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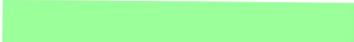


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services



DATE: **DEC 30 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:

SELF-REPRESENTED

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, 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 Delaware corporation, is an electrical wholesale business. The petitioner claims to be an affiliate of [REDACTED], located in the United Kingdom. The petitioner stated on the Form I-129 that it seeks to employ the beneficiary as a troubleshooter 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 an electrical wholesale retailer, with 6200 employees worldwide, and a gross income of \$66,000 in the United States. The petitioner provided a letter in support of the initial petition, signed by the Division Manager of the [REDACTED], describing the specialized knowledge position in the United States. Specifically, the petitioner states that as a troubleshooter, the beneficiary will be performing the following duties:

[The beneficiary] will be working for [the petitioner] in the [REDACTED] as a troubleshooter in the [REDACTED] metro area. [The beneficiary] has intimate and specialized knowledge of company processes and procedures that make him especially valuable in this capacity. He will be assisting me in my capacity as Division Manager, as well as Profit Center Managers in a variety of situations, including but not limited to counter sales, purchasing, warehouse operations, accounts payable, inventory control and operational issues in general.

The director issued a Request for Evidence ("RFE"), requesting 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 a change in the beneficiary's offered position. The petitioner stated that the initial job offer to the beneficiary was for a "troubleshooter" position, but the petitioner now wants "to place [the beneficiary] as the profit center manager of [REDACTED] located at [REDACTED]"

The petitioner provided a two page description on the duties and specialized knowledge related to the performance of the profit center manager position, four letters describing the beneficiary's claimed specialized knowledge, and a letter providing a more detailed description of the claimed specialized knowledge position with the foreign employer.

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. The director noted that the petitioner failed to show how the position of troubleshooter involves a special or advanced knowledge. The director further noted that the petitioner failed to show how the processes pertaining to the position of troubleshooter for the petitioner are different from those applies by any other organization in the industry. Finally, the director noted that the beneficiary has gained experience and on the job training, but the petitioner failed to show how the beneficiary possess knowledge that is an advanced level of processes and procedures of the company or a special knowledge of the company's product and its application in international markets.

On appeal, the petitioner again states that the beneficiary will be hired as "the Profit Center Manager for [REDACTED] not as a division troubleshooter."

#### 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).

As a preliminary matter, the petitioner has changed the position offered to the beneficiary in response to the RFE and on appeal from the initial offer of troubleshooter to the position of Profit Center Manager for [REDACTED] in response to the RFE and on appeal. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position,

but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition related to the position of troubleshooter.

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.*

The position description for the troubleshooter position submitted with the initial petition lacks the specificity required to determine what the beneficiary will be doing on a day to day basis. Therefore, it is not clear what specialized knowledge duties will be required for the position. Specifically, the petitioner states that the beneficiary will be "assisting" with duties relating to "counter sales, purchasing, warehouse operations, accounts payable, inventory control, and operational issues in general." Stating that the beneficiary will be "assisting" with these "situations" does not provide a clear description of what duties the beneficiary will be performing on a day to day basis. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 present case, the petitioner's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures.

The petitioner's letters submitted in response to the RFE to describes a number of tasks or projects completed by the beneficiary including providing training, audit reviews, inventory observations, and investigations. The petitioner fails to show, however, how these duties evidence the specialized knowledge held by the beneficiary. Furthermore, the petitioner does not describe what other employees in the company possess similar knowledge to the beneficiary or otherwise state how the beneficiary's training differs from other employees in the company.

On appeal the petitioner generally claims that the beneficiary is "special" and that he "has to be the smartest guy at the profit center" but fails to provide specifics on the beneficiary's knowledge and training with relation to other employees in the company. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

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.

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.