



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 03 2014

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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, 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 the Form I-129, Petition for a Nonimmigrant Worker, seeking to qualify 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 established in 2008, operates in the telecommunications industry. The petitioner states that it is an affiliate of the beneficiary's foreign employer [REDACTED]. The petitioner currently employs the beneficiary as a [REDACTED] engineer and seeks to extend her L-1B status for a period of three years.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that she has been or 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, the petitioner contends that the evidence of record establishes that the beneficiary holds specialized knowledge of unique optimization techniques developed by the company.

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.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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.

¹ Consistent with 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

- (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 as a result of her foreign employment and whether she will be employed in the United States in a specialized knowledge capacity.

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.

A. Facts and Procedural History

The petitioner filed the Form I-129 on July 30, 2013. The petitioner states that it is a wholly owned subsidiary of a leading network services company with operations in more than forty countries "offering services and solutions to address the Network Life Cycle requirements of Telecom Carriers and Technology providers (OEMs)." The petitioner indicated that its global group of companies owns more than 32,000 towers and had revenues of over \$1.5 billion in 2012. The petitioner explained that it provides "Network Deployment, RF & Network Engineering, Real Estate Services, Equipment Installation and Commissioning

and Network Operations & Maintenance in markets across the United States, Canada and Latin America." The petitioner stated that it employs 69 individuals in the United States and that it earned over \$21 million in revenue in 2013.

The petitioner indicated that the beneficiary will continue to act in a specialized knowledge capacity as an RF engineer to "design, test and develop [redacted] Optimized telecommunications and radio networks." The petitioner stated that the position "requires specialized engineering knowledge of [petitioner] products and tools that focus on the 3G technology and [redacted]" The petitioner submitted a detailed description of the beneficiary's duties, and specified that the beneficiary "holds the distinction of having a strong professional and educational background, including a Bachelor's degree in electronics and communications engineering from the [redacted] and "over ten years of experience in the field of telecommunication network planning, designing and optimization." The petitioner stated that the beneficiary was previously employed as a [redacted] optimization engineer with the foreign entity from November 2009 to November 2010 prior to her assignment to the United States where "she conducted Involvement in the 3G Optimization of [redacted] for [the foreign entity]."

The petitioner further explained the beneficiary's current capacity in the United States as follows:

More importantly, [the beneficiary] is familiar with our operations worldwide. She prepared site plan using Net Act planning tool and site search for [redacted] technology. She also conducted drive test, data analysis and optimization using NEMO Outdoor data measurement tool, NEMO Analyzer and Actix optimization tool. Since November 2010 she has been employed as an [redacted] Optimization Engineer, responsible for the designing and Optimization of telecommunications networks. In sum, [the beneficiary] has a specialized knowledge of [the petitioner's] inventory of major wireless tests and surveys tolls [sic]. She possesses expertise in managing the parameters of network planning, designing and Optimization and has the capability of assisting the optimization group staff that is critical for our continuous operations.

The petitioner submitted an organizational chart indicating that the beneficiary works as a senior RF engineer in the [redacted] department reporting to a "senior director RF." The chart reflected that the other members of the beneficiary's department include three senior RF engineers, an RNC engineer, and a BTS engineer.

Further, the petitioner provided a resume for the beneficiary reflecting that she worked for various other telecommunications companies as an engineer, dating back to 2003, and prior to beginning employment with the foreign entity in 2009. The petitioner resume indicated that the beneficiary performed duties similar to her current position while working for [redacted] optimization engineer in the Philippines from October 2008 to July 2009, acting as a [redacted] optimization engineer for [redacted] in Brazil from August 2008 to September 2008, and working as a [redacted] optimization engineer for [redacted] in Philippines from November 2006 through July 2008, amongst other similar positions dating back to January 2003. The resume listed eleven different trainings and seminars the

beneficiary completed during her career, most of which were concluded during 2007 and 2008 while she was employed by [REDACTED]

