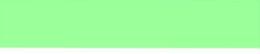




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 08 2014** Office: VERMONT SERVICE CENTER FILE: 

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. 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 Vermont Service Center Director ("the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a corporation established in the Commonwealth of Puerto Rico, operates internationally as a travel retail operator. It is an affiliate of [REDACTED], located in the Dominican Republic. The petitioner seeks to employ the beneficiary in the United States in a specialized knowledge capacity as its IT director for a period of three years. Accordingly, 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 director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a capacity 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 asserts that the beneficiary has extensive knowledge of the highly customized [REDACTED] which was implemented by the beneficiary's foreign employer and which will be implemented by the beneficiary's proposed U.S. employer. Counsel asserts that [REDACTED] is unique to the petitioner and its group of affiliate companies and further asserts that the proposed employment requires the beneficiary to use special software to implement and modify the [REDACTED] in order to attain optimal efficiency within the organization.

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 parent, subsidiary, or affiliate of the foreign employer.

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. Factual Background and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 23, 2013. The petitioner stated that the beneficiary held the position of IT manager for the foreign entity from 2005 to 2010 at which time he became the foreign entity's regional system ERP support manager. The petitioner claimed that the beneficiary gained extensive knowledge of the various components of an information system used to run the foreign entity's and its affiliate companies' duty free businesses. The petitioner further noted that the beneficiary "participated in workshops and System implementation training" at the company's headquarters in Switzerland as well as its regional office in Mexico. The petitioner provided the following list of the job duties the beneficiary performed during the course of his employment as the regional system manager:

- (i) [P]rovided end user support and training for the System;
- (ii) [D]eveloped computer information resources, and provided for data security and control, strategic computing, and disaster recover for the System;
- (iii) [C]onsulted with end users, management, vendors, and technicians to assess their computing needs and System requirements;
- (iv) [M]anaged backup, security and user support systems for the System; and

- (v) [I]dentified risks, detected problems, and formulated solutions concerning System implementation and training.

With regard to the beneficiary's proposed position with the U.S. entity, the petitioner stated that the beneficiary would use the specialized knowledge he gained to implement the information system within the petitioning organization, where he will also work to train the end users of that system and provide support throughout the various phases of implementation. The petitioner provided the following list of the beneficiary's proposed job duties:

- (i) to review project plans to plan and coordinate the System's implementation;
- (ii) to provide end user support and training for the new System;
- (iii) to develop computer information resources, and provide for data security and control, strategic computing, and disaster recovery for the System;
- (iv) to consult with end users, management, vendors, and technicians to assess their computing needs and System requirements;
- (v) to manage backup, security and user support systems for the System; and
- (vi) to identify risks, detect problems, and formulate solutions to ensure the successful implementation of the System in Puerto Rico in a timely fashion.

In a supporting statement, dated September 18, 2013, the petitioner reiterated that the beneficiary's knowledge of the [REDACTED] Information System (System) is specialized and therefore essential for the successful implementation of the System within the petitioner's duty free retail operation in Puerto Rico. The petitioner asserted that the beneficiary possesses specialized knowledge because he has advanced knowledge of the petitioner's proprietary information system and is highly familiar with the goals, needs, expectations, and requirements of the affiliate group companies. The petitioner explained that the beneficiary "has extensive knowledge of the customs processes . . . outside the United States" and was thereby able to implement and support the various components that comprise the [REDACTED]. The petitioner further claimed that the beneficiary gained his specialized knowledge "through his years of hands[-]on implementation and training of the highly customized customs [sic] duty free system" and asserted that such knowledge is not easily transferrable. The petitioner also submitted the beneficiary's résumé.

