

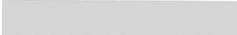


**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JUN 01 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
 Beneficiary: 

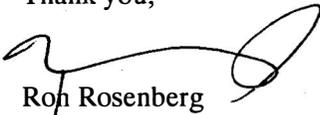
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The record will be remanded to the director for further development of the record and entry of a new decision.

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 Pennsylvania corporation, is a plastics molding firm. The petitioner claims to be the subsidiary of [REDACTED], located in France. The petitioner seeks to employ the beneficiary as a Sales Account Manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary 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 the AAO for review. On appeal the petitioner contends that the director misapplied the standard of "specialized knowledge" and that the evidence supports a finding that the beneficiary has advanced knowledge of the petitioner's processes and procedures.

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.

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)(iii) and (iv) requires a petitioner to submit evidence that the beneficiary 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, and that the year of employment abroad was in a specialized knowledge position.

II. The Facts and Procedural History

The sole issue to be addressed is whether the petitioner established that the beneficiary has been employed in a specialized knowledge capacity, which we will remand to the director for further development of the record. Accordingly, we reserve and need not address whether the petitioner established whether the beneficiary will be employed in a specialized knowledge capacity.

Established in [REDACTED] the petitioner employs 24 workers in the United States and claims a gross income of \$5.8 million. In a letter submitted in support of the initial petition, the petitioner stated the beneficiary will be working as a Sales Account Manager. The petitioner also stated that the beneficiary has served in the specialized knowledge position of Sales Account Executive at its parent company in France since April of 2010. As a Sales Account Executive, the petitioner claimed that the beneficiary is responsible for using her knowledge of [REDACTED] plastic converting technologies to manage existing international clients and prospective new customers. The beneficiary is also responsible for monitoring technical studies and sales statistics, implementing internal pricing policies, contributing to the development and implementation of commercial strategies and corrective measures, and preparation of the annual budget.

As evidence of the beneficiary's position with the foreign employer, the petitioner submitted an organizational chart for the foreign entity showing the beneficiary as a Key Account Executive with three sales assistants and four research and development ("R&D") positions reporting to her. The beneficiary appears to be reporting to the Sales Manager. There are two other Key Account Executives listed in addition to the beneficiary with no reporting employees shown. The petitioner also provided a copy of a "Certificat [sic] of Employment" dated March 4, 2014 stating that the beneficiary has been employed with the foreign employer since January 4, 2010 in the position of "Sales Account Executive."

In response to the director's Request for Evidence (RFE), the petitioner provided a letter describing the nature of the beneficiary's specialized knowledge position abroad. The petitioner stated that the position with the foreign entity involved specialized knowledge because the beneficiary uses her technical knowledge, combined with her experience with the company's sales and marketing strategies, to "meld the Research & Development '(R&D)', Sales, and Marketing functions into one seamless process."

The petitioner stated that the beneficiary has "acquired extensive knowledge of our products and services" during her tenure of employment with the foreign employer. Although the petitioner did not provide a specific time period, the petitioner provided a description of the formal and on-the-job training that provided the beneficiary with specialized knowledge:

[The beneficiary] has undergone extensive training so that she can better identify, understand, and respond to the needs of our clients. Specifically, [the beneficiary] has undergone training to increase her knowledge of plastics materials and processes, plastics

extrusion, and the packaging and carriage of dangerous materials. In addition, [the beneficiary] has gained extensive knowledge of our products and processes through on the job experience. Indeed, a majority of the skills required to effectively fulfill the duties of this position are gained through on the job training- and we estimate that it would take three years for another individual to acquire the knowledge possessed by [the beneficiary].

The petitioner provided a second letter dated May 26, 2014, from the foreign employer, providing additional information. The letter stated that the beneficiary has been in the position of "Sales Account Executive" since January of 2010. The letter provided a breakdown of the beneficiary's duties with the foreign employer. The letter also provided a list of "significant assignments and results" as well as an accounting of the formal training completed. According to the foreign employer, the beneficiary received 63 hours of training by December 8, 2011.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary has been, or will be, employed in a position requiring specialized knowledge. In denying the petition, the director noted that the petitioner stated it would take three years for another individual to acquire the specialized knowledge held by the beneficiary. The director further noted that it was unclear when the beneficiary would have performed the specialized knowledge position abroad for one continuous year after obtaining the specialized knowledge gained through on the job experience.

On appeal, the petitioner asserts that the evidence supports a finding that the beneficiary was employed in a specialized knowledge capacity with the foreign employer and that she would be employed in the United States in a specialized knowledge capacity. The petitioner states that the director misapplied the standard for specialized knowledge. The petitioner provides a brief and additional evidence in support of the appeal.

III. Analysis

Upon review, we find that the current record lacks sufficient evidence to make a determination on whether the petitioner established that the beneficiary was employed in a specialized knowledge capacity with the foreign employer. Accordingly, we decline to reach the merits of the director's decision and reserve any determination on whether the petitioner has established eligibility.

In order to establish eligibility, the petitioner must provide evidence that the beneficiary 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. 8 C.F.R. § 214.2(1)(3)(iii). The petitioner must show that the beneficiary's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(1)(3)(iv).

In examining whether the offered position requires specialized knowledge, we 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(1)(3)(ii). We also look to the amount and type of training, work experience, and/or

education required to develop that knowledge to determine whether the required knowledge is specialized. See 8 C.F.R. § 214.2(l)(3)(iv) (requiring petitioner to submit evidence of the beneficiary's "prior education, training, and employment").

