



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 10 2015**

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the beneficiary's status 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 New York corporation, provides international investment banking and financial services. The petitioner states that it is an affiliate of the beneficiary's foreign employer, [REDACTED] located in Singapore. The petitioner seeks to employ the beneficiary in the position of Analyst, Global Operations for a period of two years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that she has been or will be employed 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 our office for review. On appeal, the petitioner contends that the director has applied a more stringent burden of proof than the preponderance of the evidence standard. The petitioner asserts that the director acted in error by issuing a "broad brush" request for evidence (RFE) attempting to eliminate all doubt with respect to the beneficiary's eligibility. The petitioner states that it adequately responded to the director's evidentiary request and has established by a preponderance of the evidence that the beneficiary has been and will be employed in a qualifying specialized knowledge capacity.

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.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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 as a result of her foreign employment and whether she will be employed in the United States in a specialized knowledge capacity.

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.

A. Facts and Procedural History

The petitioner filed the Form I-129 on April 7, 2014. The petitioner indicated in a support letter that it is part of the greater corporate group [REDACTED] "a major global financial services provider engaged in retail banking, credit cards, corporate and investment banking and wealth management." The petitioner explained that [REDACTED] operates in over 50 countries, employs over 140,000 people, and that it earned more than \$47 billion in 2013. The petitioner stated that it is one of many affiliated companies within [REDACTED] and that it operates as a "US registered broker-dealer" in [REDACTED]

The petitioner indicated that the beneficiary has worked in its "Asset Services team" since November 2011. The petitioner stated that the beneficiary is involved in "processing [the company's] specific mandatory and voluntary corporate transaction documentation" and that this position "requires an individual who possesses the unique combination of specialized knowledge of [the company's] specific customizations, specifications, business requirements, and IT infrastructure for our proprietary technology and procedures." The petitioner indicated that the beneficiary's position requires "advanced knowledge of [the company's] diverse and complex global structure and operating model."

The petitioner asserts that the beneficiary obtained her knowledge of the company's asset services processes and applications through her employment with the foreign employer beginning in June 2007, noting that she acted "as a key Dividend Analyst with extensive and noteworthy experience in [REDACTED]" The petitioner further stated that the beneficiary "served as a subject matter expert for dividend related processes, overseeing and managing the processing of dividends, including the reconciliation of dividend entitlements and the timely collection of dividend payment." The petitioner explained that the beneficiary has advanced knowledge of the company's operations system, [REDACTED] its main dividends application, as well as the [REDACTED] and [REDACTED] applications, which are "used to assist in the reconciliation, processing, and pre-payment of dividends." The petitioner described the specific functioning of each of these applications and how the beneficiary uses them.

The petitioner stated that the beneficiary "has been charged with responsibility to manage and build relationships with key internal and external stakeholders and actively manage expectations" and noted that she is "one of the few employees with advanced knowledge of [the company's] Operations systems." The petitioner indicated that the beneficiary "covers dividend events for proprietary clients, internal businesses and the Stock lending desk" and that she uses her knowledge to "participate in cyclical User Acceptance Testing (UAT) to ensure that systems are continually developed." Furthermore, the petitioner explained that the beneficiary uses specialized knowledge of "UK Inland Revenue's Manufacture Overseas Dividend rules and applies them to the desk in the U.S. and globally." The petitioner stated that the beneficiary's knowledge of the company's asset services processes and procedures is "unparalleled" and that she is "one of a few employees" who has developed an advanced knowledge of these systems. In addition, the petitioner indicated that the beneficiary worked for various other financial institutions dating back to 1994 and that she holds a Bachelor of Science degree in commerce and accounting.

