



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: DEC 02 2014 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)

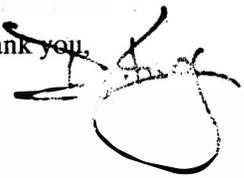
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the petition for a nonimmigrant visa. 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 established in 1999, is an advertising technology business. The petitioner states that it is the parent company of the beneficiary's employer abroad, [REDACTED] located in India. The petitioner seeks to employ the beneficiary in a specialized knowledge capacity as a Senior Sales Engineer for two years.

The director denied the petition, concluding that the petitioner had failed to demonstrate that the beneficiary possesses specialized knowledge or that he has been or will be employed in a position requiring specialized knowledge.

The petitioner filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the record demonstrates that the beneficiary's past and proposed positions involve specialized knowledge. The petitioner submits a brief and supporting documentation 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(1)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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 (1)(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 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, Petition for a Nonimmigrant Worker, on December 18, 2013. The petitioner stated in its letter of support dated July 29, 2013, that it is a "digital advertising solutions company that offers proprietary products and services used by various online advertising companies." The petitioner also stated that the beneficiary has worked for the subsidiary for four and a half years, working on "two of our major proprietary products – [REDACTED] [REDACTED]". In addition, the petitioner stated that the [REDACTED] "ranks [REDACTED] among all the independently owned ad servers in the world."

The petitioner claims that the beneficiary has been employed with the foreign entity from June 2006 until June 2008 in the position of Technical Team Lead and then from January 2011 to the present in the

position of Senior Sales Engineer. The petitioner stated that the beneficiary "played a key role in selling [the petitioner's] two major proprietary products: [REDACTED] to prospective new customers and also works with their technical teams during initial stages of implementation." The petitioner also described the beneficiary's role as Senior Sales Engineer with the foreign entity as follows:

- Attending pre-sales conference calls with US Sales Team members;
- Remotely presenting and demonstrating [REDACTED] to prospective clients;
- Responding to all technical queries from prospective clients about [REDACTED] and [REDACTED];
- Understanding prospective clients' business requirements and accordingly suggesting suitable implementation methodologies for [REDACTED] products to meet their business needs;
- Working closely with client technical teams during product evaluation and implementation phases;
- Providing post sales technical assistance to successfully implement [REDACTED] products;
- Responding to Requests for Information and Requests for Proposals sent by prospective clients;
- Acting as the Technical point of contact between [REDACTED] customers and [REDACTED] Sales and Product Management Teams.

The petitioner also explained that the beneficiary will serve as Senior Sales Engineer in the U.S. and will be "responsible for utilizing his specialized knowledge of the company's proprietary products [REDACTED] to serve as the key liaison between [REDACTED] Customers and [REDACTED] Sales and Products Management Teams." Specifically, the beneficiary will perform the following duties in the proffered position:

- Working in tandem with US Sales team members to get deals signed;
- Accompanying US Sales team members for sales calls and meetings as a technical expert on [REDACTED] products, specifically [REDACTED];
- Giving in-person demos and presentations on [REDACTED] to top US prospective clients;
- Resolving complex technical questions that arise during product evaluation and implementation phases;
- Demonstrating unique features in real time, thereby influencing clients' buying decision;
- Visiting onsite client locations from time to time in order to process critical/complex client implementations;
- Working with signed [REDACTED] customers to get them implemented successfully;
- Engaging with existing customers to introduce newly released features, advising on impact and educating on best practices for [REDACTED];
- Conducting trainings to update US Sales and Account Management teams of new features and releases regarding [REDACTED]

- Working on Requests for Information and Requests for Proposals from prospective clients;
- Participating in Sales Strategy discussions with the US Sales and Executive teams;
- Working in-sync with the US Sales Team to realize [the petitioner's] Sales and Marketing goals; and
- Promoting [REDACTED] at major industry conferences and trade shows in the U.S.

The petitioner also explained that the beneficiary acquired his specialized knowledge over the course of four and a half years of employment with the foreign entity. The petitioner stated that the beneficiary received "high-level trainings as well as day-to-day experience with these proprietary products while working with [the petitioner's] corporate clients," and "someone with less than one year of training and experience at the company would not possess his unique level of skills in these products." The petitioner further stated that "among all our employees worldwide, only two other employees possess [the beneficiary's] level of both sales and technical expertise in our critical proprietary products: [REDACTED]

[REDACTED]' The petitioner explained the beneficiary's expertise as follows:

[The beneficiary], having worked with [REDACTED] for over four and a half years, has expert knowledge of the complex product's user interface, ad formats, optimization techniques, product features (of which are hundreds), reporting capabilities, implementation methods and best practices. Likewise, with [REDACTED] he has the highest level expertise on the product's specifications, trafficking guidelines, implementation methodologies and reporting capabilities.