The director later issued a request for evidence (RFE) indicating that the petitioner had submitted insufficient evidence to establish that the beneficiary acted in a specialized knowledge capacity with the foreign entity, noting that the duties of the beneficiary appeared to be average tasks performed by an individual similarly placed in the telecommunications industry. As such, the director requested that the beneficiary submit copies of the beneficiary's training, pay or other personnel records to confirm her employment abroad and an organizational chart relevant to the beneficiary's foreign employment including names, job titles, duties, education levels, and salaries for the members of the beneficiary's former department. Further, the director asked that the petitioner submit a letter from the foreign entity describing the beneficiary's duties abroad along with the percentage of time she spent on each task; an explanation as to how the beneficiary's position was different from other similar positions in the industry; a statement of the products, services, tools, or processes used by the beneficiary; an explanation as to why someone else cannot perform the beneficiary's duties, and a statement regarding the minimum amount of time required to obtain the beneficiary's knowledge. Likewise, the director noted that the petitioner had not demonstrated the beneficiary's specialized knowledge capacity in the United States and requested that the petitioner submit similar evidence relevant to her current U.S. position.

In addition, the director stated that the evidence provided did not demonstrate how or why the beneficiary's education and experience provided her with uncommon knowledge. Therefore, the director asked that the petitioner explain why the beneficiary's knowledge is not commonly found in the industry, describe why the knowledge can only be taught through prior experience with the company, submit documentation of the beneficiary's completion of pertinent training courses, explain how the beneficiary's training differs from others in the organization, and provide an indication as to how many others in the organization hold knowledge equivalent to the beneficiary.

In response, the foreign parent stated that the beneficiary holds "10+ yrs of local and international experience" with various systems, network telephony platforms, and a "valuable combination of having experience and knowledge in Qos from Radio Access Network up to Core Network," including various "network and telephony equipment from [REDACTED]" The foreign entity re-submitted the same foreign duty description, but added the percentages of time the beneficiary spent on her tasks. The duties indicated that the beneficiary spent 5% of her time reviewing and evaluating the work of others, both inside and outside the organization, and another 5% preparing documentation containing confidential descriptions and specifications relevant to proprietary hardware and software, product development and product performance weaknesses, amongst other duties.

The foreign parent stated that the company "has unique in-house technical procedures and processes to improve the network performance of various technologies used in Cellular networks," and that it "has developed unique in-house Optimization techniques for optimization of complex multivendor UMTS & HSPA+ networks." The foreign parent indicated that these techniques represent "global practices that are being followed across the various countries [the foreign parent] operate [sic]," and that "these international

unique global practices can be better implemented in the US marketplace by using employees like [the beneficiary]."

The foreign parent stated the following when describing why the beneficiary's knowledge was considered special within the organization:

[The foreign entity] provides technical manpower services to local telecommunication operators. [The beneficiary's] contribution is special because she has worked [*sic*] significant number of years in the industry prior to this project. [REDACTED] wireless operators and global vendors in [REDACTED], deployed [REDACTED] networks in [REDACTED] before it started deployment in the US. [The beneficiary] gained valuable network experience and competence on such network with technologies including [REDACTED] and [REDACTED]. These qualifications were very important to provide the customer quality service in this field.

In addition, the foreign parent stated the following when explaining why another engineer in the beneficiary's field could perform the same duties:

Very few persons can perform these highly technical and complex tasks because they require highly technical knowledge and years of specific experience to deliver efficiency and quality service to the telecoms industry. Apart from the practical experience, candidates also need long term exposure to network parameters of equipment manufacturers like [REDACTED] to understand the complexities involved in the optimization of [REDACTED] networks. Telecommunications industry requires high maintenance science the service offered greatly impacts the society.

The parent company indicated that it would require 24 to 36 months for another to obtain the knowledge possessed by the beneficiary.

The petitioner likewise submitted a letter reiterating the same assertions in the letter from the foreign parent set forth above. Further, the petitioner re-submitted the organizational chart provided at the time of filing and provided a foreign organizational reflecting that the beneficiary worked in a department with another senior RF engineer. Neither of the submitted organizational charts provided duties, education levels, or salaries for the beneficiary's stated colleagues.

