



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 16 2013** Office: CALIFORNIA 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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 California corporation, operates a power cord manufacturing and distribution business. The petitioner claims to be an affiliate of the beneficiary's foreign employer [REDACTED] located in [REDACTED] China. The petitioner seeks to employ the beneficiary as a technical sales manager for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and that the beneficiary's proposed position in the United States involves 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 for review. On appeal counsel for the petitioner contends that the director failed to apply the correct definition of specialized knowledge and asserts that the beneficiary possesses specialized knowledge and that the U.S. position involves specialized knowledge. Counsel solely 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. The Issue on Appeal

The issues addressed by the director are whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary's position in the United States involves specialized knowledge.

A. Facts and Procedural History

In support of the petition, the petitioner submitted a letter describing the beneficiary's specialized knowledge as follows:

The Beneficiary . . . has been working for [the foreign entity] for nearly 3 years since he joined our company in 2009. [The beneficiary] has been serving as Research and Development Manager, Products and Markets, of [the foreign entity] in Shen Zhen, China. In his capacity as Research and Development Manager, the Beneficiary has been responsible for performing cost analysis, managing standard costs, and forecasting costs. He calculates material costs by model and creates an expense closing report. He analyzes the effectiveness of current company products in relation to the ever-changing technology that requires the use of our products. He oversees the development/engineer department by checking and confirming the drawings/sketches of new applications, application of safety standards and samples of new products. He works closely with the safety compliance agencies and

company departments to ensure harmonization and proper connection with suppliers. He is in charge of preparing, reviewing operational reports, and scheduling to ensure accuracy and efficiency. He analyzes internal processes, recommending, and implementing procedural/policy changes to improve operations, such as supply changes or records disposal.

* * *

[The beneficiary] has intimate knowledge of the China Factory's manufacturing policies, procedure, and capabilities. Since different regions of the world have varied safety compliances for electrical products, a product made for the Chinese market may not be compatible in the U.S. market. With his specialized knowledge, [the beneficiary] will continue to manage factory's potential output as well as compliances with various governmental agencies that are needed to ensure that the highest and safest product is made for our clients in the U.S. and South America. His specialized knowledge of our proprietary procedures and products, as well as his intricate understanding of the China factory, is necessary for our office which will need to work closely with our China affiliate. We would like for this knowledge to be continued to our growing Mexico factory in terms of manufacturing and his sales and new product expertise to be present in our U.S. office. He understands the company's current product line, potential new production items, and the sale of these technical products through sales company representatives to a highly sophisticated clientele.

The petitioner went on to describe the beneficiary's position in the U.S. and his duties as follows:

In the capacity of Technical Sales Manager in the U.S., [the beneficiary] will plan, direct and coordinate the operations of the company in much the same capacity as his role in our China affiliate. He will direct and coordinate activities of businesses or departments concerned with the production, pricing, sales, or distribution of products. He will review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement. [The beneficiary] will oversee activities directly related to making products meeting the needs and demands of the current and potential clients in the U.S. and Latin American countries. The Southern California region is the optimal place for a U.S. headquarters since more and more technology based companies have offices in this region with companion maquiladora plants across the border to manufacture the product. Through company representatives in each territory, [the beneficiary] will be expanding our sales efforts.

The petitioner's initial evidence consisted, in part, of the petitioner's letter, documentation to establish the affiliate relationship between the foreign and U.S. companies, and an organizational chart of the foreign and U.S. companies illustrating the beneficiary's position.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, the following: (1) evidence that the beneficiary possesses specialized knowledge; (2) evidence that the beneficiary has been employed abroad by a qualifying organization in a position that involved specialized knowledge; and (3) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner described the beneficiary's specialized knowledge and his position in the United States as follows:

He successfully led the development of over 10 new power cord items, involving wiring capability, color-modification, and changing, end changing, etc., and thus, possesses proprietary knowledge in our products and processes. . . .

From 1993 to 2012, [the petitioner] obtained approvals for more than 30 safety standards from countries around the world for our products. Because all of our products are custom designed according to specific customer needs, [the beneficiary's] intimate knowledge of all these standards are essential to our business. [The beneficiary] plays a key role in ensuring that Safety Approval standards are met. . . . If our customers are going to sell products to different countries, their parts must meet the specific standard of each country. This is where [the beneficiary] provides a valuable service by working with the company and engineers to establish product engineering requirements and criteria to meet the standards. . . . It would take many years for a new person to be familiar with all of these standards.

