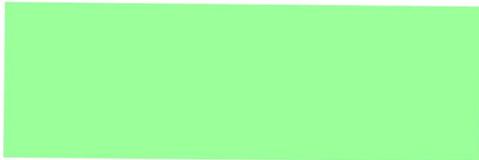


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JAN 15 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 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 corporation, is a litigation support firm. The petitioner claims to be a subsidiary of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as a Technical Client Services Support Analyst for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a position involving 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 director erred as a matter of law in determining that it failed to establish that the beneficiary was employed abroad in a position involving specialized knowledge.

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 United States 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.

Finally, 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 beneficiary has been employed in a specialized knowledge capacity abroad as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

A. Facts

The petitioner is a litigation support firm, with 13 employees in the United States, and a gross income of \$5,000,000. On the Form I-129, the petitioner described the beneficiary's duties abroad as follows:

- Managing all areas related to the collections of databases, migration, processing data, analysis of data, conversion of data, quality assurance, tracking and management of client litigation data.
- Liaising with clients and project managers regarding client's requests.
- Planning and executing electronic evidence collection exercises, on-site at client premises around the UK and abroad.
- Utilizing industry standard and specialized industry software to access, extract and cull data from electronic sources.
- Processing, converting, analysis, quality control, importation, and other specialized tasks including interaction with other consultants, supervisors, and client personnel.

The petitioner provided a letter in support of the initial petition dated April 25, 2014. The petitioner described the litigation support industry as a "niche market" in which clients require expert knowledge from the company's support staff. According to the petitioner, the beneficiary has worked on projects instrumental to the success of the parent company and will transfer this knowledge to the United States. Specifically, the petitioner states that the beneficiary:

[The beneficiary] has obtained specialized skills of our software and systems and processes during his employment of the past 3 years that make him invaluable to the organization. [The beneficiary] has obtained Administrative Certifications in 2 unique industry software required for our clients' projects. Specialized Knowledge of these software programs and training of our US staff in these is crucial to the continued growth of the company.

The petitioner further summarized the beneficiary's qualifications as follows:

- Relativity Certified Administrator (specialized software that is unique to the Litigation Support Industry)
- Viewpoint Certified (specialized software that is unique to the Litigation Support Industry)
- Microsoft MCSA certified
- Strong knowledge of EDDS data migration. Good knowledge of SQL scripts
- Good knowledge of infrastructure (e.g. SANs, servers, switches and firewalls)

The petitioner submitted an organizational chart for the foreign entity showing the beneficiary as one of two "Technical Client Services Support Analyst" reporting to the "Technical Client Services Support Coordinator." The Coordinator in turn reports to the "Director of Global IT and Technical Client Services" reporting to the Vice President of Global Operations.

The petitioner attached a copy of the beneficiary's resume. The resume lists his position as a Technical Client Services Support Analyst with the foreign entity from May 2013 to "present" and previously from October 2011 to November 2012 in the same position. The resume notes that the most recent position with the foreign employer is "similar" to the beneficiary's previous role but "with increased responsibility."

The director issued a Request for Evidence ("RFE") on May 9, 2014. The director requested that the petitioner provide, among other items, evidence of the specialized knowledge position with the foreign employer.

In response, the petitioner provided a letter describing the beneficiary's training and experience abroad and an organizational chart for the foreign entity.

The petitioner's letter in response to the RFE explained the beneficiary's specialized knowledge position as supporting both internal and external clients of the foreign entity, including software support and data production. The petitioner described the beneficiary's specialized knowledge to including working daily with the software tools including: Relativity Certified Administrator; Viewpoint; Microsoft MCSA; EDDS data migration; SQL scripts; and infrastructure (e.g. SANs, servers, switches, and firewalls). The petitioner states that these "tools are specific to our industry and difficult to support." The petitioner further explains that the beneficiary worked directly with "experts" to acquire his specialized knowledge and that two other staff members in the UK hold the same knowledge as the beneficiary.

