

(b)(6)



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF AUSA- LLC

DATE: OCT. 5, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business software and technical consulting firm, seeks to temporarily employ the Beneficiary as an "Implementation Engineer [REDACTED]" under the L-1B nonimmigrant classification for intracompany transferees. See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary possesses specialized knowledge, and that he been employed abroad and will be employed in the United States in a specialized knowledge capacity. The Director also found that the placement of the Beneficiary at the worksite of an unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in overlooking evidence of record and reaching erroneous conclusions of law.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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. SPECIALIZED KNOWLEDGE

The first issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

(b)(6)

Matter of AUSA- LLC

A. Evidence of Record

The Petitioner is business software and technical consulting firm, with 14 employees, and a stated gross annual income of \$7 million.

The Petitioner stated the Beneficiary will be working as an implementation engineer [REDACTED]. The Petitioner provided a brief description of the Beneficiary's duties on the Form I-129, followed by a more lengthy description in an attached letter. In the letter, the Petitioner stated that the Beneficiary was employed in a specialized knowledge capacity with the foreign employer "for over four years (June 2011- October 2015) in the position of Senior Functional Consultant. The Petitioner stated that the Beneficiary was "critical" in the development of "[REDACTED]", a proprietary series of software modules." The modules are based on SAP software architecture. Specifically, the Petitioner stated that the Beneficiary performed the following duties:

[The Beneficiary] was responsible for the customization, integration, and implementation of SAP software used for contract life-cycle management and developing specific blueprints for implementation of this software for projects at client sites; customizing end-user interfaces to be used by client personnel; overseeing the implementation of such software components at client project sites (according to [REDACTED] specific guidelines); providing key lectures and instructional seminars on [REDACTED] proprietary [REDACTED] method (which includes all aspects of the implementation process as well as regular maintenance); and training new functional consultants within the [REDACTED] department.

The Petitioner stated that through the Beneficiary's "employment with our affiliate...[the Beneficiary] developed specialized knowledge and a unique skill set involving the customization, integration, and implementation of [REDACTED] proprietary [REDACTED] methodology and module."

Regarding the position in the United States, the Petitioner stated that the Beneficiary's employment in the United States is sought for the Petitioner's client, "[REDACTED]". The Petitioner explained that the project involves the deployment of the [REDACTED] module.

The Petitioner stated that as an implementation engineer ([REDACTED]), the Beneficiary will be responsible for the following duties:

- Using the [REDACTED] module to design customized versions of corresponding interfaces which match [REDACTED] contract life-cycle management needs (as assessed earlier in the implementation process) **[30% of the time]**;
- Overseeing integration scenarios and test runs of contract management methods and interfaces associated with the [REDACTED] in order to ensure that specific glitches or malfunctions can be appropriately addressed **[25% of time]**;

(b)(6)

Matter of AUSA- LLC

- Creating initial design and implementation proposals which address targeted client needs (based on his specialized knowledge of [REDACTED] specific method of configuring the SAP [REDACTED] suite and how such software can manage these points of interest) **[10% of time]**;
- Preparing and conducting workshops with [REDACTED] personnel to gather the relevant information regarding contract life-cycle management in order to develop a framework for the implementation of the [REDACTED]-specific payment technologies to be used for this technology **[10% of time]**;
- Serving as an expert point of reference, for both [REDACTED] professionals as well as subordinate and junior [REDACTED] professionals assigned to this project regarding [REDACTED] system throughout the entirety of the project and addressing any integration concerns regarding the same **[10% of time]**;
- Providing end-user training for the [REDACTED] employees who will be responsible for accessing [REDACTED] systems put into place and related software on a day-to-day basis **[10% of time]**; and
- Leading and coordinating the initial processing of [REDACTED] current historical methods and interfaces for managing the life-cycle of contractual agreements processed through [REDACTED] **[5% of time]**;

The Petitioner further described the Beneficiary's acquisition of specialized knowledge as follows:

[The Beneficiary] has accumulated a body of specialized knowledge regarding [REDACTED] proprietary [REDACTED] methodology that can only be gained through extensive and substantial training and work experience with the methodology.

The Petitioner noted the Beneficiary's twelve years of SAP-related experience and that he has spent "an additional four years acquiring and refining his specialized knowledge of our proprietary [REDACTED] methodology."