Sales of our products in the United States are through representative companies. [The beneficiary] will be the person who plans, directs, and coordinates these representative companies according to their regions. Utilizing his proprietary knowledge in our products, processes, and manufacturing procedures, [the beneficiary] will work with our customers' representatives to hammer out product requirements on the outset and continuously work with customers for product improvements. He will oversee activities directly related to making products meeting the needs and demands of the current and potential customers in the United States and Latin America.

* * *

His specialized knowledge of our proprietary procedures and products, as well as his intricate understanding of the China factory, is necessary for our office which will need to work closely with our China manufacturer. We would like to utilize [the beneficiary's] knowledge maintain [sic] our market share as well as to continue to grow our business in the U.S. and Latin America. [The beneficiary] understands the company's current product line, potential new production items, to enable to the continuation of the sales of these technical products through sales company representatives to a highly sophisticated clientele.

The petitioner went on to describe the beneficiary's specialized knowledge and the difficulties of imparting such specialized knowledge to another individual as follows:

[The beneficiary] will be the only foreign worker at our company. No other employee in the U.S. has a similar position than that of [the beneficiary]. Generally, we will be able to train other employees in minor aspects of [the beneficiary's] duties. However, due to the specialized knowledge that is required for the position, the knowledge cannot easily be transferred to others within a reasonable time period. It would take someone with the unique combination of the academic and work experience of [the beneficiary] to effectively perform

the requisite duties, and to recruit and train for such skill sets would put our company at a considerable disadvantage. Additionally, the position being offered to [the beneficiary] requires the person to hold a foundation in proprietary technology, products, and processes owned as well as oversee [sic] by [the petitioner].

The person who held the position being offered to [the beneficiary] recently left our company. Without the services of [the beneficiary], [the petitioner] stands to lose an estimated \$2½ million in sales each year. Without his specialized services, [the petitioner] will lose customers

The petitioner also submitted the following documentation in response to the RFE:

- International Safety Standards for the petitioner's product;
- Quality Certifications for China, Saudi Arabia, and Brazil;
- Certifications for ISO 9001, ISO 14001, Sony Green Partner, and Canon Green Procurement;
- Samples of the petitioner's product;
- U.S. Patent of the petitioner's product;
- An organizational chart for the foreign entity;
- An organizational chart for the U.S. company; and
- A list of the beneficiary's job duties.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary's proposed position in the United States requires specialized knowledge. In denying the petition, the director found that the beneficiary gained experience and job-related training with the petitioner's policies, processes and products through employment; however, the director found that the petitioner submitted insufficient evidence to establish that the beneficiary has knowledge that is special or advanced in comparison to other similarly-experienced persons employed in the same field. The director also found that the record lacks evidence to establish that that the U.S. position involves specialized or advanced knowledge as there is no evidence in the record to demonstrate that the processes pertaining to the petitioner's organization are different from those applied by any technical sales manager or similar position working in the same industry.

On appeal counsel for the petitioner contends that the director erred when considering specific evidence submitted in the instant case and failed to apply the correct definition of specialized knowledge. Counsel describes the beneficiary's specialized knowledge as follows:

The Beneficiary gained advanced knowledge of the company's products and processes from the years of working as the Research and Development Manager. He has been serving as the foreign entity's Research and Development Manager since 2009. . . .

The Beneficiary "successfully led the development of over 10 new power cord items, involving wiring capability, color-modification, end changing, etc." . . . The fact that the Beneficiary has led the development of 10 new products for the Petitioner distinguishes the Beneficiary from other employees and others in the industry.

As the Research and Development Manager, the Beneficiary is required to have intimate knowledge of safety and regulatory requirements for all of the Petitioner's products sold in different countries and regions around the world. . . . The knowledge of all of the international safety standards and certification requirements as they relate to the Petitioner's products is an advanced knowledge in and of itself. The Petitioner indicated that "[i]t would take many years for a new person to be familiar with all of these standards" and "[b]ecause all of [the company's] products are custom designed according to specific customer needs, [the beneficiary's] intimate knowledge of all of these standards are essential to [the company's] business." . . .

