



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 06 2015

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:

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.

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 this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware limited liability company established in December 2013, states that it engages in services for industrial furnaces. The petitioner is a subsidiary of [REDACTED] located in Germany. The petitioner seeks to transfer the beneficiary to the United States to serve in a specialized knowledge capacity, as a [REDACTED] for an initial period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been employed abroad, and would be employed in the United States, in a position 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, the petitioner asserts that the director incorrectly denied the petition as the petitioner established by a preponderance of the evidence that the beneficiary is qualified for the classification sought. The petitioner submits a brief and additional evidence in support of the appeal.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(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.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 13, 2014. The petitioner indicated on the Form I-129 that it is a new office that will operate an industrial furnace service company in the United States.

The petitioner stated the beneficiary will be working as a [REDACTED] In support of the petition, the petitioner submitted evidence including a letter describing the beneficiary's duties abroad as a [REDACTED] for over 10 years, his specialized knowledge, and his proposed duties with the petitioner. The petitioner provided a lengthy description of the beneficiary's role and responsibilities, indicating that he will be responsible for supervising a site-based project, coordinating with site engineers, recording and finalizing documentation, and the planning, installation, monitoring, recording, and documenting the controlled heat up, furnace superstructure expansion, and furnace drilling/draining systems of the proprietary products used for the specific project. The petitioner further explained that while there are

many products and methods used in glass making furnaces, it has a proprietary "high velocity burner" that has been installed in the U.S. client's facilities around the world and must now be installed at its facility in Michigan

The director issued a request for additional evidence ("RFE") instructing the petitioner to submit, among other items, evidence that the beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad by a qualifying organization in a position that was managerial or executive or involved specialized knowledge; and (3) evidence of the proposed specialized knowledge position in the United States.

In response to the RFE, the petitioner submitted additional evidence, including an expanded explanation of the beneficiary's specialized knowledge. The petitioner indicated that there are only three other companies worldwide with the capability to provide a similar service and only 12 individuals worldwide, among the four companies, with specialized knowledge comparable to the beneficiary. The petitioner contends that no one outside of its company can provide the services for its contracts because the burners, monitoring equipment, and processes are unique and proprietary.

The director denied the petition on April 4, 2014, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a position requiring specialized knowledge.

On appeal, the petitioner indicates that the beneficiary meets the statutory and regulatory definitions of "specialized knowledge" in that it is more likely than not that the beneficiary possesses advanced knowledge or expertise of its products, processes, and procedures. The petitioner further asserts that it has provided sufficient evidence to establish that the beneficiary is one of a very few people worldwide who has specific skills on the advanced furnace cool-down and heat-up processes, and that this skill is not generally available among many workers in the industry.

B. Analysis

Upon review, the petitioner has established that the beneficiary possesses specialized knowledge and that he has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge 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 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.

In the present case, the petitioner's claims are based on the second prong of the statutory definition. Specifically, the petitioner asserts that the beneficiary has an advanced knowledge of the company's unique and proprietary heat-up techniques and processes specific to its proprietary high velocity burners. The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary's knowledge is specialized as he is one of four employees within the company with an advanced level of expertise of its "high velocity burners" and that the beneficiary's ten years of experience with the petitioner's products, techniques, and processes render his knowledge "advanced" within the company. *See* 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner further established that the proffered position requires the beneficiary's specialized knowledge and requires an advanced level of internal knowledge that is of significant complexity and can reasonably only be gained within the petitioner's company.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge, and that he has been employed abroad, and will be employed in the United States in a position requiring specialized knowledge. *See* Section 214(c)(2)(B) of the Act. Accordingly, 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, that burden has been met.

ORDER: The appeal is sustained.