The Director issued a request for evidence (RFE). The Director requested that the Petitioner provide evidence that the Beneficiary has specialized knowledge, evidence of the proposed specialized knowledge position in the United States, and evidence of the proposed specialized knowledge position with the foreign employer.

In response to the RFE, the Petitioner provided a letter with additional detail regarding the Beneficiary's position abroad, claimed specialized knowledge, and position in the United States. Regarding the position abroad, the Petitioner provided the following brief explanation of the specialized knowledge position as follows:

[The Beneficiary] was responsible for developing specific blueprints for, and overseeing the implementation of key [REDACTED] software components at client project sites (according to [REDACTED] specific guidelines), providing key lectures and

Matter of AUSA- LLC

instructional seminars regarding [redacted] proprietary [redacted] method, and training new functional consultants within the [redacted] department.

The Petitioner provided a more detailed explanation of its [redacted] modules, and noted that its products and services have “only just been introduced into the United States market.”

Regarding the nature of the Beneficiary’s specialized knowledge, the Petitioner stated that the Beneficiary has “since June of 2011, [received] training on, and achieved mastery of, [redacted] **proprietary** [redacted] modules.” The Petitioner further explained how the Beneficiary gained this experience in his position, as he was “responsible for the development and implementation of [redacted] proprietary SAP-based [redacted] modules.” Finally, the Petitioner stated that the Beneficiary is only “one of a limited number of employees . . . who is trusted to coordinate business requirements and proprietary [redacted] solutions with clients.”

Regarding the Beneficiary’s acquisition of specialized knowledge, the Petitioner claimed that the Beneficiary’s attendance of trainings and conferences over his four years at the company “further develop[ed] his knowledge of [redacted] proprietary SAP-based [redacted] modules.” The Petitioner listed a Certificate of Advanced Banking Framework-Foundation and participation in the Advanced Banking Academy.

In addition to the Beneficiary’s training after joining the company, the Petitioner claims that the Beneficiary was hired “because he was *already distinguished* with the SAP development and customization field.” The Petitioner reviewed the Beneficiary’s degrees and his prior work history. The Petitioner summarized the Beneficiary’s experience as follows:

[The Beneficiary] began his career as an accountant and since 2001 has served in various SAP Consulting roles of increasing responsibility. This deep well of experience in SAP-related business processes and solutions has given [the Beneficiary] the ability to quickly learn [redacted] company specific [redacted] modules and to truly improve our company’s ability to offer proprietary products across the globe.

The Petitioner reviewed the specialized nature of the Beneficiary’s work product, specifically technical blueprints previously submitted, two additional technical documents, and a presentation given by the Beneficiary to the subordinate functional consultants, evidencing the Beneficiary’s claimed specialized knowledge.

Regarding the specialized knowledge position in the United States, the Petitioner provided a two page description of the Beneficiary’s duties. The Petitioner noted that as an implementation engineer, the Beneficiary is responsible for “spearheading the implementation, configuration, and deployment of [redacted] module at the [redacted] projects, as well as for providing guidance to junior engineers and other United States employees on same.” The Petitioner noted that the Beneficiary is the “only individual within [redacted] ranks that has detailed

(b)(6)

Matter of AUSA- LLC

knowledge of each of these [business] processes and how they have been designed and configured at [REDACTED]”

In addition to the letter, the Petitioner also submitted a copy of the foreign and United States organizational charts, the Beneficiary’s resume, and the Beneficiary’s training certificates.

The Director ultimately denied the petition, concluding that the Petitioner did not establish that the Beneficiary has specialized knowledge and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. In denying the petition, the Director found that the Beneficiary’s duties with the foreign entity are similar and typical of a senior functional consultant or related occupation. The Director found that the Petitioner did not demonstrate how the Beneficiary’s education, training, and experience have resulted in specialized knowledge of the Petitioner’s product and its application in international markets, or an advanced level of knowledge or expertise in the organization’s processes and procedures. Finally, the Director determined that the Beneficiary would be performing the same or similar duties as other similarly situated employees. The Director noted that the Petitioner did not show that although the Beneficiary possessed knowledge of proprietary products, the knowledge was “special” or “advanced.”

