



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 09 2014** OFFICE: CALIFORNIA 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:

[REDACTED]

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, California Service Center ('the director'), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) to classify the beneficiary as an intracompany transferee in a specialized knowledge capacity 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 Nevada corporation established in March 2013, states that it is a subsidiary of [REDACTED] located in the Philippines. The petitioner intends to operate a liquidations and auction business, as well as engage in the wholesale and retail of household furniture. It seeks to employ the beneficiary in the position of international appraiser and auctioneer for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in the United States 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. On appeal, counsel for the petitioner asserts that the director erred in determining that the beneficiary does not possess specialized knowledge. Counsel asserts that the proposed U.S. position requires knowledge of the petitioner's appraisal strategies and techniques, as well as knowledge of the U.S. and Philippines liquidation markets. Counsel further contends that the beneficiary possesses extensive training, education and experience in the operation of the business which resulted in his advanced knowledge of the processes and procedures of the business operations, its financial operations, its appraisal and auctioneering techniques, and the intricacies of the Philippines liquidation and auctioneering market.

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.

Finally, pursuant to 8 C.F.R. § 214.2(l)(3)(vi) if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;

- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

II. The Issue on Appeal

The sole to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in the United States in a specialized knowledge capacity.

A. Facts

The petitioner is a Nevada corporation established in March 2013 which operates a liquidation and auction business and intends to engage in the retail and wholesale of household furniture. The petitioner further described its intended activities as follows:

Petitioner Company will conduct direct acquisition of assets from its identified sources for purposes of resale, then sell its inventory through its identified distribution channels. Petitioner Company will designate its expert appraisers to find, inspect and estimate the value of assets of prospective sellers. Its sources of inventory include the following: (a) closed-down businesses; (b) purchased returns/shelf-pulled products from national, regional and local chains; (c) companies disposing of their assets for purpose of renovation, redesign, upgrade, downsizing, relocation, among others; (d) bank foreclosed properties; and (e) private and government liquidations.

The petitioner indicated that it will sell its acquired assets through public auctions (onsite, off-site or online), through its own wholesale and/or retail outlet, and through export of assets to the Philippines for resale by its parent company. The petitioner indicates that, based on its market studies, it is the only liquidation company in the [REDACTED] area which has the ability to dispose of its stock quickly through export to the Philippines, and its parent company will be the only Philippines auction company that directly imports products from the United States on a regular basis.

The petitioner stated that the beneficiary will be employed in a specialized knowledge capacity as an International Appraiser and Auctioneer and described his proposed duties as follows:

1. Evaluate and conduct ocular visits of client sites
2. Participate in auctions and liquidations
3. Identify assets and goods for purchase and conduct appraisal of their value, using the company's proven methods of valuation, market trends studies, and with due

regard to potential disposition prices at Petitioner Company's identified ways of disposition of inventory in both US and Philippine markets

4. Conduct negotiations on acquisitions of assets
5. Conduct inventory, tagging, set prices, catalog for purposes of resale
6. Oversee the incoming and outgoing flow of merchandise in the company's warehouse and during auctions and liquidations
7. Assist in the management and performance of auctioneering services for the company
8. Keep himself abreast of the market trends in the US and Philippine liquidation and auctioneering industry

The petitioner stated that the beneficiary has held the positions of appraiser and auctioneer apprentice (2006 to 2009), vice president for operations and senior appraiser/auctioneer (2009 to 2010), and president (2010 to present) with its parent company in the Philippines. The petitioner stated that, as a result of this experience, he "undoubtedly possesses intimate and advanced knowledge of the processes and procedures of our business operations, financial operations, our appraisal and auctioneering techniques and service, and intricacies of the Philippine liquidation and auctioneering market." In addition, the petitioner provided evidence that the beneficiary earned bachelor's degrees in Entrepreneurship and Business Administration/Marketing Management in 2009 and 2013, respectively.

The petitioner further explained its requirements for its international appraiser and auctioneer position as follows:

Due to our unique business model, particularly our plan to export inventory to the Philippines through [the foreign parent company] as part of our distribution/sale of inventory from the United States, it is crucial that the person who will conduct the evaluation, appraisal, purchase and liquidation of inventory purchased by Petitioner Company should be extremely knowledgeable about our appraisal strategies and the Philippine and US liquidation market as well. Such person must be able to perform his functions and have a holistic approach to the duties of the job, with full regard to what type of merchandise to buy, how much should be its purchase price given the Petitioner Company's budgets and financial position, the proper valuation of the property and making offers thereon, and how much can Petitioner Company and/or [the foreign entity] sell these products for both in the US and Philippine markets.

While many individuals can perform the job of an auctioneer or appraiser in the United States, these individuals have no knowledge about [the foreign entity's] business strategies and the Philippine liquidation market at the same time.

