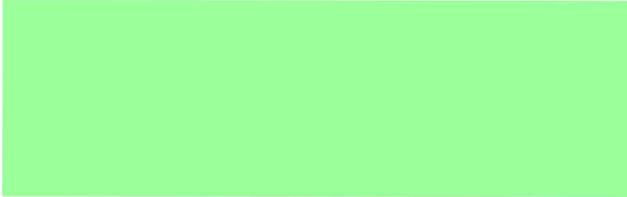




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 04 2014**

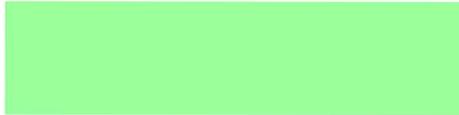
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

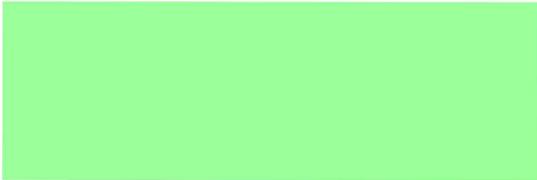
Petitioner:

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.

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.

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("director"), denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the matter to the director for further action and issuance of a new decision.

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129) 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, is in the information technology industry. The petitioner states that it is the parent company of [REDACTED] located in India. The petitioner seeks to engage the beneficiary as lead software developer [REDACTED] for a period of three years.

The director denied the petition, concluding that the petitioner failed to demonstrate that the beneficiary possesses specialized knowledge or that he would be employed in a capacity requiring specialized knowledge.

On appeal, counsel contends that the beneficiary possesses advanced and narrowly held knowledge of the company's proprietary product, [REDACTED] and that the director incorrectly concluded that this knowledge is not significantly different from that held by other similar software developers in the field.

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 was whether the petitioner established that the beneficiary possesses specialized knowledge and whether he was employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

A. Facts

The petitioner filed the Form I-129 on September 24, 2013. The petitioner stated that it "has been a leading developer of commercial [REDACTED] solutions for over 10 years," including the proprietary products [REDACTED] and [REDACTED]. The petitioner stated that it has "delivered over 400 [REDACTED] enterprise solutions globally across various industries

including portal development, content management, and big data" to address client business goals and lower their cost of doing business. The petitioner stated that it earned over \$19 million in revenue in 2011 and that it currently employs 54 in the United States.

The petitioner explained that the beneficiary began his employment with the foreign entity on April 1, 2010 as a consultant and since that time he has acquired and applied specialized knowledge in the development and deployment of its proprietary [REDACTED] product. The petitioner stated that "the beneficiary is a member of the small, core at [the foreign subsidiary in India] that designed, developed and implemented the [REDACTED] product right from when the product was conceptualized." The petitioner stated that the beneficiary's expertise is built upon seven years of core information technology experience.

The petitioner explained that the [REDACTED] product is a sophisticated market platform that "provides an easy platform for users to share their reusable components and end-to-end processes and [it] facilitates the introduction of new components making them available to other users as downloads based on request." The petitioner indicated that the [REDACTED] product helps clients efficiently set up internal web stores, introduce new products, and maximize the sharing of applications over their internal websites or intranets in a user friendly environment. The petitioner indicated that "the development of the source code for [REDACTED] is based on [REDACTED] with [REDACTED] and [REDACTED] integration," as such requiring "expertise on [REDACTED] and integration of [REDACTED] and [REDACTED] which the Beneficiary possesses."

The petitioner stated that the beneficiary supervises a team of seven IT specialists. The petitioner explained that his subordinates focus on "setting up the development environment by using [REDACTED] which would be favourable [*sic*] for creating the source code." The petitioner indicated that the beneficiary was also essential in the creation of components of the [REDACTED] product and explained them as follows: (1) [REDACTED]

In addition, the petitioner indicated that the beneficiary developed and wrote manuals relevant to the [REDACTED] source code, which were attached as exhibits and included a [REDACTED] components user manual, a [REDACTED] components technical document, a [REDACTED] components core source code document, a [REDACTED] components description and blog link, and a detailed description of [REDACTED]. However, none of the aforementioned documents submitted on the record included any mention of the beneficiary, nor was other supporting evidence provided to support the petitioner's claim that the documents were developed and authored by the beneficiary.

