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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: NOV 14 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 sustain 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 Utah corporation, is a software solutions firm for the sign making, digital printing, proofing, and [REDACTED] machining industries. The beneficiary's current employer, [REDACTED] located in Belgium, is the petitioner's wholly-owned subsidiary. The petitioner seeks to employ the beneficiary as its Product Director for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that she will be employed in a position requiring specialized knowledge, or that she has been employed abroad 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 for review. On appeal, counsel contends that the director's denial is erroneous as a matter of fact and law.

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 issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge, and whether she has been employed abroad and would be employed in the United States in a position requiring specialized knowledge.

The petitioner is a software solutions firm for sign making, digital printing, proofing, and machining industries, with 15 employees in the United States, and a gross income of \$3.3 million. The petitioner explains that its software solutions turn "creative ideas into reality by providing . . . design and editing tools geared for production."

The petitioner stated the beneficiary will be working as the Product Director for its Print product line. The petitioner provided a description of the beneficiary's duties with the foreign entity, where she is currently

employed in the same position. The petitioner explained that this position is being relocated to the United States as the beneficiary reports to the petitioner's chief executive officer, while the remainder of the European staff is engaged exclusively in global product sales. The petitioner stated that the beneficiary currently manages her subordinate and interacts with other members of the organization remotely.

With respect to the beneficiary's duties, the petitioner stated that she will continue to be responsible for leading product development and strategic marketing for the company's Print product line; managing products throughout the product lifecycle; and overseeing all development activities by internal engineering employees and external developers. According to the petitioner, the beneficiary acquired a "highly advanced level of knowledge and understanding of the development, marketing and management of our proprietary specialty software products." The petitioner explained that the beneficiary has been using her knowledge: to drive the entrance of the digital printing software into the growing textile printing industry; defining the product strategy and roadmap, defining market requirements and leading assessments of partnership and licensing opportunities; functioning as product expert with respect to competitors by providing ongoing analysis of competitive products; developing strategies designed to counteract changes in competing products; and developing the core position and messaging for each product.

Furthermore, the petitioner explained that the beneficiary is one of the "most knowledgeable people in the company" with regard to the company's proprietary control systems. The petitioner stated that two individuals who had a similar level of knowledge and experience left the company when it relocated its headquarters. According to the petitioner, the beneficiary's knowledge of the control systems and how they impact the development and marketing of product lines will be critical as the software and control systems continue to be refined with software-as-a-service and cloud-based licensing trends.

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 of the proposed specialized knowledge position in the United States, and evidence that the beneficiary was employed in a position requiring specialized knowledge with the foreign employer.

In response to the RFE, the petitioner provided: documentary evidence of the beneficiary's work product; articles in printing industry publications in which the beneficiary is quoted discussing the petitioner's specialized software products; an organizational chart showing the proposed position with the petitioner's United States organization; and a more detailed description of the nature of the beneficiary's specialized knowledge, as well as additional details regarding her current and proposed duties.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary has been or would be employed in a specialized knowledge position, or that the beneficiary has specialized knowledge. In denying the petition, the director found that the beneficiary's position abroad and in the United States is similar to that of any product director and that she performs the same or similar duties.

as others in the field. Furthermore, the director found that the petitioner failed to demonstrate that knowledge of the organization's processes, methodologies, and framework is specialized knowledge.

On appeal, counsel asserts that evidence of record is sufficient to establish that the beneficiary has specialized knowledge, evidence of the proposed specialized knowledge position in the United States, and evidence that the beneficiary was employed in a position requiring specialized knowledge with the foreign employer.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

In the present case, the petitioner's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner emphasizes that the beneficiary has been serving in the position of Product Developer for the past four years, previously served as an application support specialist for two years, and has specific knowledge the company's digital sign and print software product lines as well as internal proprietary control systems.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary is one of the few employees within the petitioner's organization who possesses advanced knowledge of the company's digital

sign and print software product lines. While the director compared the beneficiary's role to the general duties normally performed by a marketing manager, such comparison is not supported by the evidence. The petitioner submitted an organizational chart which reflects that the company's product management department is separate from both the marketing department and from the product development department. The petitioner's detailed position descriptions reflect that the company's product directors are considered to be experts on their assigned products and are required to possess deep technical and business-related knowledge specific to these products.

The petitioner further established that such knowledge cannot be gained outside the organization and submitted evidence of the beneficiary's educational background and work experience that contributes to an advanced level of knowledge regarding the processes and procedures of the company. See 8 C.F.R. § 214.2(1)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires this advanced level of knowledge, as the petitioner is relocating the position and requires the beneficiary's knowledge in the United States.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be sustained.

IV. Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the director's decision dated March 27, 2013 is withdrawn.

ORDER: The appeal is sustained.