



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 21 2014

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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 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, 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 the Form I-129, Petition for a Nonimmigrant Worker, 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 publically traded corporation, states that its software monitors, reports and analyzes live data. The petitioner is the parent company of [REDACTED], a Delaware corporation with a branch office in Greece. The petitioner seeks to transfer the beneficiary from its subsidiary's Greek office and has offered him the position of "Big Data Engineer" for a period of three years.

The director denied the petition determining the petitioner failed to establish that the beneficiary's employment abroad was in a managerial or specialized knowledge capacity, that the beneficiary possesses specialized knowledge and that the beneficiary's position in the United States will be in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to establish the beneficiary's eligibility for the requested classification. Upon our *de novo* review of the record of proceeding, including the evidence submitted on appeal, we issued a request for evidence (RFE) and received a timely response from the petitioner.¹

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 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 thereof in a managerial, executive, or specialized knowledge capacity.

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:

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In the RFE, we requested supporting documentation that was specifically referenced in the petitioner's brief but not included in the initial appeal filing.

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.

The petitioner, a publicly traded company with 6,000 licensed customers in 90 countries, develops software used to monitor, report and analyze live streaming IT data and historical data from a single interface. In September 2013, its acquired [REDACTED] a Delaware corporation with a branch office in Athens, Greece. [REDACTED] develops unique software that offers analytics to determine mobile application performance and data collection. The petitioner stated that, with this acquisition, it will gain the ability to analyze machine data directly from mobile devices and improve operation intelligence. Further, the petitioner indicates that the combination of the two companies' technologies will create "a novel, one-of-kind technology that enables simultaneous combination of crash and data analytics."

The record reflects that the beneficiary has been employed by the petitioner's newly acquired subsidiary as a Data Analysis Engineer for over two years and that he had a lead role in the development of its proprietary Stream data process, [REDACTED] which delivers real-time data analytics. The petitioner explained that [REDACTED] provides customers with access to a proprietary Software Development Kit (SDK), which simultaneously provides crash reporting and user data analytics functions and holds a significant share of the Android application market. The petitioner stated that it acquired the beneficiary's employer specifically to incorporate its innovative SDK into its existing array of proprietary business software products and to expand its presence in the mobile data-mining market. The petitioner provided a detailed explanation of its subsidiary's technologies, the beneficiary's role in their development, and its need for his services as a Big Data Engineer in the United States where he will lead the integration of the software and technologies he developed with the petitioner's existing catalog of software tools.

After reviewing the initial evidence and the petitioner's response to a request for evidence (RFE), the director denied the petition, concluding that the petitioner did not establish that the beneficiary has been or would be employed in a capacity requiring specialized knowledge. The director's decision was based on a finding that the beneficiary performs the same or similar duties compared to other software developers, and that there was insufficient evidence to establish that his role requires a special or advanced level of knowledge in the information technology field.

On appeal, the petitioner emphasizes that it requested the beneficiary's transfer as a specialized knowledge employee "because he is the creator of a unique product which does not exist outside of [REDACTED] or [the petitioner], a product which provides a highly sought after service achieved by no other company in the world." The petitioner also provides evidence of two patents listing the beneficiary as inventor for inventions specific to the enhancement of the above-reference [REDACTED] as well as additional evidence of his involvement in the development of the proprietary technology owned by its subsidiary.

III. ANALYSIS

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he 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 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

servicing 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 states that the beneficiary has expert knowledge of its proprietary mobile data mining technology as he created certain functions and architecture of that technology. One of the critical questions before this office is whether the petitioner has supported its claim that the beneficiary's knowledge of its mobile data mining technology alone constitutes specialized knowledge. In that regard, the petitioner has clarified the nature of the beneficiary's foreign employment, and provided documentary evidence demonstrating the beneficiary's development of specific functions of its subsidiary's mobile data mining technology, including a proprietary programming language which is unique and exclusive to the petitioner's streaming data processor. The petitioner has provided evidence of the beneficiary's work product as well as evidence that the beneficiary is listed as a co-inventor on two patent applications filed with the United States Patent Office, which involve specific technology related to proprietary features and architecture of the petitioner's subsidiary's mobile data mining technology. In addition, the petitioner sufficiently explained the necessity of the beneficiary's specialized knowledge to integrate the subsidiary's technology, which the beneficiary helped develop, into the petitioner's [REDACTED] product.

Overall, the petitioner submitted detailed and credible evidence to demonstrate that the beneficiary possesses special knowledge of its newly-acquired subsidiary's mobile data mining technologies and the application of this technology in international markets. The petitioner established that the knowledge is special as the product itself is patented, such that it is not widely known in the industry. The petitioner also submitted evidence that the technology is not only exclusive to the petitioner's organization, but that it is of significant complexity, distinct from other offerings in the petitioner's field, and not easily transferrable to others who were not involved in its development. In addition, the petitioner provided evidence of the beneficiary's work experience that contributes to his special knowledge of the product as one of its key developers. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires the beneficiary's special knowledge.

For the reasons discussed above, the record demonstrates that the beneficiary more likely than not possesses specialized knowledge, and that he was employed abroad, and would be employed in the United States, in a position that requires specialized knowledge as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Accordingly, the director's decision will be withdrawn and 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, the petitioner met that burden. Accordingly, the director's decision is withdrawn. The appeal will be sustained and the petition approved.

ORDER: The appeal is sustained.