On appeal, the Petitioner asserts that the Director overlooked facts and evidence of record. Specifically, the Petitioner states that although the Beneficiary’s duties are similar to a computer systems analyst, the position involves additional duties related to the proprietary and highly complex products offered by the Petitioner.

B. Analysis

Upon review of the evidence of record, including the Petitioner’s submission on appeal, the record does not establish that the Beneficiary possesses specialized knowledge or that he was employed abroad and 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 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). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

Once a 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 its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary’s knowledge. The petitioner should also 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. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary’s knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. 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.

Here, the Petitioner’s claims are based on the first and second prong of the statutory definition, asserting that the Beneficiary has a special knowledge of the company’s products and their application in international markets and an advanced level of knowledge of the company’s processes and procedures.

Because “special knowledge” concerns knowledge of the petitioning organization’s products or services and its application in international markets, a petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

Because “advanced knowledge” concerns knowledge of an organization’s processes and procedures, a petitioner may meet its burden through evidence that the beneficiary has knowledge of or expertise in the organization’s processes and procedures that is greatly developed or further along in progress, complexity and understanding in comparison to other workers in the employer’s operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

Here, the Petitioner claims that the Beneficiary has specialized knowledge, and that both the foreign position and proffered position in the United States require the specialized knowledge possessed by

(b)(6)

Matter of AUSA- LLC

the Beneficiary. Specifically, the Petitioner claims in the initial petition and in response to the RFE that the Beneficiary's specialized knowledge involves the following:

[The Beneficiary's] knowledge of the [redacted] module requires an in-depth knowledge of not only SAP based software systems and their integration and implementation, but also of [redacted] processes and procedures regarding client interaction and coordination, a knowledge that can only be gained through prior experience with [redacted]

The Petitioner made general claims regarding the Beneficiary's acquiring knowledge through on-the-job training. The Petitioner stated in the initial petition that the Beneficiary's specialized knowledge was attained through "employment with our affiliate." The Petitioner further stated that the Beneficiary "accumulated" specialized knowledge regarding the Petitioner's proprietary [redacted] methodology "that can only be gained through extensive and substantial training and work experience with the methodology. The Petitioner also notes in response to the RFE that the Beneficiary has "since June of 2011, [received] training on, and achieved mastery of, [the Petitioner's] proprietary SAP-based [redacted] modules." The Petitioner noted that the Beneficiary received a Certificate of Advanced Banking Framework-Foundation and participated in the Advanced Baking Academy. The Petitioner also provided a sheet listing eight training programs at the "Level 2" and nine training programs at the "Level 3." Only the Advanced Banking Academy certificate of conference listed the date as April 5, 2012. The other two training documents do not list the date the trainings were completed or duration of the trainings. Finally, the Petitioner stated in the initial Petitioner that the Beneficiary spent "four years acquiring and refining his specialized knowledge of our proprietary [redacted] methodology."

The Petitioner has not shown that the duties required to perform the foreign position require the application of specialized knowledge. 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 senior functional consultant with the foreign employer since his initial date of hire in June of 2011 to October of 2015, at which time he began work with the Petitioner in the United States. The Beneficiary did not claim any prior experience with the foreign employer or affiliated entity. The Petitioner, however, claims that the Beneficiary foreign position was a specialized knowledge position as it required knowledge of the Petitioner's proprietary [redacted] modules. The Petitioner does not explain how the Beneficiary obtained such in-house knowledge prior to any experience with the company. The Petitioner has not provided any other explanation on how the Beneficiary received training that it claims can only be acquired by in-house employees, without his having been previously employed by the company at the time he commenced the specialized knowledge position.

We also note that the Petitioner claims that the Beneficiary worked in the specialized knowledge position for approximately four years prior to his transfer to the United States. If the Beneficiary spent four years "acquiring and refining" his specialized knowledge with the Petitioner as stated in the initial petition, then consequently the Beneficiary would not have been able to spend one full

(b)(6)

Matter of AUSA- LLC

year in the specialized knowledge position after obtaining the required specialized knowledge prior to his transfer to the United States.