Ultimately, the director denied the petition, concluding that the petitioner had not established that the beneficiary was employed in a capacity requiring specialized knowledge or that she would be employed in the United States in a role involving specialized knowledge. In denying the petition, the director noted that the beneficiary's duties appeared similar to those of other network services engineers and that the petitioner did not establish that she possesses any special or advanced knowledge specific to the petitioner's organization. The director concluded that the evidence indicated that others in the organization had received training similar to the beneficiary's. The director noted that knowledge of specific client requirements does not establish that

knowledge is special or advanced and found that the petitioner had failed to articulate or substantiate how or why the beneficiary's knowledge is uncommon when compared to those similarly employed in the industry.

On appeal, the petitioner generally reiterates the same assertions provided in response to the director's RFE. The petitioner contends that the beneficiary's knowledge is special in the telecommunications marketplace because the company has developed unique in-house optimization techniques for [REDACTED] networks." The petitioner notes that the beneficiary has significant experience in the industry and that she has worked on unique networks prior to their deployment in the United States. Finally, the petitioner states that the beneficiary is "updated on the RF optimization field" and that "very few persons" have the beneficiary's level of experience in the industry.

B. Analysis

Following a review of the totality of the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that she will be employed in a specialized knowledge capacity 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's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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. 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.

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 matter, the petitioner has not provided sufficient explanation of the beneficiary's specialized knowledge. The petitioner makes reference to various technologies and software that form the basis of the beneficiary's claimed specialized knowledge, including optimization of [REDACTED] networks, NEMO outdoor data measurement tool, NEMO Analyzer and Actix optimization tool, Qos from radio access network up to core network, network and telephony equipment from [REDACTED]. However, in each case, the petitioner has not provided a layman's explanation of these technologies in order to allow for an understanding of the nature of the beneficiary's specialized knowledge, despite the direct request of the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Likewise, the petitioner asserts that the beneficiary holds knowledge of unique in-house technical procedures and processes developed by the company that improve the network performance of various technologies used in cellular networks. However, the petitioner does not identify any specific examples of these procedures or processes, explain them in detail, or submit supporting evidence to substantiate that the beneficiary or the company holds this proprietary knowledge. 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)). Again, United States Citizenship and Immigration Services (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.

To the extent the beneficiary provides specific evidence relevant to the beneficiary's knowledge and experience, this evidence suggests that the beneficiary's knowledge is widely held within the telecommunications industry. The beneficiary's resume indicates that she began working for the foreign entity in 2010, and prior to this, that she worked for various other telecommunications companies in a similar capacity dating back to 2003, including [REDACTED]. The beneficiary's resume reveals that all of her formal training was completed while employed by [REDACTED] and [REDACTED].

In response to the director's RFE, the petitioner stated that the beneficiary's knowledge is based on techniques representing "global practices that are being followed across the various countries [the foreign parent] operate [sic]." Further, on appeal, counsel states that the beneficiary is "updated on the RF optimization field." However, the duties set forth for the beneficiary in her various roles with different telecommunications companies since 2003 are not discernibly different. Based on her resume, the beneficiary performed similar duties and worked with similar technologies for years prior to commencing employment with the foreign entity. Further it is unclear that she has acquired any special or advanced knowledge specific to the

petitioner's group of companies since joining the foreign entity, as the petitioner has failed to explain how the beneficiary's knowledge obtained while employed with the foreign entity and petitioner sets her apart from those employed in similar positions elsewhere in the industry. It appears that the beneficiary's prior professional experience in the telecommunications field qualified her to fulfill a role in the petitioner's organization and any company-specific or proprietary knowledge she holds was transferred without any significant period of formal or on-the-job training, as the petitioner did not respond to the director's request for an explanation or documentation of the beneficiary's training while employed by the foreign entity or the petitioner. Therefore, in sum, the evidence submitted on the record indicates that the beneficiary's knowledge is more likely than not typical among similarly educated and experienced engineers in the telecommunications field.

