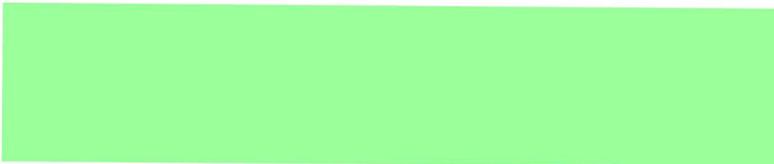


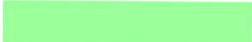
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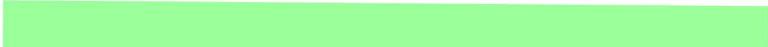
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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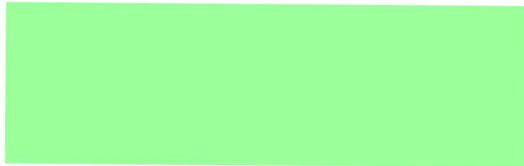


DATE: **DEC 08 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:



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,

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 dismiss 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 California corporation, is a hardware and software solutions firm. The petitioner claims to be an affiliate of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as an Applications Manager/Product Specialist for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a position involving specialized knowledge, that the beneficiary possesses specialized knowledge, or that he will be employed 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 erred as a matter of law in determining that the petitioner failed to establish that the beneficiary was employed abroad in a position involving specialized knowledge, that the beneficiary possesses specialized knowledge, or that he will be employed in a position requiring specialized knowledge.

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 United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

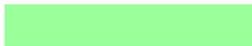
If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may 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.

Finally, 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.

I. The Issue on Appeal

The sole issue addressed by the director is whether the beneficiary has specialized knowledge and whether he has been, and will be, employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Facts

The petitioner is a software and hardware solutions firm, with four employees, and a gross income of \$2.2 million. The petitioner provided a letter in support of the initial petition dated February 19, 2014. The petitioner described their product as "innovative image enhancement, color correction and restoration systems" used by movie studios, television networks, and post-production facilities. The petitioner also noted that the company's research and development group has developed multiple generations of the  image processing systems. The petitioner stated that the beneficiary currently serves as the Quality Assurance Manager for the foreign entity. In this role, the beneficiary performs the following duties:

He organizes and manages the department, immediately creating a positive and effective working environment in the department. He helped drive development cycle after the head of R&D left the company, and he manages to streamline an already successful development team. He demonstrates an excellent understanding of the R&D working methods and has been able to keep the release cycle of the software running smoothly.

The petitioner explained that the beneficiary began working for the foreign entity as a Quality Assurance Engineer in 2007 before moving to the "specialist" role as a Support Engineer for the [REDACTED] region. The petitioner stated that the beneficiary performed the following duties as a Support Engineer:

[He] was responsible for providing and organizing direct after sales technical support to our global customer and reseller channel base through telephone, email, and fax. In addition to executing the support, documenting the calls including follow up of any required support actions was required. Within the [REDACTED] region specifically [the beneficiary] was required to carry out troubleshooting and repairs of our proprietary technology and related specialist computer hardware components at the customer site. In house training for customers at our [REDACTED] office or on the customer site was also one of [the beneficiary's] duties. On site customer installations and system approvals throughout [REDACTED]. Due to nature of our business and industry sector [the beneficiary] could also be called upon to perform or participate in customer demonstrations of our products, this could be at a customer site or in our [REDACTED] demonstration facility.

Assisting the sales organization with technical information to ensure the complete qualification and maximization of every sales opportunity was also an essential requirement. Reporting market feedback to R&D, Product Management, Sales, and Marketing was also another important duty. Being involved in beta testing new code and products was also another important role.

The petitioner explained that the beneficiary worked for the parent company from January 2007 to December of 2011, and from December 2012 to the date of filing.

The petitioner attached a copy of the beneficiary's resume. The resume lists his position as a Quality Assurance Manager from December 2012 to "present."

The petitioner attaches a copy of an organization chart showing the beneficiary as a "Support Engineer." The chart is labeled "[REDACTED]" and does not clarify whether it is the United States entity or foreign employer. The chart also shows a second support Engineer, Senior Support Engineer, and Head of Customer Report all in the same department. The chart shows a total of 25 employees.