The director later issued a request for evidence (RFE) advising the petitioner that it had submitted insufficient evidence to establish that the beneficiary was employed in a specialized knowledge capacity with the foreign entity. The director indicated that the petitioner's support letter did not provide specific details regarding the beneficiary's qualifications or training courses she completed to obtain her knowledge. The director noted that the petitioner did not provide details regarding the number of the beneficiary's colleagues who held knowledge equivalent to the beneficiary or the credentials and experience of her colleagues. As such, the director requested that the petitioner submit the beneficiary's personnel records and an organizational chart listing the beneficiary's department, including the names, titles, job duties, education levels and salaries for each of the beneficiary's colleagues. In addition, the director asked that the petitioner provide a letter from the foreign entity explaining how the beneficiary's knowledge was different from that required for other similar

positions in the industry. The director requested that the petitioner submit a detailed explanation of the products and services the beneficiary uses, a description of how the foreign entity's products and services are "special," a statement as to the minimum time required to obtain the beneficiary's level of knowledge and details regarding significant assignments completed by the beneficiary. Likewise, the director requested that the petitioner provide a similar letter elaborating on the same issues referenced above with respect to the beneficiary's proposed U.S. employment.

The director further asked that the petitioner and foreign entity, respectively, indicate the percentage of time the beneficiary spends, and would spend, on each of her tasks. In addition, the director requested that the petitioner describe the beneficiary's training and experience abroad, including a layman's explanation of the beneficiary's claimed specialized knowledge. Finally, the director asked the petitioner to provide evidence to support that the beneficiary's knowledge is not generally found in the industry and that it can be only taught through prior experience with the company.

In response, the petitioner reiterated that the beneficiary has "in-depth and noteworthy knowledge of [the company's] Asset Servicing (AS) department's applications and procedures." The petitioner explained the beneficiary's knowledge as follows:

Due to the complexity and proprietary nature of the Asset Servicing department's applications and procedures for processing mandatory and voluntary corporate transaction documentation, knowledge in this area is not readily available in the industry and only a handful of our Analysts located in the U.S. and throughout our global and affiliate operations are sufficiently well-versed and knowledgeable in these areas. This background would be difficult to impart to another without significant economic inconvenience to [the company], as a professional with [the beneficiary's] skills are not readily available in the U.S. labor market. [The beneficiary] is one of the few employees with the extraordinary training, experience, and skill set who is qualified to assume the Analyst, Operations position.

In addition, the petitioner provided duty descriptions relevant to the beneficiary's former capacity abroad and her position in the United States. The petitioner submitted a support letter in response to the RFE indicating that the beneficiary is "ideally and uniquely qualified" and "one of the foremost experts" in the company's dividend processing, asset servicing, and global operations and its related proprietary applications. The petitioner stated that the beneficiary is a member of the dividends division, one of three major divisions within the company, the others being "Principal and Interest" and "Reorganization." The petitioner indicated, given the proprietary nature of the beneficiary's knowledge, "it is clear that this type of knowledge is distinguishable from that generally found in the financial services industry." The petitioner explained that knowledge of the company's proprietary systems can only be acquired through prior experience with the company and that it cannot be easily transferred to another employee, noting that it is "unique and highly uncommon."

The petitioner stated that the beneficiary will be responsible for migrating functions from the company's Singapore office to the United States. It noted that the beneficiary would transfer her "expert knowledge of dividend processing and Asset Servicing systems and operations in Singapore to train the U.S. team." The petitioner indicated that the beneficiary "is one of only two dedicated employees in the U.S. who has this high level of expertise processing and booking for our dividend processing and Asset Servicing systems." The petitioner explained that unlike other specialized knowledge positions in the industry "this role requires specialized knowledge of [the company's] customized processes and applications developed for [the company's] unique Dividends processing, Asset Servicing, and Global Operations use and compliance processes." The petitioner provided a specific explanation of the technologies utilized by the beneficiary including, [REDACTED], which it stated were developed by the company and "unique and exclusive." The petitioner indicated that these technologies were previously utilized only in Singapore and a "select few locations" prior to the beneficiary's transfer to the United States in November 2011.

