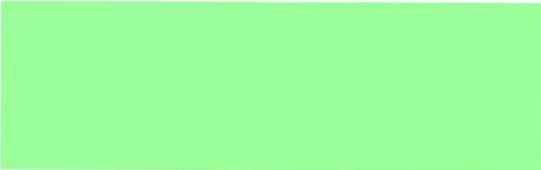




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **DEC 11 2014** Office: VERMONT 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. 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 Director, Vermont Service Center, ("the director") denied the nonimmigrant visa petition. 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).¹ The petitioner, a Delaware corporation established in year, states that it intends to provide math and English tutoring. The petitioner claims that it is the parent of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary in the United States in a as its "Assistant Centre Director" ("ACD") for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved 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.

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 parent, subsidiary, or affiliate of the foreign employer in a qualifying managerial or executive capacity or in a capacity that involves specialized knowledge.

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

¹ We note that the beneficiary was granted an E-2 visa for employment with [REDACTED] as a Center Director valid from November 26, 2014 to November 23, 2019.

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.

In addition, 8 C.F.R. § 214.2(l)(3)(vi) further provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

II. The Issue on Appeal

The primary issue to be addressed on appeal is whether the petitioner established that the beneficiary had at least one year of full time employment abroad in a position that was managerial, executive, or involved specialized knowledge.

A. Factual and Procedural Background

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on December 16, 2013. The petitioner stated that the beneficiary has been working for the foreign entity as an ACD since October 2012 and would continue to serve in the same position in the United States if the instant petition is approved.

In an undated supporting statement, the petitioner claimed that the beneficiary's current and proposed positions require the beneficiary to assist customers of the centers "on a one-on-one basis by determining the optimum, individualized tutoring program" and to help "a team of part-time tutors using their specialized knowledge and hands-on experience with [the company's] Development Plan." The petitioner further stated that the beneficiary "must apply her specialized, hands-on knowledge of [the company's] products and services" in carrying out the following job duties:

- Teach[es], mentor[s] and create[s] learning pathways for children by applying specialized knowledge of [the company's] methods, techniques and tested experience[.]
- Determine[s] individual needs and abilities of children[.]
- Provide[s] detailed feedback to parent and children members[.]
- Discus[se]s member goals based upon [the company's] methods and techniques[.]
- Develop curriculum pathways to meet children's needs according to [the company's] methods and techniques[.]
- Resolve[s] conflicts and manage interaction with member parents and children, and potential members and teachers[.]
- Oversees the center's presentation and atmosphere
- Develops schedules and rotations[.]
- Provides feedback to Centre Director and Senior Management necessary to assess hiring and compensation decisions[.]
- Participates in the negotiation of budget costs, collection of debt and improvements of pricing for members by determining and implementing additional content sales[.]
- Interfaces directly with member parents and children[.]

The petitioner further added that the proposed position in the United States requires someone with "specialized knowledge and hands-on experience as an Assistant Centre Director" so that she is able to "implement the necessary methods and techniques of [the company's] tutoring programs to meet the demands of the members and prospective members it serves."

After reviewing the petitioner's supporting evidence, the director determined that the petitioner had failed to establish the beneficiary's eligibility for L-1B nonimmigrant status. Accordingly, the director issued a request for evidence (RFE) instructing the petitioner to explain the following: how the beneficiary's knowledge is different from that of others employed in similar positions within the industry; which product, service, process, or procedure that is part of the beneficiary's employment involves specialized knowledge; how the beneficiary's knowledge is advanced and how the employer's products, techniques or services are special. The director also asked the petitioner to disclose the minimum amount of time required to gain the specialized knowledge that the beneficiary is claimed to possess, including training and hands-on experience after the conclusion of training. With regard to training, the director asked the petitioner to state the duration of courses taken, the number of hours spent daily on training courses, the completion dates of any courses taken, and to provide certificates of completion. In addition, the petitioner was instructed to provide a statement describing the beneficiary's training or experience with the foreign entity as well as a detailed explanation of the beneficiary's advanced knowledge of the company's processes and procedures. The petitioner was also asked to compare the beneficiary's knowledge and training to other workers within the same organization who are similarly employed.

