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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 19 2013 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 (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,

for Ron Rosenberg
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 sustained.

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 states that it operates a steel manufacturing business and seeks to extend the beneficiary's L-1B status so that he may continue to serve as a marketing specialist for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the beneficiary meets both prongs of the statute and regulation and both possesses and will apply special knowledge of the company's products, services, research, techniques, management or other interests related to its international operations as well as advanced knowledge or expertise of its products, processes and procedures.

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 sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 6, 2012. The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it operates a steel manufacturing business with 1,672 current employees and a gross annual income of $6.5 billion.

The petitioner stated the beneficiary will be working as a marketing specialist. In support of the petition, the petitioner submitted a letter describing the beneficiary's duties abroad as a marketing technical advisor, his specialized knowledge, and his duties at the U.S. company. The petitioner provided a lengthy description of the beneficiary's role and responsibilities, indicating that he will be responsible for assisting the director of marketing in determining the process (an internal management system), the commercial Action Plan process, and the calculation and maintenance of all surcharges in the specialty steels division. The petitioner went on to describe these processes and explained the beneficiary's proficiency in applying his

specialized knowledge to carry out the required duties, emphasizing that the beneficiary is considered a key expert implementing as it pertains to marketing functions for specialty steels.

The petitioner further described the beneficiary's specialized knowledge and indicated that he is uniquely qualified for the position in the United States as he has internal expertise in the petitioner's proprietary business activities, systems, processes, and methodologies gained as a result of four years of progressive experience in specialty steel marketing operations gained with the parent company. Additionally, the petitioner stated that the beneficiary was responsible for the "design and planning of methodologies for the Marketing and Sales of the area business, applying [the petitioner's] requirements, and lead[ing] the process of elaborating the Marketing and Sales Five-Year Plan and the [a proprietary business plan program] for this area."

The director issued a request for additional evidence ("RFE") on December 15, 2012, instructing the petitioner to submit, *inter alia*, evidence that the beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad by a qualifying organization in a position that was managerial or executive or involved specialized knowledge; and (3) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner it greatly elaborated upon the initial description by submitting a seven-page explanation of the beneficiary's duties and specialized knowledge that included specific examples of his previous assignments and the applicability of his knowledge to the U.S. marketing specialist position. The petitioner stated that the beneficiary will be employed in essentially the same position at the U.S. company as he was employed abroad, and therefore, both positions involve specialized knowledge. The petitioner went on to describe the specialized knowledge possessed by the beneficiary and how he is uniquely qualified for the position in the United States. The petitioner indicated that he was the sole person in that position abroad and it would take at least one year to train another worker in the required special steels marketing operations, which would still not confer the advanced level of knowledge of company processes that the beneficiary possesses.

The petitioner provided an organizational chart for the foreign entity illustrating that the beneficiary was the sole "marketing technical advisor." The petitioner explained that it was acquired as a U.S. subsidiary of the foreign entity in 2008 and, therefore, its existing employees do not share the beneficiary's expertise with the international group's complex internal systems, processes, policies, and methodologies. The petitioner's organizational chart illustrates that the beneficiary is the sole foreign worker assigned to the U.S. company. The petitioner emphasized that his presence is necessary to provide in-house expertise to the existing employees of the acquired company in the United States and to continue to align the petitioner's internal systems and best practices with those of its parent company.

The director denied the petition on March 20, 2013, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director stated that it appeared that the beneficiary performed the same or similar duties as other workers in a similar position in the field, and as such, insufficient evidence was presented to establish that the position of marketing

technical advisor involves a special or advanced level of knowledge in the steel manufacturing field or related occupations.

On appeal, counsel for the petitioner asserts that the beneficiary meets both prongs of the statutory and regulatory definitions of "specialized knowledge" in that it is more likely than not that the beneficiary both possesses and will apply special knowledge of the company's products, services, research, techniques, management or other interests related to its international operations as well as advanced knowledge or expertise of its products, processes, and procedures. Counsel further asserts that the petitioner has provided sufficient evidence to establish that the beneficiary's knowledge is also different, uncommon, and advanced within the organization itself.

Upon review, counsel's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge 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 both prongs of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets, as well as advanced knowledge of the company's internal processes and procedures for business planning and implementation of best practices in the marketing area. Specifically, the petitioner states the beneficiary has crucial knowledge of the [redacted] systems, as well as the petitioner's proprietary business activities, including research and analysis of various market conditions based on its internal products, equipment and processes, its competitors, and its operations. The petitioner established that the beneficiary's knowledge is special as he was responsible for the design and planning of specific methodologies for the marketing and sales of special steels abroad. The petitioner has further established that

the beneficiary's training and experience with the petitioner's systems, processes, and procedures render his knowledge "advanced" within the company, such that few, if any, employees possess the beneficiary's level of knowledge, training, and experience with internal marketing strategies and best practices for the special steels segment. *See* 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner explains that there are a total of six marketing technical advisors within the company (worldwide) and the beneficiary is the only one familiar with the practices of the special steel operations abroad as well as the most experienced technical advisor in the company's marketing of special steels. Finally, the petitioner explained that the proffered position requires the beneficiary's special knowledge and requires an advanced level of internal knowledge that is of significant complexity and can reasonably only be gained within the petitioner's group. The petitioner clearly demonstrated why the proposed assignment requires a marketing specialist with the specific experience and expertise that the beneficiary possesses due to the lack of current employees experienced in the parent company's internal systems, processes, and methodologies.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge, and that he has been employed abroad, and will be employed in the United States, in a position requiring specialized knowledge. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be sustained.

III. 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 been met.

ORDER: The appeal is sustained.