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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

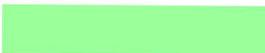


U.S. Citizenship
and Immigration
Services



DATE: **MAY 14 2013**

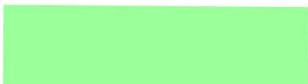
OFFICE: CALIFORNIA SERVICE CENTER

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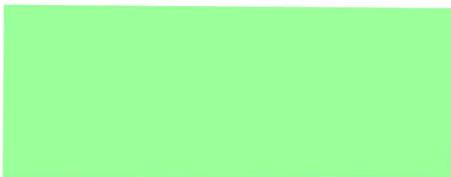
Petitioner:

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 [REDACTED] located in Italy. The petitioner seeks to employ the beneficiary as a 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 she was employed in a position requiring specialized knowledge abroad, and that she 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.

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 [REDACTED], the parent company of numerous companies employing more than 3,400 people around the world. The parent company owns [REDACTED] the beneficiary's foreign employer. The petitioner described [REDACTED] as the [REDACTED] subsidiary company specializing in Microsoft technologies and applications.

The petitioner stated on the Form I-129 that the beneficiary will be working in the United States as a Consultant. The petitioner described the beneficiary's overall responsibilities as including "working on a [Microsoft] MS Dynamics CRM project in the Chicago Area (Burr Ridge) as part of a team developing the Sales Force Automation (SFA) System for [REDACTED]" The petitioner listed the beneficiary's particular duties as: gather and analyze users' requirements; design process flows and provide a functional solution through MS Dynamics CRM; lead training sessions for end users (i.e. agents from call centers or salesmen) and trainers provided by companies involved; perform UAT (User Acceptance Test) of systems with business owners and end users; create/configure Users, Entities and Business Units, test functions developed by programmers, standard Workflow/Dialog functions provided by CRM system; import

data provided by CRM system; and write user manuals, UAT documentation, training material, and functional specifications documentation of the projects.

The petitioner provided a description of the beneficiary's duties with the foreign entity. The beneficiary was previously employed abroad by ([REDACTED]) since May 2011 as a Consultant in Customer Management Systems. The petitioner described the beneficiary's overall responsibilities as "to gather and analyze users' requirements, to design process flows, and to provide functional solutions through [REDACTED]" The beneficiary performed similar responsibilities abroad as she will in the United States, such as leading training sessions, perform UAT, writing user manuals, giving support to end users and providing system maintenance services, creating and configuring CRM systems, and test functions developed by programmers.

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 submitted a letter from the beneficiary's foreign employer explaining that [REDACTED] value is in guiding and supporting its customers in the implementation of projects using Microsoft applications, technologies, and infrastructures. The letter explained that the beneficiary's work at the foreign entity was to develop information systems for different kinds of companies through configuration and customization of the Microsoft product, *Dynamics CRM 2011*. The letter highlighted the beneficiary's prior responsibility for completing customized releases on Microsoft product, *Dynamics CRM 2011*, for the [REDACTED]. The letter listed the beneficiary's particular duties as including the following:

1. Functional Analysis. The petitioner explained that the beneficiary has knowledge and "expertise" with Microsoft Dynamics CRM 2011, and uses this knowledge and expertise to best match customer requirements with Microsoft Dynamics CRM 2011 features and suggest alternative solutions to customers.
2. Customization and Configuration. The petitioner explained that "thanks to knowledge of the Microsoft product and employment experience, the Beneficiary implements actions on Microsoft Dynamics CRM 2011" in order to model standard function to meet customer needs, perform change requests or resolve defects, and support end users.
3. Preparation of UAT (User Acceptance Test). The petitioner explained that the beneficiary develops test scripts to better test and evaluate system performance and functionalities.
4. Meeting with customers. The petitioner explained that the beneficiary's work experience, internal training, and individual study allows her to effectively and efficiently face meetings with customers and provide "customized solutions on the basis of Microsoft product standard features or customized implementations developed for previous projects.

5. Training. The petitioner explained that in order to provide this critical service, “it is necessary to have a deep knowledge of the Microsoft product (through internal training and professional study) and of the [REDACTED] customer project itself in terms of business processes.”
6. Demonstrations. The petitioner explained that “[k]nowledge of business processes involved in the project and of Microsoft product customizations” is needed in order to provide this service.
7. Support on site. The petitioner explained that the beneficiary gives support on site for Issue Management.