The petitioner explained that training someone new in the United States to perform the duties of the position would cause a significant interruption in the petitioner's new business and could lead to significant losses.

Upon review of the initial record, the director issued a request for evidence (RFE). The director requested that the petitioner provide additional evidence to establish that the beneficiary has specialized knowledge and evidence that the proposed position in the United States requires specialized knowledge. The director instructed the petitioner to provide additional explanation as to how the beneficiary's duties require special or advanced knowledge not generally found among similarly employed workers in the petitioner's field.

In response, the petitioner emphasized that its planned sale of acquired stock in the Philippines market will be key to its success in the United States, and stated that for this reason it "cannot just employ any individual who will perform the functions of appraising, evaluating, examining, and purchasing stock for purpose of resale." The petitioner emphasized that the international appraiser and auctioneer "must have an advanced knowledge of the company's processes and procedures in the context of the liquidation industry vis-à-vis the Philippine liquidation market," and that such knowledge is "an absolute requirement for the position."

The petitioner explained that the beneficiary has participated in hundreds of auctions and liquidations in the Philippines and has gained advanced knowledge of "the important stages [of] our parent company's business in the context of the Philippine liquidation industry." The petitioner stated that the beneficiary gained expertise in dealing with scraps and building materials from demolitions, construction equipment and machinery, vehicles, furniture, electronics, appliances, fixtures and other materials and has been assigned to key projects with major clients.

The petitioner explained that no one within the foreign company possesses the same breadth of knowledge and experience with major clients, that his expertise cannot be easily acquired in the United States, but can only be acquired through at least three years of experience with its parent company. The petitioner emphasized that the position requires "expertise in the Philippines market, knowledge of the buying preferences of our sellers, our company's methods of appraisal and valuation of stock to purchase for the purpose of resale, and setting mark-ups in order to maximize our profits."

The petitioner added the following duties to its initial description of the beneficiary's proposed U.S. position:

- Conduct regular review of acquisition prices of stock and resulting resale price in US and Philippine markets.
- Conduct continuing monitoring of US and Philippine market and prices of goods to ensure that appraisals and acquisition of stock for resale to the Philippines realize maximum profits; confer with US and Philippines sales and purchasing personnel to obtain information about customer needs and preferences.
- Evaluate, examine, appraise and purchase merchandise at the most favorable price consistent with quality, quantity, specification requirements and other factors, with particular regard to potential resale value in the US and Philippine market.

- Monitor and analyze sales records, trends, or economic conditions to anticipate consumer buying patterns and determine what the company will sell and how much inventory is needed.
- Closely work with vendors and suppliers for the purpose of getting quality products.
- Analyze market and delivery systems to assess present and future material availability.
- Work closely with sales team to determine mark-ups and selling prices for merchandise.
- Resolve vendor supplier issues, initiate claims against vendor/suppliers, if necessary.

The petitioner maintained that it is "too risky" to hire someone in the United States to perform the duties of the offered position, as it has only one year to ensure that its new office becomes viable. The petitioner also submitted a letter from the foreign entity affirming the beneficiary's experience abroad, including his familiarity with the Philippines liquidation industry, the company's business practices and strategies, and the buying preferences of its wholesale and retail clients.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he would be employed in the United States in a position requiring specialized knowledge. In denying the petition, the director acknowledged the beneficiary's prior experience with the petitioner's parent company, but found that the experience the beneficiary gained did not involve knowledge or expertise beyond what is commonly held by similarly-experienced workers in the petitioner's field, or that knowledge of the petitioner's business practices qualifies as specialized knowledge. The director found that the petitioner did not establish that knowledge of its business practices and customer preferences would be difficult to transfer to an experienced appraiser or auctioneer in the field, and therefore did not establish that the knowledge required for the position is special or advanced.

On appeal, counsel for the petitioner asserts that the proposed duties require an advanced level of knowledge in the organization's processes and procedures for appraising and reselling assets in the Philippine liquidation market, and reiterates that "a simple knowledge of appraisal and auctioneering would not be enough for Petitioner's purposes."

B. Analysis

Upon review, the petitioner has not established that the beneficiary possesses specialized knowledge or that he 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 or

prongs. 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. All employees can be said to possess unique skill or experience to some degree; the petitioner must establish that qualities of its processes or products require this employee to have knowledge beyond what is common in the industry.

Turning to the question of whether the petitioner established that the beneficiary possesses specialized knowledge and will be employed in a capacity requiring specialized knowledge, upon review, the petitioner has not demonstrated that this employee possesses knowledge that may be deemed "special" or "advanced" under the statutory definition at section 214(c)(2)(B) of the Act, or that the petitioner will employ the beneficiary in a capacity requiring specialized knowledge.