In response to the RFE, the petitioner stated that the beneficiary uses specialized knowledge in performing most of her daily tasks and is currently working at one of only two facilities in the United Kingdom that will use a new curriculum tool – [REDACTED] – which will also be used by the petitioner. The petitioner pointed out that the beneficiary is one of four ACDs, out of a total of 178 ACDs, who have knowledge of the [REDACTED] tool and further noted that the beneficiary's prior experience in opening a

new center in the United Kingdom "provides her with unique insight" as to how to launch a new center in the United States.

The petitioner also asserted that the director imposed an additional legal requirement by asking the petitioner to establish the precise time when the beneficiary obtained specialized knowledge. The petitioner further asserted that the plain language of the relevant statute indicates that Congress did not intend to place emphasis on the period of time spent working abroad in a specialized knowledge capacity. The petitioner also contended that the statutory language does not indicate that the beneficiary must attain a certain level of expertise prior to being deemed an individual who works in a specialized knowledge capacity.

The RFE response also included a statement, authored by the founder and CEO of both the foreign entity and the petitioner, [REDACTED] Mr. [REDACTED] described the company's products and services, its start-up history, and its goals for future expansion. He included the following list of responsibilities for ACDs and center directors:

- All communication with parents, including holding "trial sessions," feedback at the end of each session and holding a Parent Conference every two months[.]
- Implementing the center's marketing and sales plans[.]
- Recruiting, training and managing the team of part-time tutors[.]
- Ensuring [that] the center achieves its educational, operational financial targets[.]

Mr. [REDACTED] explained that the beneficiary and the center director would be responsible for both the educational and financial success of the center. Although Mr. [REDACTED] stated that hiring "experienced Assistant Directors will be the main source of Center Directors," he did not specify what qualifications had to be present for one to be deemed an "experienced" assistant director. In a separate statement, dated February 7, 2014, Mr. [REDACTED] discussed his company's "unique approach to teaching." Mr. [REDACTED] stated that the beneficiary "has undergone and excelled at a large number of national trainings days," which he claimed are also offered to the entire teaching staff so that they can "become experts in [the company's] curriculum." Mr. [REDACTED] claimed that the beneficiary teaches and mentors students "by applying the [company's] techniques, tools and approach" and added that she works as a first-line supervisor and trainer of the part-time tutors at her center to ensure that they use "the same methodology and approach."

In addition, Mr. [REDACTED] provided the following list of the beneficiary's daily job duties:

- Using the [REDACTED] methods, she evaluates initial start levels for new pupils and assesses how we can accomplish their personal learning goals[.]
- Using the [REDACTED] methods and techniques, she develops a customized, constantly adapting curriculum approach for each child
- She provides feedback reports on each child showing their progress and areas which she shares with parents/guardians through the [REDACTED] Parent Conference structure[.]
- She conducts training of the tutors at her learning centre, ensuring that they are properly applying [REDACTED] ; unique teaching product, techniques and procedures when they are teaching the other children[.]
- She supervises the tutors at her learning centre to ensure that they are properly applying [REDACTED] s unique teaching product, techniques and procedures when they are teaching children[.]
- She develops the schedule and rotation of learning centre tutors and staff, ensuring that the appropriate tutors are available to meet with the children when they come in for a session[.]
- She works with the Centre Director and Senior Management when reviewing hiring and compensation decisions for her centre team[.]
- She plans, delivers and evaluates specialist lessons

- She is involved in the process of developing and implementing the budget for her centre as well as the collection of accounts receivable and determining the best price-point for any specialist class sales.

