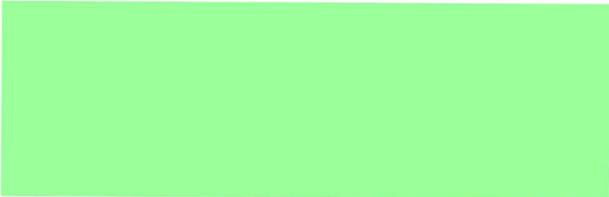




U.S. Citizenship
and Immigration
Services

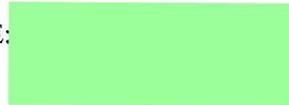
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DATE: **MAY 21 2014**

Office: VERMONT SERVICE CENTER

FILE:



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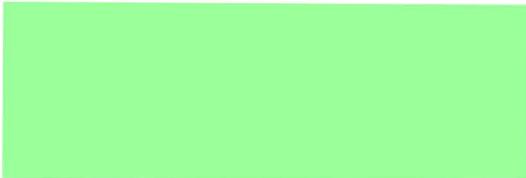
Petitioner:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 U.S. corporation with principal offices in Boston, Massachusetts, is the parent entity of [REDACTED] located in Bangalore, India. The beneficiary's employer abroad is a systems development and testing company engaged in the design, development, testing, maintenance and improvement of proprietary software applications that support the financial services that the U.S. petitioner offers worldwide. The petitioner seeks to employ the beneficiary in the position of Onsite Quality Assurance Engineer at its [REDACTED] Texas office for a period of three years.

The director denied the petition, concluding that the petitioner provided insufficient evidence to establish that the beneficiary possesses specialized knowledge or that she has been and will be employed in a capacity 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. On appeal, counsel asserts that the director misapplied the law and erroneously concluded that the beneficiary does not possess specialized knowledge. Counsel maintains that the beneficiary is, and will be, employed in a specialized knowledge capacity.

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(I)(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 (I)(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 Issues on Appeal

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

A. Facts and Procedural History

The record shows that the petitioner filed the Form I-129, Petitioner for a Nonimmigrant Worker, on April 25, 2013. Among the supporting evidence, the petitioner provided a letter, dated April 12, 2013, which discussed the support services the beneficiary's foreign employer provides to the U.S. petitioner. The petitioner states that the beneficiary will work as an Onsite Quality Assurance Engineer providing her expert knowledge of the foreign employer's internally-developed Customer Account Management (CAM) applications, "proprietary tools, methodologies, processes, and systems which comprise the technical backbone of the assigned [company] business domain."

The petitioner maintains that the beneficiary's U.S. position will be comprised of nine specific job duties and describes how each duty involves the beneficiary's knowledge and understanding of the foreign company's software applications, brokerage products, test automation processes, and/or technologies, all of which are proprietary to the petitioner's multinational organization. The petitioner provided a specific list and explanation of all processes, methodologies and tools, demonstrating that all processes and methodologies to

be used during each quality assurance phase are proprietary to the petitioning organization. Additionally, the petitioner provided a human resources record that listed the formal classroom training the beneficiary has had since being hired by the foreign entity in 2010 as well as photocopies of two award certificates acknowledging the beneficiary's various achievements within the organization.

The director subsequently issued a request for additional evidence ("RFE") requesting that the petitioner provide additional evidence and explanation in support of its claim that the beneficiary possesses specialized knowledge and that she has been and will be employed in a position requiring specialized knowledge.

In response, the petitioner complied with the director's request by providing a comprehensive 10-page letter, dated July 1, 2013, accompanied by various supporting documents, which show the projects the beneficiary has undertaken, describe the positive results attained through the beneficiary's work with the company's internal applications, methodologies, and processes, and explain how she will utilize the claimed specialized knowledge in the proffered U.S. position. The petitioner emphasized that the beneficiary's level of specialized knowledge was gained primarily through daily reinforcement and development of the company's proprietary applications and tools to improve the company's competitiveness on a global scale. The petitioner also emphasized that the beneficiary was recognized for her development and implementation of the client test automation process and for her leadership role in developing and subsequently implementing the test automation process templates, which decreased the time required to create client accounts. The petitioner stated that the beneficiary will guide the U.S.-based team in its creation, development, and execution of testing solutions based on the proprietary FIT domain and CAM applications.

The director found that the record was insufficient to establish that the beneficiary possesses specialized knowledge or that she has been and would be employed in a specialized knowledge capacity. The director reasoned that while on-the-job training is a valid training method, it "raises the question of whether the beneficiary's knowledge is more advanced than that of his trainers and mentors."

On appeal, counsel asserts that the director applied an unduly restrictive interpretation of the term "specialized knowledge" and thereby reached an erroneous decision as to whether the beneficiary in the present matter possesses specialized knowledge and whether she has been and would be employed in a capacity that requires specialized knowledge. Counsel offers an extensive legal brief in which he reviews the legislative and case law history of USCIS's (legacy INS) of interpreting specialized knowledge and contends that the beneficiary's acquired knowledge of a highly complex subject matter rises to the level of what is currently deemed as specialized. In total, counsel maintains that the beneficiary qualifies as having specialized knowledge of the company's proprietary systems, applications, and testing methodologies as demonstrated by her more than two years of hands-on training, her documented professional achievements, and her recognized contributions to the organization's test automation processes.

B. Analysis

Upon review, 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 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. 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.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of the company's systems, tools and methodologies and their application in international markets. The petitioner established that these systems, tools and methodologies are proprietary to the petitioner, such that they are not widely known in the industry. The petitioner also submitted evidence that the beneficiary's knowledge is not only exclusive to the petitioner, but that it is of significant complexity and requires a significant period of training or experience to perform at the beneficiary's level. The petitioner also submitted evidence of the beneficiary's educational background and work experience that contributes to her special knowledge of the company's proprietary technology. See 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner has provided very detailed explanations of the beneficiary's job duties with the foreign employer, including specific examples of internal projects the beneficiary worked on, the proprietary applications and methodologies she used in the course of her work, the contributions she made to the development of company processes in her area of specialization, and the significant impact she had on the organization's test automation processes as a result of her specialized knowledge. Further, the record reflects that the petitioner has adequately documented its claims with relevant supporting documentation. The totality of the evidence establishes that the beneficiary possesses specialized knowledge, that she has acquired specialized knowledge through her work with the foreign entity and that such knowledge is necessary for the beneficiary to carry out the duties of her foreign and proposed positions.

In conclusion, the evidence submitted establishes that the beneficiary possesses specialized knowledge and that he 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, 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 sustained that burden. Accordingly, the director's decision dated December 9, 2009 is withdrawn.

ORDER: The appeal is sustained.