Additionally, the Service has determined that the Beneficiary's position in the foreign entity as Research and Development Manager is a managerial position. . . . As such, the Beneficiary cannot be considered an ordinary or average employee but one who have [*sic*] reached a higher level in the employment hierarchy. To reach this level in the company's hierarchy, the Beneficiary must have acquired specialized knowledge of the company's products, processes and procedures.

Counsel also quotes the petitioner's description of the beneficiary's position in the United States and adds:

Additionally, the Beneficiary will be working closely with customers for after purchase customer service and to ensure that product quality is in line with company standards as well as the numerous standards around the world. As such, the Beneficiary will work with a diverse group of customers

The Petitioner stated that "we will be able to train other employees in minor aspects of [the beneficiary's] duties. However, due to the specialized knowledge that is required for the position, the knowledge cannot easily be transferred to others within a reasonable time period." . . . Thus, the proffered position in the U.S. is one which requires specialized knowledge.

B. Analysis

Upon review, the petitioner has not established that the beneficiary possesses specialized knowledge or that the beneficiary's position in the United States requires specialized knowledge.

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). USCIS 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 the first prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets. The petitioner indicated that the beneficiary has been employed at the foreign entity for 3 years and has developed 10 new products for the petitioner and "obtained approvals for more than 30 safety standards from countries around the world for our products." As a result, the petitioner claims that the beneficiary: "possesses proprietary knowledge in our products and processes"; "has intimate knowledge of the China Factory's manufacturing policies, procedure, and capabilities"; and "understands the company's current product line, potential new production items, and the sale of these technical products." However, the initial description of the beneficiary's foreign duties did not include any product development tasks; it only included tasks related to managing costs and expenses. In fact, the petitioner has not provided any clear descriptions of the beneficiary's role in the development of the new products or safety standards in order to establish that the beneficiary acquired specialized knowledge through his work as a research and development manager at the foreign entity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner states that the beneficiary will be the sole employee in the United States in the specialized knowledge position. The petitioner indicated that the beneficiary possesses a unique combination of academics and work experience that qualify him for the specialized knowledge position in the United States. However, the petitioner has not provided any evidence or other information relating to the beneficiary's education, employment history, or training at all. Based on the limited information provided, the record reflects that the beneficiary was hired for the research and development manager position at the age of 23, with no documented academic or employment qualifications for the position. This failure of documentation is important because the evidence does not demonstrate that the beneficiary possesses education, training, or experience that rises to the level of having acquired specialized or advanced knowledge. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the record, the petitioner contends that the beneficiary worked for the foreign employer as a research and development manager developing 10 new products and obtaining approvals for 30 safety standards over a period of three years, but it has not provided a detailed description of his duties or roles within the development of such products or safety standards. The petitioner claims that it has "proprietary procedures and products," but has not described or documented these procedures and products or how knowledge of such is typically gained within the organization, such that the AAO could conclude that familiarity with these procedures and products constitutes specialized knowledge. The petitioner has not documented the beneficiary's completion of internal or external training courses offered by the foreign entity or by the petitioner's clients. While the AAO does not doubt that the beneficiary is qualified to fulfill the duties of the U.S. assignment, the petitioner claims that the beneficiary possesses specialized knowledge, or that he would be employed in a position requiring specialized knowledge, fail on an evidentiary basis.

Other than its unsupported statements stating that the beneficiary developed 10 new products and a statement indicating that the beneficiary possesses a unique combination of academics and work experience, the petitioner has not submitted evidence to demonstrate that the beneficiary possesses a level of knowledge that is specialized or advanced. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position abroad and in the United States that would differentiate that employment from the position of "technical sales manager" at other employers within the industry.

The AAO acknowledges the petitioner's reliance on a 1994 legacy Immigration and Naturalization Service policy memorandum. *See* Memorandum of James A. Puleo, Acting Exec. Assoc. Comm., INS, "Interpretation of Specialized Knowledge," (March 9, 1994). However, the referenced memorandum concluded with a note about the burden of proof and evidentiary requirements for the L-1B classification:

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. Likewise, a petitioner's assertion that the alien possesses an advanced level of knowledge of the processes and procedures of the company must be supported by evidence describing and setting apart that knowledge from the elementary or basic knowledge possessed by others. It is the weight and type of evidence, which establishes whether or not the beneficiary possesses specialized knowledge.

Puleo Memorandum at p.4.

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 will be employed in a specialized knowledge

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capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. 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 not met that burden.

ORDER: The appeal is dismissed.