As stated by the Petitioner, the Beneficiary began performing the duties of his current position with the foreign employer on day one of his employment. Consequently, he performed those duties without the specialized knowledge that the Petitioner states he acquired through his employment experience. If the Beneficiary performed his required duties on the first day of employment with the company without any specialized knowledge, it logically follows that he 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 his duties have otherwise changed in nature or complexity, thereby demonstrating the full assimilation of specialized knowledge gained through on-the-job experience.

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 on-the-job experience and training as required by the Petitioner. 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).

Similarly, the Petitioner has not shown that the Beneficiary possesses specialized knowledge. We note the Petitioner's submission of the Beneficiary's work product, namely "blueprints." The Petitioner states on appeal, however, that projects on which the blueprint rely, "involve a great deal of customization as well as a full understanding of the many project dependencies and requirements that depend on the [REDACTED] module." The Petitioner's claims are based on the Beneficiary's knowledge of the proprietary [REDACTED] module, but the Petitioner has not demonstrated that this knowledge is in fact specialized. Specifically, the Petitioner has not shown that such knowledge rises above the working knowledge of the product, tools, processes, or procedures needed to perform the technical lead function for the foreign employer, such that it might be considered special or advanced. 8 C.F.R. § 214.2(l)(1)(ii)(D). The Petitioner did not explain why, if the Beneficiary was able to fulfill the position without any prior experience with the [REDACTED] module, any other similarly situated employee with banking and financial knowledge as well as SAP experience gained at other employers would not also be able to acquire readily transferrable knowledge of the proprietary [REDACTED] module.

Finally, the Petitioner has not shown that the Beneficiary will serve in a specialized knowledge position in the United States. The Petitioner claims on appeal that the Beneficiary is the "only individual within [REDACTED] ranks that has a detailed knowledge of each of these [business] processes and how they have been designed and configured at [REDACTED]. The Petitioner notes that the Beneficiary has an expert level of knowledge related to "SAP banking modules and technology,

Matter of AUSA- LLC

banking and financial knowledge, and [REDACTED] methodologies.” The Petitioner states that this combination of skillsets is required for the claimed specialized knowledge position in the United States. The Petitioner, however, has not provided sufficient evidence to demonstrate how the Beneficiary’s knowledge of SAP banking modules and technology, or banking and financial knowledge generally, rises above that of a similarly situated employee. The Petitioner’s submission of the Beneficiary’s academic degrees and work history submitted in response to the RFE do not provide any comparison to other employees in the field. Furthermore, as explained above, the Petitioner has not demonstrated that knowledge of the Petitioner’s business methodologies, specifically the [REDACTED] module, rises to the level of specialized knowledge.

We note that the Petitioner, in response to the RFE, stated that the Beneficiary was hired because he was “*already distinguished* within the SAP development and customization field.” The Petitioner provided information regarding the Beneficiary’s degrees and work history. The Petitioner, however, seemed to be relying solely on the Beneficiary’s length of service and experience, but did not provide any comparison to other similarly employed workers in the industry. Furthermore, the Petitioner claimed that the specialized knowledge possessed by the Beneficiary and required for both the position abroad and in the United States involves the use of their proprietary [REDACTED] modules. As the Beneficiary did not use such modules until his employment with the Petitioner, it is unclear how the Beneficiary’s general knowledge of SAP modules during his prior work history provides him with unique or uncommon knowledge compared to other similarly employed workers.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and 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. VISA REFORM ACT

If a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the statute mandates that the petitioner establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act. These two questions of fact must be established for the record by documentary evidence; neither the unsupported assertions of counsel or the employer will suffice to establish eligibility. *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). If the petitioner does not establish *both* of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee.

Although the Director discussed the Beneficiary’s placement at a client site, we need only evaluate the Beneficiary’s worksite placement when the Petitioner has met its burden to establish that the Beneficiary will be employed in the United States in a specialized knowledge position. In this case, the Petitioner has not demonstrated that the Beneficiary will be employed in a specialized knowledge

position. As such, we do not make a finding with regard to the Beneficiary's worksite placement at this time. However, if the Petitioner were to overcome the issues cited above in the future, the Petitioner would then need to establish that the Beneficiary's employment and worksite placement were in compliance with the applicable law.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 136; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of AUSA- LLC*, ID# 13744 (AAO Oct. 5, 2016)