The director issued a Request for Evidence ("RFE") on March 8, 2014. The director requested that the petitioner provide, among other items, evidence that the beneficiary has specialized knowledge and evidence of the specialized knowledge position with the foreign and United States employer.

In response, the petitioner provided a letter describing the beneficiary's training and experience abroad, copies of his degree, documents credited for work created using [REDACTED] products; copies of documents created for software releases; copies of press releases; copies of product brochures; and copies of awards for technological excellence.

The petitioner's letter in response to the RFE states that the beneficiary started his career at [the foreign entity] as a QA Engineer. The petitioner stated that the beneficiary's "initial phase of training at [the foreign entity] was a six month period with time spent on all of our products." During this time, the petitioner explained that

the beneficiary worked with the head of Quality Assurance, Demo artists, senior engineers, and product managers. The petitioner further stated that in order to "QA" the product effectively, the beneficiary had to understand "every element of our services," The beneficiary, therefore, spent "a minimum of two months training with each of our products."

According to the petitioner, the knowledge gained as a QA Engineer position him well to move to his role as a Support Engineer for the [redacted] region [redacted]. The petitioner provided the same explanation of the beneficiary's duties in this role as provided in the initial petition. Regarding the training necessary for this position, the petitioner stated:

It takes several years to obtain the basic knowledge required. After seven years, [the beneficiary] has become an expert in his field yet his is still continuing to learn and improve within this highly specialized and technical environment.

Regarding the beneficiary's specialized knowledge, the petitioner summarized his on-the-job training as follows:

With seven years of experience working at [the foreign entity], in this time, [the beneficiary] has gained a unique blend of experience working with the R&D team, global sales and direct customer offering onsite support and specialist training in our product range. Because [the beneficiary] has been able to work with many of our products from the ground up, to gain this level of experience would require several years training and time on the job within our R&D environment here in the UK and Sweden to be able to replicate the knowledge that [the beneficiary] has spent with this company to obtain a similar level of knowledge that [he] has gained.

According to the petitioner, two support engineers in the UK, one freelancer, and one employee in [redacted] NY have the same knowledge as the beneficiary. The petitioner further states that there is no other team member who has the beneficiary's experience to "deliver high end manufacturing support in one of our most important regions." Furthermore, the petitioner claims that it would take "several years for any new employee to obtain the knowledge [the beneficiary] has gained.

Furthermore, the petitioner states that with the release of new products including [redacted] the petitioner must have a member who has an understanding of how these products work, how to set them up, and give technical guidance to the customer's in the [redacted] region.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed in a specialized knowledge position or that the beneficiary possesses specialized knowledge. In denying the petition, the director found that the petitioner failed to explain and provide evidence to show how the beneficiary's proficiency with the petitioner's products equates to specialized knowledge. The director concluded that it appears that the beneficiary performed the same or similar duties as other workers in a similar position in the field. The petitioner, therefore, cannot establish that the position abroad involved specialized knowledge.

With respect to whether the beneficiary possesses specialized knowledge, the director noted that the petitioner failed to establish how familiarity with the organization's products, processes, and methodologies equates to specialized knowledge. The director also states that the petitioner did not provide evidence to show that the beneficiary completed two months of training on each of the products.

On appeal, the petitioner claims that evidence is sufficient to establish that the beneficiary was employed abroad in a position involving specialized knowledge, that the beneficiary possesses specialized knowledge, or that he will be employed in a position requiring specialized knowledge. The petitioner states that the director failed to address evidence in his decision.

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary possesses specialized knowledge or that he was employed in a specialized knowledge capacity with the foreign employer as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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). 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. *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.

[REDACTED]

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In the present case, the petitioner's claims are based on the first and second prong of the statutory definition, asserting that the beneficiary has a special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

The petitioner failed to meet its burden of proof with regard to the specialized nature of: (1) the beneficiary's actual duties; (2) the tools and methodology required to perform the duties; and (3) the beneficiary's knowledge of the petitioner's product.