According to the petitioner, two U.S. citizens were hired by the petitioner for the position in the United States, but a foreign employee is needed to train the United States employees. The petitioner states that other two

Technical Client Services Support Analysts with the foreign entity have the same knowledge and experience as the beneficiary. The petitioner stated that the beneficiary gained his specialized knowledge while working side by side with an "expert" in the company for one year. After the one year period, the beneficiary was also an "expert in the tools, processes, and procedures."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed in a specialized knowledge position with the foreign entity. In denying the petition, the director found that the petitioner failed to explain and provide evidence to show how the beneficiary's proficiency with the petitioner's products equates to specialized knowledge. The director concluded that it appears that the beneficiary performed the same or similar duties as other workers in a similar position in the field. The petitioner, therefore, cannot establish that the position abroad involved specialized knowledge.

The director further noted that the petitioner claims that it takes a minimum of one year of training and experience to acquire the specialized knowledge required for perform the duties required of the position. The director concluded that the beneficiary did not have the claimed one year of training plus one year of employment in the specialized knowledge position before the petition was filed.

On appeal, the petitioner claims that evidence is sufficient to establish that the beneficiary was employed abroad in a position involving specialized knowledge. First, the petitioner states that the director miscalculated the dates of the beneficiary's employment abroad, and that the beneficiary was employed for two years with the foreign employer. Furthermore, the petitioner states that the position held by the beneficiary requires "highly developed specialized knowledge only obtained by working in the systems and on multiple projects to ensure best practice."

B. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary was employed in a specialized knowledge capacity with the foreign employer as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

We note that the petitioner states the beneficiary has been employed by the foreign employer for over two years, and the director's comments regarding the duration of the beneficiary's employment abroad will be withdrawn.

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.

In the present case, the petitioner's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures.

The petitioner failed to meet its burden of proof with regard to the specialized nature of: (1) the beneficiary's actual duties; (2) the tools and methodology required to perform the duties; and (3) the beneficiary's knowledge of the petitioner's product.

The petitioner claims that the specialized knowledge position abroad requires an advanced level of knowledge of the company's processes and procedures. The petitioner states in the initial petition that the beneficiary's specialized knowledge involves the petitioner's software and systems and processes, gained during the beneficiary's past three years of employment. In response to the RFE, the petitioner states that the position involves supporting both internal and external clients of the foreign entity, including software support and data production using the software tools.

The petitioner, however, fails to articulate what company processes and procedures are required for the position. The only software, systems, or tools described by the petitioner as required for the position are software programs commonly used throughout the litigation support industry, including Relativity and Viewpoint. While the petitioner states that these programs are "unique to the Litigation Support Industry," the petitioner fails to explain how these programs are used specifically for the petitioner's processes and procedures, and not just litigation support firms industrywide. The petitioner also lists required skills for the position to include knowledge of Microsoft MCSA; EDDS data migration; SQL scripts; and infrastructure (e.g. SANs, servers, switches, and firewalls). Again, the petitioner fails to explain how knowledge of tools and programs that span multiple industries equates to knowledge specific to the company's processes and procedures.

Finally, the petitioner further described a year of training with an "expert" that is required for the position. The petitioner does not clarify whether the "expert" is an industry expert, or an expert in processes and procedures specific to the petitioner. The petitioner states that after one year, the beneficiary was also an

“expert” in “tools, processes, and procedures,” but again, fails to state what company tools, processes, and procedures the beneficiary had knowledge of.

Similarly, the petitioner fails to show how the specialized knowledge position requires knowledge of a company product and its application in international markets, as required by the first prong of the regulations. In response to the RFE, the petitioner states that the company is unique in that the UK based firm goes “onsite to many other European Countries” and the beneficiary is familiar with European rules. Again, while the beneficiary may understand that application of litigation support services in international markets, the petitioner fails to show how the position requires knowledge of litigation support services specific to the “company” and not litigation support services found industry-wide.

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.

For the reasons discussed above, the petitioner has not submitted probative, credible evidence to establish that the beneficiary was employed abroad in position involving the claimed specialized knowledge, and therefore, the evidence submitted fails to establish by a preponderance of the evidence that the beneficiary has been employed in a specialized knowledge position. See Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. Beyond the Decision of the Director

Beyond the decision of the director, the record does not contain sufficient documentation to persuade the AAO that the beneficiary possesses specialized knowledge or would be employed in a position that requires specialized knowledge, as required at section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15). As described above, the petitioner fails to show what knowledge of company products would be required in the United States other than those commonly found in the litigation support industry, or similarly, that the beneficiary’s knowledge of general litigation support software equates to specialized knowledge of the petitioner’s products.

For this additional reason, the petition cannot be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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, the burden of proving

eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361 Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.