Further, the petitioner stated that the training provided to the beneficiary is "specific to the way [the company's] actions are created, calculated and processed across the books and records of the Company, and therefore different from the typical training provided to other [company] employees." The petitioner indicated that the beneficiary "is also responsible for drafting procedures, and User Acceptance Testing for systems enhancements" and that she "will lead development, analysis, design, and delivery of functional and technical specifications, and improvements and testing to the system." The petitioner explained that a regular candidate would not be able to perform the beneficiary's duties or train junior employees. The petitioner stated that each employee holding this knowledge "received specific training in Singapore" the mastery of which "is only possible by spending a significant amount of time working directly with these systems, as [the beneficiary] has done well in excess of four (4) years." However, the petitioner further explained that "the number of employees who are similarly employed and who possess similar knowledge are not spread throughout all [REDACTED] entities," but "predominantly limited to [REDACTED] in [REDACTED]." The petitioner indicated that a candidate "walking into this role" without specific knowledge and training "would not be able to perform the senior and advanced job duties required of the position, even after a reasonable period of on-the-job training of three months or even six months." The petitioner explained that it would take a minimum of four (4) years of experience in the company's operations and processes to develop the expertise held by the beneficiary.

In denying the petition, the director found that the petitioner had failed to document the beneficiary's claimed special training. The director concluded that the petitioner did not articulate how many others in the company had gained the beneficiary's level of knowledge, beyond indicating that the beneficiary was only one of a few. Further, the director stated that the petitioner did not specify how long it would take another to acquire the beneficiary's level of knowledge. Further, the director noted that the beneficiary did not explain the specifics of the beneficiary's team in the United States or how the beneficiary will transfer knowledge to her colleagues in the United States as asserted. The director stated that mere familiarity with a company's tools and procedures is not sufficient to establish specialized knowledge.

On appeal, the petitioner contends that it has established the beneficiary's eligibility by a preponderance of the evidence and asserts that the director applied a more stringent standard, requiring that the petitioner

demonstrate specialized knowledge "beyond all reasonable doubt." The petitioner states that the director issued a "broad brush" RFE that requested already submitted evidence and which merely reiterated the regulatory criteria. The petitioner claims that it "unequivocally responded" to the director's RFE and states that the director improperly denied the petition based upon the petitioner's failure to submit evidence that was not requested in the RFE. The petitioner asserts that evidence of training courses is not required to establish specialized knowledge and that this should not be "the only regulatory benchmark." The petitioner states that the director erroneously denied the petition based on the petitioner's failure to articulate how many others had acquired the beneficiary's level of knowledge and the amount of time it would take another to obtain this knowledge, when in fact, the petitioner did provide this information in response to the RFE.

2. Analysis

Following a review of the totality of the evidence submitted, the petitioner has not established that the beneficiary possesses specialized knowledge or that she has been or will be employed 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's prior year of employment abroad was in a position involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iii). 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.

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. 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present matter, the petitioner contends on appeal that the director issued a "broad brush" RFE which applied a more stringent burden of proof. We do not find this assertion persuasive. We do acknowledge that the director did request certain evidence already provided with the petition, such as English translations of certain documentation. As noted, in evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376. 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. Some repetitiveness in an RFE does not establish grounds for overturning the denial of a petition and it is still the petitioner's burden to demonstrate with a preponderance of the evidence that the beneficiary holds specialized knowledge.

The petitioner has not submitted sufficient supporting documentation in support of its claim that the beneficiary possesses special or advanced knowledge. The petitioner states that the beneficiary has uncommon knowledge of the company's proprietary customizations, specifications, business requirements, and IT infrastructure relevant to the processing of dividends. However, the petitioner has not sufficiently documented the basis of the beneficiary's knowledge or sufficiently explained how the beneficiary's knowledge sets her apart from her colleagues or others similarly placed in the industry. For instance, the director requested that the petitioner submit organizational charts relevant to the beneficiary's U.S. and foreign employment, including the names, duties, experience, education, and salaries of the her colleagues. The petitioner did not submit this evidence, which is critical to effectively comparing the beneficiary to her peers. 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).

This evidence is of particular weight considering that the petitioner states that it maintains an entire department devoted solely to the processing of dividends. Although the petitioner indicates that the beneficiary is "one of only two" holding this knowledge, this assertion is of little probative value without a specific comparison of the beneficiary with her actual colleagues abroad and in the United States. The petitioner does not explain or document how the beneficiary was able to gain this level of knowledge while nearly all other company and department employees were not, nor did it detail and document specific projects or training she completed to gain her knowledge, beyond generally stating that she underwent "extraordinary training." Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

We acknowledge that proprietary information can form the basis of specialized knowledge, but establishing this alone is not sufficient to demonstrate specialized knowledge, as such a standard would greatly expand the regulation beyond its intended bounds. Therefore, the petitioner must provide detailed and probative evidence to support its assertion that the beneficiary's knowledge is advanced or uncommon in comparison to her colleagues within the organization. Here, the lack of specific comparison to her colleagues and supporting evidence demonstrating her acquisition of her asserted knowledge leaves the record insufficient to establish her eligibility. 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)).