Mr. [REDACTED] claimed that the beneficiary has specialized knowledge of the company's products and teaching techniques and procedures "as well as [its] unique management marketing model" which has been used to open centers in the United Kingdom. Mr. [REDACTED] indicated that the beneficiary, "together with other UK staff," has taken part in developing new tools for the U.S. market's curriculum, including a math problem solving project concerning financial literacy. Based on her prior accomplishments abroad, Mr. [REDACTED] expressed his interest in hiring the beneficiary in the United States to provide on-the-job training to the ACDs who will staff the U.S. center.

The petitioner also provided a sample personal development plan, which listed courses that are part of the ACD's induction training and advanced skills training and listed the training modules for four weeks of training. The personal development plan explains the self-study component and indicates that ACDs should complete all in-center and head office training courses within three to six months. The professional development plan lists the various training modules included in the induction training and describes the courses that are part of the advanced skills training.

In a decision, dated February 27, 2014, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad for one continuous year in a position involving specialized knowledge. The director observed that the petitioner failed to disclose the beneficiary's training history or establish how long it took for the beneficiary to be trained to use the foreign entity's specific products, tools, procedures or methods that were required for her position as an ACD. While the director acknowledged the various prior references to the beneficiary's training, he found that the petitioner did not provide the information that was necessary to determine when the beneficiary gained knowledge of the company's [REDACTED] tool or the amount of on-the-job training that was required for the beneficiary to become an ACD.

On appeal, the petitioner submits a brief and asserts that the beneficiary's time spent in training should be counted as part of the one-year that the beneficiary spent working continuously in a specialized knowledge capacity.

B. Analysis

Upon review, we find that counsel's assertions are not persuasive.

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and 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 current and proffered positions 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.

In the instant matter, the record lacks sufficient information specifying the nature of the beneficiary's claimed specialized knowledge and the training the beneficiary received in order to gain such knowledge. While the petitioner provided a copy of its Professional Development Plan that all ACDs must complete within three to six months of hiring, it did not provide documentation to confirm the beneficiary's completion of such training for the record. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As the petitioner did not provide the beneficiary's specific training record, it is entirely unclear when she acquired specialized knowledge. Despite Mr. [REDACTED] claim that the beneficiary has been trained in the company's newest product – [REDACTED] – in addition to the general training mandated for all ACDs,² the petitioner failed to provide any information as to the type of training involved in learning the new tool, how long it took to train the beneficiary in the use of this tool, and when the beneficiary actually took the training. In other words, based on the deficiencies in the evidence provided, we are unable to determine when the beneficiary completed all the training required to fully carry out the duties of her position and, more importantly, when the beneficiary completed the training in her company's newest tool, which Mr. [REDACTED] claimed is only offered to a limited number of ACDs. In fact, the record contains no information specifically identifying the training requirements, including the specific information to be conveyed during the training or the specific length of time required to complete the training for the [REDACTED] tool.

Furthermore, although the petitioner claims that the alleged specialized knowledge can only be acquired through completion of its internal training program, we note that the beneficiary in this case, according to her resume, immediately assumed the position of ACD upon joining the foreign entity in October 2012. Despite her lack of training in the petitioner's processes and procedures, the beneficiary was hired by the foreign entity to perform precisely the same duties she would be performing in the United States.

This fact directly undermines the petitioner's claims. There is no evidence that the beneficiary completed any training before assuming the duties of ACD with the foreign entity. Although the petitioner has indicated that some portion of its training program is conducted on-the-job, it has declined to specify at what point a trainee is actually able to carry out the job duties of a ACD. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

² We note that the petitioner's Professional Development Plan includes a training module entitled "[REDACTED]"

A review of the petitioner's statements raises the question of whether the beneficiary's qualifications are so uncommon and specialized that similar knowledge could not be imparted to a U.S. worker without undue economic hardship to the petitioner.