The director determined that the petitioner did not provide sufficient evidence to warrant approval of the petition and therefore issued a request for additional evidence (RFE), dated October 7, 2013. The director instructed the petitioner to submit additional evidence that explained how the beneficiary's knowledge is different from that of others in similar positions within the industry. The director requested that the petitioner identify the tool, process, equipment, or procedure that involves specialized knowledge and explain how this tool, process, equipment, or procedure is applied in the international marketplace and why someone else in this field cannot perform the beneficiary's job duties. The petitioner was also asked to describe the beneficiary's specialized knowledge duties and state the minimum time required to obtain the specialized knowledge, including training, and experience accrued after the completion of training. In that regard, the petitioner was instructed to identify any pertinent training courses the beneficiary took while working for the foreign employer and to specify the duration of the course(s), the number of hours the beneficiary spent daily in training, and the course completion date(s). In addition, the director asked the petitioner to explain the impact of the beneficiary's role to the employer's productivity, competitiveness, image, or financial position.

Lastly, the director expressly instructed the petitioner to provide a detailed explanation, *in layman's terms*, of the beneficiary's specialized knowledge as it relates to the petitioner.

In reviewing the evidence submitted thus far, the director found that while the petitioner discussed the length of the beneficiary's employment and the technologies he has used, it failed to explain or provide documentation showing how the beneficiary gained specialized knowledge or how the beneficiary can be distinguished from his peers within the same organization. The director informed the petitioner that the beneficiary's "insider knowledge" of the employer's operations does not automatically lead to the conclusion that such knowledge is special or advanced given that most employees would have knowledge about procedures that are essential to the employing organization.

In response to the RFE, the petitioner submitted a letter, dated January 2, 2014, briefly describing the supporting exhibits being submitted as part of the response. With regard to the beneficiary's employment abroad, the petitioner referred to a certificate, which was accompanied by an English translation, in which the foreign entity's human resource manager certified that the beneficiary has been employed in the position of regional systems manager since November 28, 2005. Supporting evidence also included (1) several of the beneficiary's paystubs for 2012 and 2013; (2) a photocopied organizational chart; (3) a document entitled "Hardware Sizing Guide," which provided a technical outline of the hardware testing process in the context of "Microsoft Dynamics NAV 2009" software; and (4) the beneficiary's certificate of completion pertaining to a training course that was scheduled to take place from May 12, 2013 to May 20, 2013. The certificate indicates that it was awarded to the beneficiary on June 20, 2013. The response statement also reiterated information pertaining to the beneficiary's role in implementing the [REDACTED] of which the beneficiary gained specialized knowledge during the course of his employment with the affiliate in the Dominican Republic.

On January 14, 2014, the director denied the petition, concluding that the beneficiary does not possess specialized knowledge and that the beneficiary was not employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. The director found that the hardware sizing chart for Microsoft Dynamics NAV 2009 is a commercially available product and does not expound on the beneficiary's specialized knowledge or differentiate between the beneficiary's knowledge and knowledge generally encountered in the same industry or among others in positions similar to that of the beneficiary. The director also pointed out that the training the beneficiary received at the company headquarters in Switzerland took place in May 2013 and that any time spent in such training cannot be deemed as time spent in a specialized knowledge capacity. Finally, the director determined that the beneficiary's job duties are those of a skilled worker and that the knowledge required to carry out such duties is common among others in the field of IT.

On appeal, counsel asserts that the beneficiary possesses "highly customized" knowledge that he obtained from his many years of work with [REDACTED]. Counsel states that [REDACTED] is proprietary and unique to the foreign entity and its affiliate companies. Counsel explains that the beneficiary used Microsoft Dynamics NAV 2009 to create a complete software solution tailored to address the foreign employer's specific needs and further claims that the beneficiary will design and implement a similar solution to fit the needs of the petitioning entity. Counsel asserts that the beneficiary has knowledge of his employer's specific retail environment and needs coupled with knowledge of his employer's proprietary information system, i.e., [REDACTED] which are crucial for the successful implementation of similar changes within the petitioner's organization.

III. Analysis

In order to establish eligibility for the L-1B visa classification, the petitioner must show that the individual has been and 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.

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.*

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.

A. Specialized Knowledge Capacity Abroad

Turning first to the issue of the beneficiary's employment abroad, we find that the petitioner has not demonstrated that the beneficiary possesses knowledge that may be deemed as "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that he was employed in a capacity that involved specialized knowledge.