Furthermore, the petitioner has not provided information that compares the beneficiary with similarly employed workers within or outside the company as necessary to demonstrate that her knowledge is uncommon or noteworthy. The petitioner's claim that the beneficiary holds complex technological or proprietary knowledge is insufficient to demonstrate that the beneficiary's knowledge is special or advanced. The knowledge must be distinguished, noteworthy, or uncommon when compared to her colleagues within the company or those similarly placed elsewhere in the industry. The director requested that the petitioner submit various forms of evidence relevant to distinguishing the beneficiary's knowledge as special or advanced when compared other similarly placed professionals. Specifically, the director asked the petitioner to submit an explanation of how the beneficiary's knowledge was different from others employed by the foreign entity and others employed in similar positions in the industry. The director further requested a foreign organizational chart explaining the job duties, education, and salaries of the members of the beneficiary's immediate department. In addition, the director asked the petitioner to specify how many others within the organization had obtained the beneficiary's level of knowledge. However, the petitioner's response to the RFE included none of this evidence relevant to comparing the beneficiary against similarly employed workers, and therefore, it has failed to establish that her knowledge is special or advanced. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Instead, the petitioner's claim is based on an unsupported statement that "very few persons" would be able to perform the duties because they require highly technical experience in the telecommunications industry and exposure to the parameters of equipment manufactured by [REDACTED]. This conclusion is supported by the petitioner's statement that the duties the beneficiary performs would require an employee with 24 to 36 months of relevant experience. The beneficiary had only one year of experience with the petitioner's foreign operations when the petitioner sought to classify her as an employee with specialized knowledge; therefore, it is reasonable to conclude that her specialized knowledge was gained as a result of her general industry experience, rather than with the foreign entity.

Indeed, the evidence submitted indicates that three other senior RF engineers work in the beneficiary's immediate department. The petitioner failed to articulate how the beneficiary's knowledge is uncommon or distinguished when compared to these colleagues or how she developed special or advanced knowledge in relation to her colleagues. Again, claiming that the beneficiary has knowledge of complex technical concepts,

proprietary information, or customer requirements is not sufficient to establish that she possesses specialized knowledge. The petitioner still has the burden to establish that the knowledge is either special or advanced. In the current matter, the petitioner has not provided sufficient evidence to differentiate the beneficiary's knowledge. 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. at 165.

Much of the petitioner's supporting evidence serves to demonstrate the technical complexity of the field, within which, this office reasonably presumes many telecommunications companies have engineers providing professional services involving proprietary software or data and specific customer requirements. Indeed, the petitioner's business model appears to be based upon the provision of these engineering services. Therefore, a significant portion of the foreign entity's workforce would presumably have expertise in the field of telecommunications engineering, employees whose duties and experience have not been distinguished from that possessed by the beneficiary. Again, it is unclear how the beneficiary has gained advanced knowledge of the company's claimed unique techniques and processes during her tenure with the company, and merely claiming that she was given access to proprietary information is insufficient to establish that this knowledge is special or advanced.

Lastly, USCIS records indicate that the petitioner was previously granted a blanket petition on June 8, 2008 which expired on August 1, 2011. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In conclusion, the petitioner has failed to provide a sufficient explanation of the beneficiary's specialized knowledge. Although the petitioner repeatedly states that the beneficiary's knowledge is special and advanced, the record fails to demonstrate that this knowledge is special compared to other similarly-employed workers in the industry or advanced as compared to similarly-employed workers in the company. While the beneficiary clearly possesses the technical knowledge and professional experience required for the position, the evidence does not distinguish her as an employee with specialized knowledge.

The record reflects that the beneficiary was previously granted L-1B status pursuant to the petitioner's Blanket L petition. A prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Further, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988).

Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that she has been or would be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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 not been met.

ORDER: The appeal is dismissed.