The petitioner indicated that the beneficiary reports to [REDACTED] project manager, and works in a position lateral to [REDACTED] senior software architect and [REDACTED] lead software architect who have "all [been] involved in the conceptualization, design development and implementation of the [REDACTED] product." The petitioner stated that these "are the only individuals at [the foreign entity] who have a complete grasp of the [REDACTED] product." The petitioner noted that the other developers on the project only focus on specific aspects of the project and thus do not hold complete knowledge of the [REDACTED] product. The petitioner also submitted a timeline specifying the development of the [REDACTED] product since October 2011 and projections into 2014. The timeline made repeated mention of Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] as leading and managing the project, but does not reference the beneficiary.

The petitioner indicated that the beneficiary had undergone training since joining the foreign entity, including the completion of a [REDACTED] course in 2013, [REDACTED] certification with the foreign entity, and that he participated in a [REDACTED] professional program in 2010. The petitioner further stated that the beneficiary was one of only eight candidates selected for advanced training coupled with an "on-the-job" experience in a simulated environment. The petitioner explained that this training was completed over a period of 48 weeks and was also coupled with work on live projects in [REDACTED] and [REDACTED].

The petitioner explained that it is imperative to have the beneficiary in the United States to efficiently handle the enhancement and customization of the [REDACTED] product for its clients and that he would act as the primary contact between the client and the development support team. The petitioner stated that he will guide and train his subordinate team in resolving issues and implementing customer projects, and impart his knowledge to U.S. based staff with no knowledge of the [REDACTED] product. The petitioner noted that it would "suffer a tremendous loss and disruption of our business plans in the event that the Beneficiary is not approved to undertake employment in the United States."

Based on an initial review of the record, the director issued a request for evidence (RFE). In the RFE, the director informed the petitioner that in order to demonstrate that the beneficiary's knowledge was special it must show that his knowledge is distinct among others of its kind, distinguished by some unusual quality, uncommon or noteworthy. The director stated that the beneficiary's duty description failed to compare him with others performing the same type of work.

In response, counsel submitted evidence similar to that provided in support of the petition, with certain additional explanations and evidence. For instance, the petitioner again explained the beneficiary's involvement with a core team that developed the [REDACTED] product and its various components.

The petitioner reiterated that the beneficiary had knowledge of the unique source code forming the basis of the [REDACTED] product held only by the beneficiary, Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED]. The petitioner stated that the other IT specialists assigned to the project, beyond the aforementioned

core team, do not hold this level of knowledge because they are supporting its development as opposed to leading the project. The petitioner indicated that the beneficiary has been involved in "the whole process right from the designing, algorithm, architecture, source code development on language with the use of and to the final development of the product."

In denying the petition, the director stated that the petitioner did not adequately explain or evidence how the beneficiary's knowledge and proficiency in the company's tools, processes and frameworks equated to specialized knowledge and concluded that the evidence demonstrated that his knowledge appeared to be the same or similar to other workers in similar positions in the field. The director further concluded that the petitioner provided insufficient evidence to demonstrate that the beneficiary was responsible for the development of the company's tools, processes, and frameworks.

On appeal, counsel reiterates that the beneficiary's knowledge results from his completion of advanced proprietary training and that the position requires advanced knowledge of the product that is narrowly held within the organization. Counsel notes that a typical software developer could not impart this advanced knowledge through training or lead the project. Counsel states that the director incorrectly concluded that the beneficiary's knowledge is not significantly different from that held by others similarly placed in the field and points to the beneficiary's involvement in the development of from its inception. Counsel contends that the petitioner has established by a preponderance of the evidence that the beneficiary's knowledge is unlike most individuals working in the company's marketplace.

B. Analysis

Upon review of the petition, evidence, and counsel's assertions on appeal, the AAO will withdraw the director's decision and remand the matter to the director for further action and issuance of a new decision.