Counsel's assertion that the beneficiary possesses specialized knowledge by virtue of his experience in working with the foreign entity's proprietary [REDACTED] during the course of his employment is not persuasive. The petitioner in this matter has not provided sufficient probative evidence establishing the nature of the claimed specialized knowledge or how the specialized knowledge was acquired. While the petitioner pointed out that the beneficiary works in the travel retail industry, which is different from the retail industry at large, this does not impact the determination of whether the beneficiary possesses specialized knowledge, despite the fact that he works with a system that is unique to his current and proposed employers. Also, while the petitioner

claims that the beneficiary attended two training courses – one in 2008 and one in 2013 – during his employment abroad, the record does not include evidence of the training the beneficiary received in 2008. 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)).

Further, with regard to the beneficiary's 2013 training, the petitioner failed to provide requested information establishing the number of hours daily that the beneficiary spent in training during the eight-day training course, nor did the petitioner expressly state that the training was a source of the beneficiary's claimed specialized knowledge. We note that 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). Moreover, even if the training the beneficiary attended in 2013 did result in the beneficiary gaining specialized knowledge, the beneficiary would have only used such knowledge for approximately four months prior to the date the instant petition was filed. Thus, the petitioner would have to establish that the beneficiary obtained specialized knowledge prior to having attended the 2013 training course.

In addition, the petitioner's reliance on a commercially available guide is not responsive to the director's RFE request for a layman's explanation of the beneficiary's specialized knowledge, as the information found in the guide is not easily interpreted by someone who is unfamiliar with the IT industry. Furthermore, given that the guide does not pertain specifically to the beneficiary, it does not address the beneficiary's knowledge or specific role with respect to others within the foreign entity's organization. The petitioner also failed to provide an organizational chart of the foreign entity, a document that was requested in the RFE. More importantly, the petitioner provided no information comparing the beneficiary's knowledge to that of others within the foreign entity or to others within the industry at large. Given that the terms "special" and "advanced" are both relative, the petitioner's failure to provide critical information to demonstrate how the beneficiary's knowledge is specialized relative to the knowledge possessed by others undermines the petitioner's claim of eligibility and precludes further analysis of a relevant component of the beneficiary's specialized knowledge capacity. Based on the evidence provided, we are unable to determine whether there were others within the same organization who received similar training as that offered to the beneficiary.

In sum, while the petitioner relies on the beneficiary's knowledge gained during his years of experience working with his employing organization's proprietary system – [REDACTED] – the petitioner did not provide evidence establishing the specific nature of the beneficiary's knowledge, the beneficiary's specific means of obtaining such knowledge, or an explanation distinguishing the beneficiary's knowledge from the knowledge of others either within the same organization or within the travel retail industry at large. Therefore, for the reasons discussed above, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge or that he was employed abroad in a specialized knowledge capacity. Accordingly, this petition cannot be approved.

B. Specialized Knowledge Capacity in the United States

The other issue to be addressed in this decision is the beneficiary's proposed employment in the United States and whether the prospective position would require the candidate to possess specialized knowledge to successfully execute the requisite job duties.

On appeal, counsel states that the beneficiary's experience abroad equipped him with the knowledge that is necessary to carry out the tasks required of the proposed U.S. position. Counsel refers to [REDACTED] as "unique and specialized" thus indicating that the beneficiary's knowledge of and prior work experience with the system makes him an individual who possesses specialized knowledge. Counsel explains that the beneficiary's primary concern in working at the petitioning entity will be to "design, implement, and modify" the petitioner's customized system "in order to maximize efficiency within the company." However, as discussed above, the petitioner failed to provide evidence to establish that the beneficiary's knowledge of its proprietary system is specialized or advanced.

Furthermore, as previously noted, claiming that the beneficiary has specialized knowledge of a proprietary tool is not sufficient without supporting documentary evidence to support the claim. *Id.* Given that the beneficiary's job duties, as previously restated, are nearly identical to those he has performed throughout his employment with the foreign entity and in light of our earlier findings with regard to the beneficiary's current employment abroad, we find that the petitioner has failed to provide sufficient evidence establishing that the beneficiary's proposed position with the U.S. entity would involve specialized knowledge. Therefore, on the basis of this additional adverse finding, the instant petition cannot be approved.

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.