in order to perform his duties. The petitioner listed the beneficiary's particular duties that require specialized knowledge as including: analysis of customer requirements; software installation and configuration; development of new customization; training to customer; integration tests; user acceptance tests; cutover; go-live; and general post go-live support and bugfix. However, other than giving generalized descriptions regarding these internal processes, the petitioner failed to explain with any specificity

why these processes require specialized knowledge. As the director found, these duties appear to be similar and typical of the duties commonly performed by Computer Systems Analysts or similarly employed workers in the same field.

The petitioner's claim that the beneficiary's duties require special and advanced knowledge appears to be based upon two elements: (1) that the duties require knowledge of the company's proprietary products processes; and (2) that the duties require knowledge particular to the company's client, As discussed above, the proprietary nature of the petitioner's products and processes, alone, is insufficient to establish that the beneficiary's particular duties constitute employment in a specialized capacity. Furthermore, generally a beneficiary's familiarity with an unaffiliated employer's systems, requirements, and personnel, while valuable to the petitioner, cannot be considered knowledge *specific to the petitioning organization* and cannot form the basis of a determination that a beneficiary possesses specialized knowledge. Most employees within a software development company would reasonably possess project-specific knowledge relative to one or more international clients, which the petitioner would equate to specialized knowledge. The mere fact that the beneficiary possesses very specific experience with a particular international client does not establish that the beneficiary's knowledge is indeed special or advanced. On appeal counsel asserts that the beneficiary is developing a "unique" system for a "unique" client, but failed to give any details explaining why this system and client are unique. The petitioner failed to establish why the particular needs of or the project are atypical from other client projects.

In this respect, the petitioner confuses the record by claiming in one letter that, in order to perform the beneficiary's duties in the United States, an employee needs to have a minimum of five years' experience in the case logistics field. In another letter, the petitioner claims that an employee needs to have a minimum of five years' employment in the automotive industry. The petitioner failed to clarify this inconsistency, which significantly undermines the petitioner's claim that the beneficiary's work experience sets him apart from other employees or makes him particularly suitable for the U.S. position. Regardless, the petitioner failed to explain the relationship between the requisite work experience in the case logistics field or automotive industry with the beneficiary's particular duties at Notably, the letter from s director described as a "world leader in the agricultural and construction equipment business" with product offerings including tractors, specialty grape harvesters, agile skid steer loaders, and hydraulic excavators for construction. further described its use of as a "platform for production plants and spare parts depots." In short, the petitioner has failed to establish what special knowledge is required to perform the duties of the project in the United States.

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). 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. *Id.*

While the AAO acknowledges that there will be exceptions based on the facts of individual cases, an argument that an alien is unique among a small subset of workers (i.e., one of a dozen employees within a company of 3,400 employees with experience, and the only employee with three prior projects

with , will not be deemed facially persuasive if a petitioner's definition of specialized knowledge is so broad that it could include the majority of its workforce by simply altering the particular project or the number of project experiences with a particular client. The petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter.

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 and will be employed in a specialized knowledge capacity. *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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.