Indeed, the petitioner's assertions leave question as to whether the beneficiary's knowledge is specialized when compared to her colleagues. For instance, the petitioner states that the beneficiary acquired her specialized knowledge in the company's asset services processes and applications while employed in Singapore. Further, the petitioner indicates that the beneficiary will be responsible for "migrating" this specialized knowledge to the United States. First, it should be noted that the petitioner has not provided documentation to support this asserted migration, such as evidence of trainings conducted by the beneficiary. In addition, the petitioner states elsewhere on the record that advanced knowledge of the company's dividend processes and applications is centered in New York, where the beneficiary will be transferred, and suggests that others have completed advanced training in these processes and applications in Singapore to be transferred back to New York. This apparent discrepancy and the lack of evidence of the beneficiary's asserted transfer of special knowledge to the United States creates ambiguities in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the petitioner asserts that the beneficiary "is also responsible for drafting procedures, and User Acceptance Testing for systems enhancements" and that she "will lead development, analysis, design, and delivery of functional and technical specifications, and improvements and testing to the system." However, the petitioner has provided little documentation to support this assertion, such as actual procedures drafted by the beneficiary or emails or other relevant documentation substantiating her leadership of development and design of the company's proprietary technology. Again, 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)).

Likewise, the same burden applies to comparing the beneficiary's knowledge against those who may be similarly placed in the industry. We do not dispute that the petitioner, and its affiliates, are a major financial institution with a high level of expertise in the industry and that they likely hold proprietary knowledge relevant to the processing of dividends. However, the possession of proprietary knowledge is not alone sufficient to demonstrate specialized knowledge. The petitioner must compare its knowledge against others similarly placed in the industry to indicate that it is noteworthy or uncommon. However, the petitioner, beyond indicating that its knowledge is proprietary, has provided little explanation or documentation to substantiate that its organizational knowledge, and in turn the knowledge of the beneficiary, is noteworthy and uncommon when compared to other companies similarly placed in the field. The petitioner states that its

proprietary technologies, including [REDACTED] were developed by the company and "unique and exclusive," but fails to specifically compare these technologies against those utilized by other companies in the field or submit documentation beyond its own statements to corroborate that these technologies are unique and uncommon in the industry. Further, the petitioner does not provide sufficient information to allow us to determine how much training is required to become proficient in such technologies, such that we can determine that the knowledge required for proficiency is truly special or advanced.

In conclusion, we acknowledge that the director made certain errors of fact in denying the petition. As noted by the petitioner, the director concluded that the petitioner had failed to state how many others in the organization held the beneficiary's level of knowledge or the amount of time it would take to gain the beneficiary's level of knowledge. We note that the petitioner did respond to both of these requests for information. However, the petitioner's identification of an error of fact on the part of a director does not alone establish eligibility. We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Our *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Further, as previously discussed, the petitioner did not probative comparisons of the beneficiary against her colleagues to give its assertions of the beneficiary being "only one of two" employees with the claimed specialized knowledge sufficient meaning. As such, despite the director's oversight of certain information provided in response to the RFE, we conclude following a review of the totality of the evidence that the petitioner has not established that the beneficiary possesses specialized knowledge. Although the petitioner states that the beneficiary's knowledge is special and advanced, the record fails to demonstrate that this knowledge is special compared to that possessed by other similarly-employed workers in the industry or advanced as compared to similarly-employed workers in the company. While the beneficiary clearly possesses the skills and professional experience required for the position, the evidence does not distinguish her as an employee with specialized knowledge.

Based on the foregoing, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge or that she has been or would be employed in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The appeal will be dismissed for the above stated reason. 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.