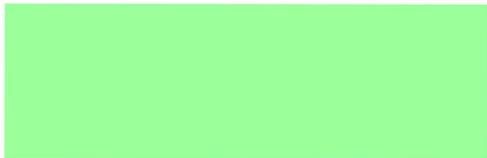


(b)(6)

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



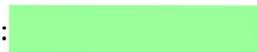
U.S. Citizenship
and Immigration
Services



DATE: DEC 19 2014

Office: VERMONT SERVICE CENTER

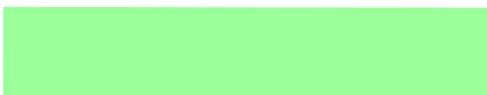
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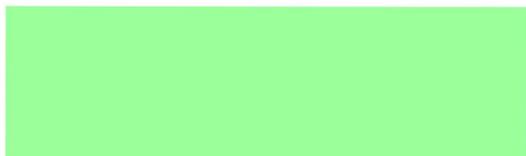
Petitioner:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 sustained.

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 [REDACTED] corporation established in 2003, is engaged in the development and implementation of telecommunications expense management solutions. It seeks to transfer the beneficiary from its Indian subsidiary to serve in the position of [REDACTED] Implementation Specialist" for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that she has been employed abroad or would be employed in the United States in a specialized knowledge capacity.

On appeal, the petitioner asserts that the director failed to recognize that the beneficiary possesses specialized knowledge of the company's [REDACTED] product and the skills to manage the implementation of this product in international markets.

I. THE LAW

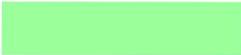
To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge 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. SPECIALIZED KNOWLEDGE CAPACITY

The sole issue to be addressed is whether the petitioner has established that the beneficiary possesses specialized knowledge and that she has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

A. Facts and Procedural History

The petitioner filed the Form I-129 on October 17, 2013. The petitioner develops cloud-based products for streamlining the management of telecommunication costs. It earned revenues in excess of \$3 million during 2013 and has 15 employees in the United States and over one hundred employees based at its subsidiary.

The petitioner stated that the beneficiary has specialized knowledge of the foreign entity's proprietary software, which is described as



The petitioner explained that the beneficiary's services are required in the United States to manage

customer accounts, implement [REDACTED] software, and train and support both petitioner and customer staff. The petitioner submitted evidence demonstrating that the beneficiary has been responsible for implementing and providing training in [REDACTED] over the last five years, and has been handling Telecom Expense Management customer accounts for major clients.

The petitioner submitted evidence establishing that the foreign entity released a second version of [REDACTED] during 2013, thereby creating a need for a [REDACTED] implementation specialist assigned to the United States. The initial evidence included a letter from the petitioner's president, who explained that the beneficiary had been instrumental in the development of the [REDACTED] product.

In response to a request for additional evidence, the petitioner submitted further evidence indicating that the beneficiary has been involved in the development of [REDACTED] for the last two years, during which time she worked with designers, developers, and managers on the product. The petitioner also submitted additional evidence in support of its assertion that the beneficiary possesses the knowledge required for the proffered position, which will require her to manage customer implementations, provide training, and implement product updates as the primary client-facing interface for [REDACTED] customers in the United States.

In denying the petition, the director noted discrepancies on the record with respect to the amount of time it would take to train another employee to the level of the beneficiary's claimed specialized knowledge. In addition, the director found insufficient corroborating evidence to support the petitioner's claim that the beneficiary was involved in the development of the [REDACTED] product, as opposed to being an end-user of the product.

On appeal, the petitioner submits additional evidence, including a support letter from its president in which he clarifies that the beneficiary "contributed extensively in the development of the platform as the subject matter expert in the areas of inventory, audit and invoices." He explains that he has personal knowledge of her contributions based on his participation in development meetings, and confirms that her inputs were incorporated into the design of the current version of the product.

The letter from the petitioner's president also provides further clarification regarding what the director found to be a discrepancy in the amount of training necessary to fulfill the duties of the offered position, noting that a total of nine months of training in [REDACTED] implementation would be needed to enable an employee to manage medium-sized customers, while up to 18 months of training would be needed to prepare an employee to perform the full range of duties the beneficiary will perform, including hiring and training a team of [REDACTED] project managers.

Lastly, the petitioner submits extensive corroborating evidence in support of its claim that the beneficiary has been a member of the [REDACTED] development team, in which she provided insight on the industry to technical contacts building the system and made recommendations on the system's design. Further, additional evidence documents the beneficiary's involvement in the development of portals for [REDACTED] and her regular coordination with executive-level staff within the organization.

B. Analysis

Upon review of the totality of the record, including the evidence submitted on appeal, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that she has been and would be employed in the United States in a specialized knowledge capacity.

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

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. 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.

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.

In the present case, we find that the petitioner has established that the beneficiary possesses advanced knowledge of the petitioner's proprietary [REDACTED] software product and the processes used for its implementation. The petitioner has submitted sufficient corroborating evidence detailing the beneficiary's current role sufficient to establish that the beneficiary made substantial contributions to the development of its proprietary product.

Moreover, the petitioner has supplemented the record with supporting documentation corroborating the beneficiary's regular engagement on the [REDACTED] development team, including evidence that

substantiates her involvement in the product's development and her responsibility for managing implementations for the company's largest customers. While the petitioner employs other implementation specialists, the record supports that the beneficiary performs advanced responsibilities beyond those assigned to her less-experienced colleagues. Finally, the record establishes that the knowledge required to develop and implement this proprietary product cannot be gained outside the petitioner's organization.

While the director's decision referenced certain discrepancies with respect to the beneficiary's role in the development of the [REDACTED] product and the amount of training required to perform the proposed duties, the petitioner has provided credible evidence that overcomes these concerns and substantiates her involvement in [REDACTED] development activities.

The petitioner has also provided credible evidence that the beneficiary's role in the United States requires the beneficiary's advanced knowledge of the [REDACTED] product given her involvement in the development of the new release of the product, her extensive experience in its implementation, and the need to train both the petitioner's U.S. employees and customer staff. The record establishes that the company's senior management relies on her as a subject matter expert with respect to both the development and implementation of this product and explains why the proffered position requires the beneficiary's advanced level of knowledge.

In conclusion, the evidence submitted establishes that the beneficiary possesses specialized knowledge and that she will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the director's determination to the contrary will be withdrawn.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has met that burden.

ORDER: The appeal is sustained.