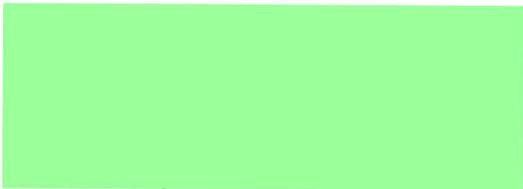


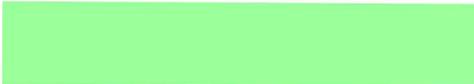


U.S. Citizenship
and Immigration
Services

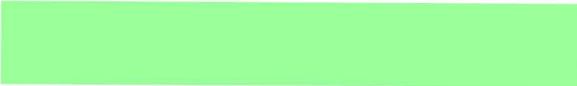
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DATE: FEB 11 2014 Office: CALIFORNIA SERVICE CENTER

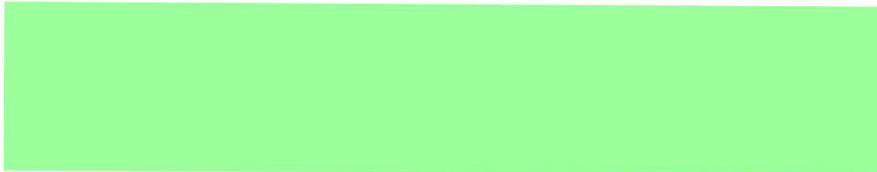


IN RE: Petitioner:
Beneficiary:



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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 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, states that it is engaged in the design and sales of semiconductor chips. The petitioner is the parent company of [REDACTED]. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as an LTE Protocol Software/System Engineer, for an initial period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires 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. On appeal, counsel for the petitioner asserts that the director incorrectly denied the petition as the petitioner established by a preponderance of the evidence that the beneficiary is qualified for the classification sought. Counsel submits a brief in support of the appeal.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

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

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary possesses specialized knowledge and whether the beneficiary has been employed abroad, and would be employed in the United States, in a position that requires specialized knowledge.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 3, 2012. The petitioner indicated on the Form I-129 that it operates a semiconductor chip design and sales company with 192 employees worldwide and a gross annual income of \$41.514 million.

The petitioner stated the beneficiary will be working as an LTE Protocol Software/System Engineer. In support of the petition, the petitioner submitted a letter describing the beneficiary's duties abroad as a Staff Engineer, his specialized knowledge, and his proposed duties at the U.S. company. The petitioner provided a lengthy description of the beneficiary's role and responsibilities, indicating that he will be responsible for developing and designing the LTE protocol stack for the company's

troubleshooting and analyzing problems related to the certification process; optimizing system performance of field trials; and improving the stability of the product.

The petitioner went on to describe its products and processes and explained that the beneficiary and his team in Korea developed the LTE protocol stack for the company's [REDACTED] to comply with U.S. mobile communication network operators' requirements. The petitioner explained that while LTE is an industry standard, each manufacturer must develop their own protocols in order to implement LTE technology onto their own proprietary [REDACTED] products.

The petitioner further described the beneficiary's specialized knowledge and indicated that he is uniquely qualified for the position in the United States as he possesses highly specialized knowledge of the petitioner's proprietary [REDACTED] and protocol stacks gained as a result of his experience at the foreign entity and his extensive work with the petitioner's single-chip mobile semiconductor products. Additionally, the petitioner stated that the beneficiary's specialized knowledge of the LTE protocol stacks integrated into the petitioner's [REDACTED] is uncommon and not known by other software teams outside of the beneficiary's research and development team at the petitioner's Korean subsidiary.

The director issued a request for additional evidence ("RFE") instructing the petitioner to submit, among other items, evidence that the beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad by a qualifying organization in a position that was managerial or executive or involved specialized knowledge; and (3) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner greatly elaborated upon the initial description by submitting a ten-page explanation of the beneficiary's duties and specialized knowledge that included specific examples of his involvement in the development and design of the proprietary products and the applicability of his knowledge to the proposed LTE protocol software/system engineer position. The petitioner went on to describe the specialized knowledge possessed by the beneficiary and how he is qualified for the position in the United States.

The petitioner indicated that the beneficiary was the sole person at foreign entity with prior experience conducting field and interoperability tests for the [REDACTED] product, and is one of five employees within the entire organization with comprehensive specialized knowledge in this area. The petitioner stated that it would be extremely difficult to find another employee who possesses the requisite combination of technical expertise, proprietary knowledge, and real world practice, which would need to be conveyed through extensive training and on-the-job experience. The petitioner emphasized that the company's research and development activities are carried out by its Korean subsidiary and therefore its U.S.-based software engineers do not possess the required expertise.

The director denied the petition on October 12, 2012, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director observed that the beneficiary had been employed with the foreign entity only since April 2010 and noted that, while the beneficiary may be familiar with the

company's products, there was insufficient evidence that he participated in the development of the product.

On appeal, counsel for the petitioner indicates that the beneficiary meets the statutory and regulatory definitions of "specialized knowledge" in that it is more likely than not that the beneficiary possesses advanced knowledge or expertise of its products, processes, and procedures. Counsel further asserts that the petitioner has provided sufficient evidence to establish that the beneficiary's knowledge is also different, uncommon, and advanced within the organization itself. Counsel contends that the director considered the beneficiary's duties without taking into account the detailed explanations of the specialized knowledge required to perform such duties. Further, counsel emphasizes that 4G LTE technology was introduced in 2010, and thus the beneficiary has in fact been involved in the development of proprietary LTE protocol stacks for the company's [REDACTED] product since its inception.

B. Analysis

Upon review, the petitioner has established that the beneficiary possesses specialized knowledge and that he has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual 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.

In the present case, the petitioner's claims are based on the second prong of the statutory definition. Specifically, the petitioner asserts that the beneficiary has an advanced knowledge of the company's proprietary products and internal processes and procedures for the further development and implementation of LTE technology into [REDACTED] and their interoperability with operators' mobile networks. The petitioner established that the beneficiary's knowledge is special as he was responsible for developing and designing the LTE protocol stack for the chipset and has already

worked on interoperability with mobile networks in Korea, the United States and Europe. The petitioner has further established that the beneficiary's experience with the petitioner's products, systems, processes, and procedures render his knowledge "advanced" within the company, such that few, if any, employees possess the beneficiary's level of knowledge, training, and experience with its proprietary LTE protocol stacks, specifically the interoperability of the [REDACTED] chipset with multiple operators' mobile networks. *See* 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner explains that the commercial adoption of 4G LTE technology was launched in 2010; therefore, the fact that the beneficiary began working at the foreign entity in April 2010 is irrelevant to his specialized knowledge as he would not have been able to develop or design proprietary products related to LTE technology for the foreign entity prior to that. The beneficiary's two and one-half years of experience on this specific project and his role in developing and designing proprietary products to work with this new technology provided him with the required specialized knowledge for the U.S. position. The petitioner further explains that the beneficiary is one of five employees within the entire organization, with comprehensive specialized knowledge and experience in this area, and thus one of few qualified individuals who can perform the duties that are now required in the United States.

Finally, the petitioner explained that the proffered position requires the beneficiary's special knowledge and requires an advanced level of internal knowledge that is of significant complexity and can reasonably only be gained within the petitioner's group.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge, and that he has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be sustained.

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, that burden has been met.

ORDER: The appeal is sustained.