The director has not sufficiently acknowledged and analyzed the petitioner's assertion that the beneficiary was a lead contributor in developing the proprietary product. Although the director acknowledges much of the evidence explained above, she fails to reference this evidence in her analysis. Instead, the director largely focused on the beneficiary's relatively short time of employment with the foreign entity since 2010. However, this focus of analysis appears misplaced given that the petitioner asserts that the proprietary product was developed beginning in 2011 and that the beneficiary was intimately involved in its development. The petitioner has not claimed that the beneficiary's knowledge is based on the length of his tenure and/or the acquisition of a large body of knowledge over many years, but that he was a leading member of an exclusive team that recently developed a new proprietary product.

Rather, the petitioner's claim is based on the beneficiary's possession of special and advanced knowledge of the product. It does not claim that all employees who have worked on the

product in India possess the specialized knowledge required for the U.S. position, but instead indicates that such knowledge is possessed only by the beneficiary and three other lead software developers employed by the foreign entity.

Although the director's decision will be withdrawn, the record as presently constituted contains insufficient evidence to warrant a conclusion that the beneficiary has special or advanced knowledge of the company's [REDACTED] product. The AAO maintains authority to review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, the petition will be remanded to the director for further review and action consistent with the discussion below.

The evidence submitted by the petitioner is not sufficient to corroborate the assertion that the beneficiary holds specialized knowledge of the proprietary [REDACTED] product. The petitioner states that the beneficiary was involved with [REDACTED] from the conceptualization, design development and implementation of the product and that he primarily wrote the source code, but presents little evidence to substantiate this claim. In fact, a timeline setting forth the milestones of the project makes no mention of the beneficiary, but only references the beneficiary's stated supervisors, Mr. [REDACTED] and Mr. [REDACTED] and Mr. [REDACTED] another developer. Likewise, the petitioner contends that the beneficiary wrote various manuals relevant to the [REDACTED] product and submits them on the record. However, there is no evidence to demonstrate that the beneficiary wrote these manuals. The only manual with a listed author, the '[REDACTED]' is shown as written by the beneficiary's supervisor Mr. [REDACTED] and no reference to the beneficiary is made in any of the provided manuals or power points. The petitioner repeatedly states that only four lead developers possess specialized knowledge of the [REDACTED] product required for the U.S. position, so documentation of the beneficiary's involvement as a lead developer is material to its claim. The record does not include any emails, or other such documentation, demonstrating that the beneficiary led the development of the [REDACTED] product or that he wrote or led the creation of source code or instruction manuals relevant to the product.

In addition, the petitioner states that the beneficiary was part of a select group of eight candidates selected for an advanced 48 week proprietary training that prepared him for the [REDACTED] development, thereby differentiating him from his colleagues. The petitioner submits no evidence to substantiate this assertion, such as training records, evidence of the existence of the program, or the beneficiary's selection thereto. In fact, the beneficiary's resume makes no reference to this proprietary training. Further, the petitioner claims that the beneficiary has been exclusively devoted to the development of [REDACTED] and proprietary training, but his resume reflects that he also acted as a senior developer or team lead on the [REDACTED] and [REDACTED] portals projects during his approximately three and a half years with the company. The record does not include the dates of his training or the dates during which he worked on other projects.

Therefore, the matter will be remanded for issuance of a new RFE and entry of a new decision. The director is instructed to request a more detailed employment history for the beneficiary, with

evidence of his completion of the 48-week training program, documentary evidence of his leadership of [REDACTED] product development activities, and any other evidence deemed necessary.

III. CONCLUSION

Therefore, in sum, the evidence submitted by the petitioner is not sufficient to support the petitioner's claim that the beneficiary was a leading member of the exclusive team that developed the [REDACTED] product. Although the director's decision will be withdrawn, the evidence of record as presently constituted does not establish the beneficiary's eligibility for the benefit sought. Accordingly, the AAO will remand this matter to the director for issuance of a new RFE in accordance with the discussion above, and entry of a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse, shall be certified to the Administrative Appeals Office for review.