The petitioner's training materials do not support its claims that the position requires and involves the application of specialized knowledge. The petitioner does not claim that its teaching methods differ significantly from those used by other tutoring centers. An employee's knowledge of minor variances in style or manner of operations cannot be considered specialized. Although the skills needed to set up and run a tutoring center are typically acquired through a period of training, they are nevertheless common in the petitioner's industry. The petitioner stated that the beneficiary is one of four ACDs with knowledge of the [REDACTED] tool, but fails to describe what it is and how the beneficiary gained knowledge of the tool.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the petitioner's tutoring methods is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. We, likewise, do not dispute the fact that the beneficiary's knowledge has allowed her to competently perform her job in the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as an employee possessing advanced knowledge of the petitioner's processes and procedures, nor does it establish employment in a specialized knowledge capacity.

On appeal, counsel contends that the director erroneously determined that the beneficiary must first complete the training required for employment in a specialized knowledge capacity before time begins to toll toward the required one-year period of employment in a qualifying capacity in order to be eligible to for a L-1B nonimmigrant visa. Citing section 101(a)(15)(L) of the Act, counsel asserts that the statute is silent as to the type of employment abroad the beneficiary must have completed in order to establish eligibility and that the beneficiary would be eligible so long as the prospective employment with the petitioning entity in the United States would be in a qualifying managerial or executive capacity or in a capacity involving specialized knowledge. Counsel's assertions, however, fail to give proper consideration to the term "continue" and the term's significance to the statute's interpretation. The statute expressly states that the beneficiary's purpose for seeking to enter the United States is so that he or she can "continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity." *Id.* Counsel's interpretation of the statutory provision focuses on the requirement that there be a qualifying relationship between the beneficiary's employer abroad and the petitioning entity.

We find that counsel's interpretation is erroneous and, if accepted, would circumvent the filing requirements for obtaining the nonimmigrant visa classification discussed herein. Proper consideration of the term "continue" strongly indicates that the beneficiary must not only intend to "continue" his or her work for a qualifying entity, but rather he or she must "continue" to be employed in a qualifying capacity, whether such employment is in a managerial or executive capacity or a capacity involving specialized knowledge. It is reasonable to conclude that if the beneficiary is to "continue" his or her employment in a qualifying capacity in the United States, then the prior employment abroad must also have been in a qualifying capacity. To interpret the statute any other way would be contrary to the regulations that are currently in place. Namely, the regulation at 8 C.F.R. § 214.2(l)(3)(v) expressly states that the petitioner must provide evidence to show that the beneficiary'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." This regulation is unambiguous as to the nature of the beneficiary's employment abroad prior to the filing of the petition.

Similarly, there is no regulation or case law to support counsel's contention that *any* time spent abroad in training should count toward the beneficiary's one year of qualifying employment. Neither the case law nor the service policy memorandum that counsel's cites on appeal supports his contention. While we concede that the beneficiary completed her required training abroad prior to filing the instant petition, we cannot assume that she acquired specialized knowledge in the first two months of employment and therefore, worked abroad for a year in such a capacity.

As previously discussed, the petitioner failed to identify the specific training that was intended to transfer specialized knowledge or to provide evidence showing what actual training the beneficiary completed, when the training took place, or how long it took the beneficiary to complete the required training. 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)). Without the highly relevant evidence and information, the director was precluded from determining when the beneficiary's formal training was completed and when the actual employment in a specialized knowledge commenced. Therefore, based on the petitioner's failure to provide evidence that is germane for the purpose of establishing precisely how much of the beneficiary's time abroad was spent working in a position involving specialized knowledge, the petitioner failed to establish that the beneficiary was employed abroad for at least one year in a position involving specialized knowledge and on the basis of this conclusion the instant petition cannot be approved.

III. Beyond the Director's Decision

Beyond the decision of the director, the record does not contain sufficient documentation to establish that the beneficiary has been or would be employed in a position that requires specialized knowledge, as required at section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated a sufficient basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional grounds of ineligibility discussed above, this petition cannot be approved.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition will remain denied.