The letter asserted that the beneficiary’s duties require special knowledge of: MS Dynamics platform; specific “CNH context of multi-brand and multi-country services”; [REDACTED] proprietary methods as applied to [REDACTED] role of CNH official *Global System Integrator for CNH MS Dynamics*; a “consolidated relationship with CNH, knowledge of its systems and databases, as well as the interactions and integrations that take place between various systems”; and a “consolidated relationship with customer CNH’s business owners.” The letter asserted that the beneficiary’s “experience gained with [REDACTED] as part of the original team working on the [REDACTED] project is key to her success in understanding projects.” The letter concluded:

Although knowledge of the MS Dynamics platform may seem common knowledge within the industry, it is not at the level at which [REDACTED] handles it. As a Gold Certified Microsoft Partner, the services that [REDACTED] offers are much more advanced and specific than most other customization companies might offer. Moreover, adding to that the knowledge of the specific CNH context, its systems and databases, and knowledge of [REDACTED] proprietary methodologies makes [the beneficiary] have specialized knowledge not readily available in the industry anywhere in the world. Indeed, not even most other [REDACTED] employees, perhaps only 3 other employees within the whole of [REDACTED] almost 3,500 employees, share [the beneficiary’s] specialized knowledge . . .

In conclusion, the specialized knowledge of [REDACTED] products and methodologies is **proprietary** and therefore **unique** and only available to [REDACTED] Group employees. Knowledge of [REDACTED] products and of the customers’ systems and databases is essential for the successful performance of the services [REDACTED] offers is customers and also only attainable as a [REDACTED] [The beneficiary] satisfies the above mentioned requirements for the position of Consultant.

The petitioner submitted another letter from the foreign employer highlighting the beneficiary’s participation in a [REDACTED] team that constructed a proposal for CNH North America (NA) based on MS Dynamics for a new Sales Force System. The foreign employer further highlighted the beneficiary’s prior participation in two Microsoft Dynamics CRM 2011 projects for CNH Europe. The foreign employer concluded that the beneficiary is essential to the petitioner because of her employment experience, her “knowledge of [REDACTED]

Reply methodologies as regards customization of Microsoft Dynamics CRM,” and her “business relationship with the customer.”

The petitioner submitted a letter describing the beneficiary’s specialized knowledge. In particular, the petitioner described how, out of [REDACTED] employees, “each with different areas of specialization,” only three employees share the kind of specialized knowledge the beneficiary has, and only the beneficiary has been working on the [REDACTED]. The petitioner differentiated the beneficiary from other similarly employed workers using MS technology by the beneficiary’s “specific knowledge of [REDACTED] proprietary methodologies or of [REDACTED] customers’ contexts, in terms of: customer processes; customer international and multi-brand structures; direct relations with Customer’s business owners; training the Customer’s staff for use of their new system; and expertise on Microsoft Dynamics CRM 2011 at the level of Gold Certified Partner. The petitioner concluded that the beneficiary has “uncommon knowledge of [REDACTED] methodologies that is of a specialized, sophisticated nature and is unique to the Italian group, is not known in the United States, and is generally not found in the industry as a whole.”

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that she was employed in a position requiring specialized knowledge abroad, and that she 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 Consultant or similar position working in the same industry.

On appeal, counsel asserts that the beneficiary is an expert in *MS Dynamics CRM* at the level of Microsoft Gold Certified Partner, and has advanced knowledge of the *MS Dynamics CRM* product, [REDACTED] proprietary methodologies and processes, and of [REDACTED] customers. Counsel asserts that the beneficiary spent over a year analyzing, designing, developing, and monitoring “unique solutions for specific clients using her expertise in MS Dynamics CRM and [REDACTED] proprietary methodology.” Specifically, counsel asserts that the beneficiary has been a key employee abroad because she has been developing a Sales Force Automation project for [REDACTED] using her expert knowledge of *MS Dynamics CRM*. Counsel also asserts that the beneficiary is a “unique source” in regards to international market knowledge gained through her prior work experience.

Counsel emphasizes that because the beneficiary works with [REDACTED] ‘proprietary systems,’ her knowledge is “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 “the advanced knowledge of the products, services, processes, and procedures necessary to be transferred to the U.S. for the successful deployment of the U.S. company.” 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 she was employed abroad in a specialized knowledge capacity, and that she 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. However, the petitioner has neither adequately articulated nor documented exactly what company products, processes, and procedures in which the beneficiary purportedly has special and advanced knowledge.