The petitioner's claim that the beneficiary acquired the specialized knowledge skills on the job while performing the position with the foreign employer casts doubt on whether the foreign position requires specialized knowledge. According to the petitioner, the beneficiary has been serving in the position of Sales Account Executive since commencing employment with the company in January of 2010. The beneficiary did not claim any prior experience with the foreign employer or affiliated entity. The petitioner claims in response to the RFE that "a majority of the skills required to effectively fulfill the duties of those position are gained through on the job training." The petitioner further states that it would take three years for another individual to acquire the knowledge possessed by the beneficiary.

The petitioner has not shown that the duties required to perform the foreign position require the application of specialized knowledge. In the foreign position, the petitioner claims that the beneficiary acquired specialized knowledge of the company's international clients, blow molding technologies, as well as R&D, sales, and marketing functions. The petitioner, however, has not shown that such knowledge rises above the working knowledge of the product, tools, processes, or procedures needed to perform the sales function for the foreign employer, such that it might be considered special or advanced. 8 C.F.R. § 214.2(l)(1)(ii)(D).

On appeal, the petitioner takes issue with the director's conclusion that, if a replacement worker would need three years of experience to fill the beneficiary's position, then the beneficiary herself would need to complete those same three years of experience prior to commencing her required one year of foreign employment in the specialized knowledge position. The petitioner states that specialized knowledge is gained as follows:

[Specialized] knowledge is acquired on a continuum: it begins to accumulate when an individual commences employment and continues to grow from that time. Therefore, in the instance case, the beneficiary began to acquire her specialized knowledge on day one of her employment with [the foreign employer] and her knowledge has continued to develop since that time.

As stated by the petitioner, the beneficiary began performing the duties of her current position with the foreign employer on day one of her employment. Consequently, she performed those duties without the specialized knowledge that the petitioner states she acquired through her employment experience. If the beneficiary performed her required duties on the first day of employment with the company without any specialized knowledge, it logically follows that she could perform those same duties after any period of employment without specialized knowledge. The record does not establish whether the beneficiary was promoted or assigned to a new position with the foreign employer at any time, or that her duties have otherwise changed in nature or complexity, thereby demonstrating the full assimilation of specialized knowledge gained through on-the-job experience.

The amount and type of training, work experience, and education required to develop the claimed specialized knowledge is one factor that may be used to determine whether the beneficiary possesses specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(iv). The potential combination of training, work experience, and education is infinitely variable and there is no specific amount of time or type of training required to establish that the beneficiary possess specialized knowledge. The petitioner, however, must submit consistent and credible evidence to establish eligibility. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The petitioner's specialized knowledge claim is severely undercut if the beneficiary was able to fulfill the basic job requirements without having first acquired the specialized knowledge by completing the minimum time of on-the-job experience, as required by the petitioner. If true, the beneficiary might be best characterized as a skilled worker. "[P]etitions may be approved for persons with specialized knowledge, not for skilled workers." *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm'r 1982).

On remand, the director should afford the petitioner an opportunity to submit additional evidence and legal argument. Specifically, the director should ask the petitioner to submit evidence to demonstrate: (1) the specific one-year period of time that the beneficiary performed the specialized knowledge position after obtaining the specialized knowledge gained through on-the-job experience; (2) the beneficiary's specific foreign job duties that required the application of specialized knowledge gained through on-the-job experience; (3) whether the beneficiary's duties changed, increased in responsibility, or otherwise departed from the duties initially required of her upon entering the sales executive position with the foreign employer; and (4) whether the other sales executive positions with the foreign employer also require the application of specialized knowledge.

The director may request that the petitioner provide evidence of the beneficiary's application of specialized knowledge with the foreign employer, including:

- Copies of staff meeting minutes showing the beneficiary's level of responsibility
- Evidence of any informal or formal training the beneficiary provided to other staff members
- Evidence of an increase in the beneficiary's salary
- Evidence of any special assignments or projects completed with the foreign entity
- Copies of the beneficiary's existing client and target client list before and after the attainment of her specialized knowledge
- Evidence of changes or advancements in the petitioner's technology during the beneficiary's tenure with the foreign employer
- Copies of sales or marketing materials produced by the beneficiary before and after the attainment of her specialized knowledge
- Copies of the beneficiary's performance evaluations
- A letter from the beneficiary's supervisor detailing (1) any changes in responsibilities given to the beneficiary after the attainment of her specialized knowledge, (2) when and how the other sales account executive's acquired specialized knowledge if applicable, and (3) who would fulfill the specialized knowledge duties currently filled by the beneficiary after her transfer to the United States; and

- Letters from client(s) describing the duties and specialized knowledge required to manage their accounts as well as the dates on which they commenced their relationship with the beneficiary as sales account executive.

If the petitioner establishes that the beneficiary's duties evolved over her employment with the foreign entity, demonstrating the application of specialized knowledge gained through her on the job experience, the director may consider that fact when evaluating the totality of the evidence relating to the petitioner's specialized knowledge claim. The director should also consider whether the beneficiary's duties required specialized knowledge for at least one continuous year within the three years immediately preceding filing of the petition.

IV. Conclusion

The decision of the director will be withdrawn and remanded so that a new decision may be entered in accordance with this decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further development of the record in accordance with the foregoing discussion and entry of a new decision, which shall be certified to the Administrative Appeals Office.