On December 26, 2013, the director issued a request for additional evidence ("RFE"), instructing the petitioner to provide additional evidence related to the beneficiary's position abroad, proposed position in the United States and his specialized knowledge. The director requested additional evidence to establish that the beneficiary has specialized knowledge as a result of his employment abroad and that his proposed position requires specialized knowledge.

In response to the RFE, the petitioner provided a more detailed statement for the position abroad and the proffered position, with a percentage breakdown of all the duties and an explanation of how each duty involves specialized knowledge.

In the job duties of the foreign position, the petitioner explained that the duties the beneficiary performed involved specialized knowledge for the following reasons:

Both [REDACTED] are complex proprietary products from [the petitioner]. [REDACTED] has hundreds of features and various capabilities which need in depth understanding of the entire product. In addition, [REDACTED] are innovated and built by [REDACTED] and have various specifications, trigger settings, implementation methodologies and tracking mechanisms. So to effectively present and demonstrate such complex proprietary products to prospective customers (knowledge of which not being

available readily in the outside market place) one needs to have extensive hands-on work experience with these products. Presenting and demonstrating these two products effectively influences the buying decision of prospective customers and hence it is very important to have special knowledge of these two products in order to perform such an important duty.

The petitioner also explained why others at the company have not acquired this level of knowledge of these two proprietary products as follows:

Others working in different teams in the company have different job duties and specific skill sets which are relevant to those specific teams. Among all other teams in the company (e.g. Web Applications, Quality Assurance, Network Operations, Client Team) only the Sales Engineering team serves as liaison between [the petitioner's] prospective corporate customers and all its internal teams (such as Sales Team) and all the other aforementioned technical teams. Sales Engineering requires both in-depth technical and business knowledge of [the petitioner's] products, as well as knowledge of their application in the international market in order to effectively help sell and implement these products for corporate customers all around the world. This requires extensive hands-on experience with these products. Others working in different teams with different job duties and levels of work experience do not have the required (i.e. both business and technical) exposure to these products similar to that attained by a Sales Engineer, and hence it is improbable for them to gain the required level of advanced, unique, critical, specialized knowledge of these proprietary products.

The petitioner also provided an "Itinerary of Training to be Provided by [the beneficiary] to [the petitioner's] U.S. Workers While in his Specialized Knowledge Role." The document provided an outline of training the beneficiary will provide to U.S. workers on [redacted] between April 2014 and March 2015.

The petitioner provided an expert opinion letter from Professor [redacted] Ph.D., [redacted], School of Business, Computer Application and Information Systems. The letter evaluates the beneficiary's job duties and education, and the letter concluded by stating that "an in-depth analysis of the knowledge acquired by [the beneficiary] through his critical roles selling and implementing proprietary products with [the foreign entity] indicates that [the beneficiary] indeed possesses specialized knowledge of the proprietary products of [the petitioner]."

On March 31, 2014, in denying the petition, the director stated that the evidence does not establish that the knowledge required of the beneficiary amounted to "specialized knowledge" as contemplated by the regulations or that the beneficiary duties were any different or more advanced than any other worker in a similar position in the field. The director found that the petitioner provided insufficient evidence to establish that the beneficiary's knowledge of the company products, processes and procedures, qualified as specialized or advanced knowledge.

On appeal, the petitioner states that the director erroneously disregarded "abundant, persuasive evidence in the record provided by the Petitioner demonstrating that the Beneficiary, through five years of working

directly with these proprietary products and undertaking formal training, as well as through his foundational technical education, became one of only three employees at the company worldwide possessing advanced expertise in [REDACTED]" On appeal, the petitioner submits a brief and additional supporting documentation.

2. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was and would be employed in a specialized knowledge capacity or that he possesses 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 was employed abroad and will be employed in the United States in a specialized knowledge capacity. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iii). 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 his foreign and proffered positions satisfy either prong of the definition.

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 advanced or special, and that the beneficiary's position requires such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, the petitioner needs to establish that the beneficiary possesses specialized knowledge. 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.