In examining the beneficiary's claimed specialized knowledge, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner's description of the beneficiary's previous and proposed duties as an appraiser and auctioneer could have described the duties of many similarly-employed workers versed in the liquidation and resale markets. The petitioner acknowledged that "many individuals can perform the job of an auctioneer or appraiser in the United States," but maintained that the position also requires advanced

knowledge of the petitioner's business strategies and the Philippines liquidation market. Therefore, the petitioner must establish that the beneficiary's combined knowledge of its internal business strategies, customer preferences and the Philippines market qualifies as either special or advanced.

The petitioner states that, based on its market studies, no other liquidation companies are operating in the United States and the Philippines and therefore the knowledge the beneficiary possesses is in fact specialized and not available outside the petitioner's organization. However, the petitioner has neither described nor documented its business processes, appraisal strategies and techniques, nor has it attempted to differentiate how such techniques differ from those generally used by appraisers and resellers in its field. While the record indicates that the beneficiary joined the foreign entity as an apprentice appraiser at the age of fifteen and subsequently acquired seven years of progressive experience with the company, it does not automatically follow that the knowledge he acquired is special or advanced as those terms are defined in the statute and regulations. The petitioner has not offered any explanation for its claim that it would take three years to train a new employee to perform the duties of the same position and has not articulated with specificity the nature of the beneficiary's claimed company-specific knowledge related to business strategies and appraisal techniques.

While we do not doubt that the company has developed internal strategies and processes for appraising, purchasing, pricing and reselling products in order to make a profit, it remains unclear whether these processes are so different from those used by appraisers at other companies that this knowledge alone can be deemed specialized. 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)).

The petitioner further claims that the beneficiary's specialized knowledge includes his knowledge of the liquidation market in the Philippines. Again, the petitioner does not further elaborate or provide any explanation or documentation establishing how this market differs from other international markets or what specific knowledge is required to work as an appraiser and auctioneer in the Philippines. Without such information, the petitioner has not established that business information critical to operating in the Philippines could not be easily transferred to an appraiser with comparable education and experience. In fact, the petitioner indicates that the beneficiary's role will also require him to apply knowledge of the U.S. liquidation and resale market, a field in which he has no apparent prior experience or training. Therefore, without further explanation, it is unclear why the knowledge required to perform the duties of an appraiser in the Philippines would be deemed to be special or advanced. If the beneficiary's undergraduate education in business and marketing and his experience as an appraiser is sufficient to allow him to adapt his existing knowledge and skills to the U.S. market, it is reasonable to believe that a similarly trained and educated appraiser could readily adapt to the Philippines market. Again, the petitioner's claim that knowledge of the Philippines liquidation market constitutes specialized knowledge is neither adequately articulated nor supported by any evidence.

Similarly, the fact that the beneficiary has substantial experience in appraisal and liquidation transactions with varied types of assets and has worked with major clients does not establish that the beneficiary's knowledge is specialized or advanced. Rather, the petitioner's specialized knowledge claims are largely based on fact that the beneficiary has worked as an appraiser for its parent company in the Philippines. Merely claiming that the beneficiary has experience with purchase and resale transactions carried out by the foreign entity with specific clients is insufficient when those transactions have not been demonstrated to be materially different from those that are handled by any similarly experienced appraisers and auctioneers. The petitioner does not explain why the foreign entity's client preferences, appraisal techniques and Philippines market trends could not be readily transferred, nor has it supported its claim that it would require three years to train an otherwise experienced appraiser to perform the duties of the proffered position. The record does not include sufficient evidence demonstrating that the beneficiary has used his particular training or his experience to perform duties other than the typical duties of many experienced and skilled appraisers. Accordingly, the record does not establish that the beneficiary possesses specialized knowledge.

The petitioner has also failed to establish that the beneficiary would work in a specialized knowledge capacity for the petitioner. As discussed, the petitioner failed to explain how the beneficiary's proposed duties require specialized or advanced knowledge of the petitioner's services and processes. Again, although the petitioner referenced the beneficiary's educational background and seven years of experience gained with the foreign entity, the petitioner did not adequately articulate the nature of the specialized knowledge to be applied in the proffered position. The petitioner did not provide documentary evidence or sufficient explanation to support its broad claim that the beneficiary is one of the few people within the foreign entity and the Philippines who possess the knowledge required for the proffered position. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The beneficiary is clearly a valued and experienced employee of the foreign entity and is qualified for the proposed position. However, the petitioner has not established that the knowledge he possesses is specialized or advanced, as it has not adequately articulated or documented how knowledge of its business processes or the Philippines liquidation market, or the combination of these two areas, is truly special or advanced compared to the knowledge generally held by similarly employed workers in the field.

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). The evidence submitted fails to establish by a preponderance of the evidence that the beneficiary possesses specialized knowledge or 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 appeal will be dismissed.

III. Conclusion

The petition will be denied and the appeal 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.