Here, the petitioner heavily emphasizes the beneficiary's expertise and advanced knowledge of Microsoft Dynamics CRM. In the petitioner's description of the beneficiary's job duties, both abroad and in the United States, the petitioner described how the beneficiary uses MS Dynamics CRM to develop systems for its clients. Indeed, the beneficiary's foreign employer, [REDACTED] specializes in Microsoft technologies and applications, and the petitioner has repeatedly described how [REDACTED] value is in guiding and supporting its customers in the implementation of projects using Microsoft applications, technologies, and infrastructures. However, the beneficiary's knowledge of an unaffiliated third party's products cannot be considered knowledge *specific to the petitioning organization* and cannot form the basis of a determination that a beneficiary possesses specialized knowledge with respect to the company product. See Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner acknowledges that "knowledge of the MS Dynamics platform may seem common knowledge within the industry," but asserts that the beneficiary's particular level of knowledge is more advanced when compared to others in the industry because of the foreign employer's status as a Microsoft Gold Certified Microsoft Partner. However, the petitioner's attempt to correlate the foreign entity's Microsoft Gold Certified Microsoft Partner status with the beneficiary's actual skill level is without any evidentiary basis. The petitioner neither asserted nor provided any documentation to establish that the beneficiary herself is a Microsoft Certified Professional; in fact, the beneficiary's resume described her Microsoft Dynamics CRM 2011 skill level as "practical training and working experience." The petitioner failed to provide any other explanation for why it claims the beneficiary's particular level of knowledge of Microsoft Dynamics CRM is more advanced than others within the company or generally found within the industry.

The petitioner makes references to the beneficiary's knowledge and experience with the [REDACTED] Sales Force Automation project and [REDACTED] processes, systems, databases, and structure, but provides no further detailed technical descriptions about the projects or the client's processes, systems, databases, and structure. For instance, the petitioner references the beneficiary's customization of a "unique system" for [REDACTED] but fails to explain what characteristics of the customized system are inherently unique as compared to other customized systems for other clients. The petitioner also references [REDACTED] "processes," "multi-brand and multi-country services," and "international and multi-brand structures," but provides no explanation of what these processes, services, and structures entail, and more importantly, why they are different from other clients' processes, services, systems and structures. Without such information, the petitioner failed to provide any evidentiary basis to support its claim that the beneficiary's client and project specific knowledge is truly specialized knowledge.

Generally, a beneficiary's familiarity with an unaffiliated employer's systems, structures, 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. Moreover, 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 or client project does not establish that the beneficiary's knowledge is indeed special or advanced. The petitioner failed to establish why the [REDACTED] Sales Force Automation project or [REDACTED] is atypical from other projects and clients.

The petitioner also makes repeated references to the beneficiary's knowledge of the company's proprietary methodologies and processes, but again, provides no detailed technical description identifying the particular proprietary methodologies and processes utilized by the beneficiary. Without such information, the petitioner failed to provide any evidentiary basis to support its claim that knowledge of the company's proprietary methodologies and processes, alone, is truly specialized knowledge.

The petitioner asserts that because the company uses proprietary methodologies and processes, the beneficiary's knowledge of these constitutes specialized knowledge. 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.'"

However, counsel and the petitioner's assertions are unpersuasive and unsupported by citations to any legal authority. The fact that the company uses proprietary methodologies and processes, and that the beneficiary has knowledge of these proprietary methodologies and 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 utilize internal methodologies and processes that are different in some way from their competitor's methodologies and processes. Likewise, most software developing companies can be said to develop and offer products that are different in some way from their competitor's products. 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 processes and products. By the petitioner's logic, anyone employed at the petitioning organization with any work experience and knowledge of a company's proprietary processes and products 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, methodologies, and processes; 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.

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's listed the beneficiary's job duties as including: Functional Analysis; Customization and Configuration; Preparation of UAT (User Acceptance Test); Meeting with customers; Training; Demonstrations; and Support on site. However, other than generally asserting that these job duties require the beneficiary to have "deep knowledge of the Microsoft product," familiarity with the client, and knowledge of the company's internal processes and methodologies, the petitioner has not explained what specialized or advanced body of knowledge the beneficiary needs in order to perform her duties. 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.

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 three employees within a company of 3,500 employees with specialized knowledge) will not be deemed facially persuasive if a petitioner fails to articulate the basis of the beneficiary's specialized knowledge. Similarly, the argument that the beneficiary is the only employee at [REDACTED] with prior work experience with [REDACTED] will not be deemed facially persuasive if the petitioner's definition of specialized knowledge is so broad that it could include the majority of its workforce by simply altering the particular client or client project. Notably, the petitioner acknowledged that each of [REDACTED] employees has different areas of specialization. Therefore, each one of [REDACTED] employees can reasonably be said to have unique client experiences when compared to other employees. 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.