The petitioner's claims are based on both prongs of the statutory definition of "specialized knowledge." Specifically, the petitioner states the beneficiary has special and advanced knowledge of the petitioner's proprietary products, namely the [REDACTED]

In examining the specialized knowledge capacity of the beneficiary, USCIS will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3). The petitioner must submit a detailed job description of the services performed to establish specialized knowledge. *Id.* Merely asserting that the beneficiary possesses, or that the position requires, "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

In the present matter, the petitioner has provided insufficient explanation and supporting evidence relevant to its processes and technologies to establish that the knowledge held by the beneficiary is specialized or advanced. The petitioner states that [REDACTED] are two major proprietary advertising solutions utilized by the petitioner and stated that "unlike our competitors, [REDACTED] is the first full-fledged ad server to offer a complete Self Service Advertising module that can be plugged into any website." However, the petitioner provides only cursory discussion of these innovations and provides no supporting documentation, other than its own statements, to support these assertions. For instance, the petitioner provides an explanation of the programs it employs, but does not sufficiently discuss how these programs differ from others used in the industry or provide documentary evidence to demonstrate that these techniques are exclusive to the foreign entity and its affiliates as claimed. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the petitioner has not provided sufficient evidence that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that his knowledge is special or advanced. The petitioner stated that the beneficiary is only one out of three employees with a special knowledge of the [REDACTED]; however, the petitioner does not explain how many individuals are employed by the whole company, and more specifically, how many Senior Sales Engineers are employed by the petitioner. In addition, the beneficiary's knowledge must be distinguished as different from knowledge that is commonly held by other Senior Sales Engineer in the industry. Merely stating that the beneficiary holds proprietary knowledge or establishing that it is technically complex is not sufficient. The petitioner must demonstrate that this knowledge is noteworthy or uncommon within the company's organization or within the industry, when compared to similarly placed colleagues. Here, the petitioner has submitted little evidence to establish that the beneficiary's knowledge is advanced or special as compared to other Senior Sales Engineers in the digital advertising solutions field.

Although the petitioner repeatedly asserts that the beneficiary has specialized knowledge in the [REDACTED] the record does not establish the precise requirements including training and experience to establish the actual nature of this knowledge, especially since the proprietary systems are two of the petitioner's "major proprietary advertising solutions of the company's business." For example, the petitioner asserted that the beneficiary has special and advanced knowledge, in part, because he was

employed by the petitioner for four and a half years in "highly specialized, technical positions with the company." The petitioner also stated that the beneficiary used and gained his specialized knowledge during many client-specific projects throughout the four and a half years. The petitioner provided a description of the beneficiary's duties which listed tasks that could be considered typical of a Sales Engineer, such as determining customer requirements, customizing the solution, assisting with the implementation, testing and training. Thus, it appears that this hands-on work experience could be obtained by any employee that holds the position of Senior Sales Engineer.

In addition, the record does include a list of training courses that the beneficiary completed for the senior sales engineer position, and did not explain the significance of the courses. On appeal, the petitioner noted that the beneficiary "completed formal, structured training in the company's proprietary products during his employment with the company abroad," comprised of "Basic and Advanced Training Modules." The beneficiary also completed "web-based training directly through the [REDACTED] interface." The petitioner explained that the duration of the Basic Training is three months and the Advanced training is six months. However, the petitioner did not explain if any other employees received this training. In addition, the petitioner provided a vague course description and did not provide details of the specifics of the training and the hours the beneficiary spent each week on the training. Therefore the petitioner has not provided sufficient evidence to establish that the training required would take an excessively long time or that it was limited to the beneficiary.

The petitioner submitted a [REDACTED] associate professor's advisory opinion attesting to the specialized nature of the beneficiary's knowledge. We may, in our discretion, use advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, we are ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

Upon review of the opinion letter, there is no indication that Dr. [REDACTED] possesses any knowledge of the petitioner's proffered position and its business operations beyond the information provided by the petitioner. Dr. [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Moreover, Dr. [REDACTED] did not indicate that he visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Dr. [REDACTED] also fails to reference and discuss any studies, surveys, industry publications, other authoritative publications, or other sources of empirical information which he may have consulted in the course of whatever evaluative process he may have followed. In short, while there is no standard formula or "bright line" rules for producing a persuasive opinion regarding the specialized knowledge of an individual and a position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than Dr. [REDACTED] has done here.

In summary, we conclude that the opinion letter rendered by Dr. [REDACTED] is not probative evidence to establish the beneficiary has obtained specialized knowledge of the petitioner's proprietary products. The conclusion reached by Dr. [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is

an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from Dr. [REDACTED] does not establish that the beneficiary has specialized knowledge.

Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that he has been or would be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.

ORDER: The appeal is dismissed.