First, it is not clear which position abroad the petitioner claims involves specialized knowledge. The petitioner generally states that the beneficiary has served in three prior positions (Quality Assurance Engineer, Support Engineer for the [REDACTED] region, and Quality Assurance Manager) with the company abroad from January 2007 to December 2011, and from December 2012 to the date of filing. However, the petitioner fails to articulate which position demonstrates that the beneficiary was employed in a specialized knowledge capacity abroad. Additionally, the petitioner did not state when the beneficiary worked in each position abroad. In both the initial petition and in response to the RFE, the petitioner stated that the beneficiary served in the "specialist role" of Support Engineer for the [REDACTED] region. The petitioner did not, however, state that the position of Quality Assurance Engineer was one involving specialized knowledge.

If the position of Support Engineer for the [REDACTED] region, is the claimed qualifying position abroad, then the petitioner has failed to provide evidence showing that the beneficiary served in this period for the at least one year in the three years prior to his application for admission to the United States. In the petitioner's initial letter of support, and in response to the RFE, the petitioner states that the beneficiary served in "specialist" role as a Support Engineer for the [REDACTED] region and that the beneficiary was qualified for this position based on his prior experience as a Quality Assurance Engineer. The petitioner states that the beneficiary was employed in the position of Quality Assurance Engineer and Support Engineer for the [REDACTED] region from January 2007 to December of 2011. The petitioner does not clarify when the beneficiary moved to the role of Support Engineer for the [REDACTED] region. The petition was filed on February 25, 2014. The beneficiary, therefore, must have completed one continuous year in a specialized knowledge position with the foreign employer on or after February 25, 2011. Even if the beneficiary started the position of Support Engineer before February 25, 2011, the beneficiary left the company in December of 2011. Therefore, the beneficiary only spent approximately 10 months at best in the claimed qualifying position.

Assuming *arguendo* that the petitioner is claiming that the position of Quality Assurance Manager also qualifies as a specialized knowledge position, the petitioner fails to describe the training and knowledge required for the position with any specificity. In the letter in response to the RFE, the director states that it takes "several years to obtain the basic knowledge required" for the position of Support Engineer for the [REDACTED] region. The petitioner generally claims that the beneficiary has "gained a unique blend of experience" after seven years with the company, but does not state with any specificity what training the beneficiary received with respect to the position of Quality Assurance Manager. 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)).

On appeal, the petitioner clarifies that the beneficiary spent a total of six months training on each of the petitioner's product lines. The petitioner states that the beneficiary received this training upon entering the company as a Quality Assurance Engineer. The petitioner, however, fails to describe how this training differs

from training that any other Quality Assurance Engineer in the company would receive. As stated above, the petitioner appears to be claiming that the specialized knowledge role abroad was the Support Engineer for the region. The petitioner, therefore, has not demonstrated how the six months of training that the beneficiary received in his entry level position would provide the beneficiary with an advanced level of knowledge of processes and procedures of the company. Furthermore, the petitioner has not described how this training imparts upon the beneficiary special knowledge of the company product and its application in international markets beyond what a Support Engineer in the industry would possess.

Additionally, in response to the RFE, the petitioner provided further explanation regarding the specific programs that the beneficiary will be assigned to by the petitioner. The petitioner stated that the beneficiary will work with their proprietary product lines of . The petitioner, however, failed to specify how the beneficiary's knowledge of these products is different than other employees with the company, and does not state when or how the beneficiary received training on these product lines. In the alternative, the petitioner does not articulate how the beneficiary has a special knowledge of the company product and its application in international markets compared with other applications/product specialists in the industry. Additionally, the petitioner fails to articulate with any specificity the amount of time the beneficiary has trained on these products and which of the beneficiary's prior three positions with the company involved work on these two product lines.

Finally, the petitioner claims that the beneficiary is only one of four employees in the overall organization that "holds similar knowledge," but failed to specify what specific knowledge they hold that qualifies them for the position in the United States or what training these other employees have also received.

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.

For the reasons discussed above, the petitioner has not submitted probative, credible evidence to establish that the beneficiary was employed abroad in position involving the claimed specialized knowledge, and therefore, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary has been, and will be, employed in a specialized knowledge position. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

II. 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.