

A #		Application/Petition I-129, Petition for A Nonimmigrant Worker
Receipt # EAC1714352363		Applicant/Petitioner Mindtree Limited
Notice Date August 7, 2017	Page 1 of 6	Beneficiary Kamkar, Vittal

BRANZBURG, ALEXANDRA
FRAGOMEN DEL REY BERNSEN & LOEWY
100 HIGH ST 3RD FL
BOSTON, MA 02110

Request for Evidence

Notice also sent to:

RETURN THIS NOTICE ON TOP OF THE REQUESTED INFORMATION LISTED ON THE ATTACHED SHEET.

Note: You are given until **October 30, 2017** in which to submit the requested information to the address at the bottom of this notice.

Please note the required deadline for providing a response to this Request for Evidence. The deadline reflects the maximum period for responding to this RFE. However, since many immigration benefits are time sensitive, you are encouraged to respond to this request as early as possible but no later than the date provided on the request.

Pursuant to 8 C.F.R. 103.2(b)(11) failure to submit ALL evidence requested at one time may result in the denial of your application.

For more information, visit our website at **WWW.uscis.gov**

Or call us at **1-800-375-5283**

Telephone service for the hearing impaired: **1-800-767-1833**

CSC11150 WS22646 EB2-1 SECTION HH

You will be notified separately about any other applications or petitions you filed. Save this notice. Please enclose a copy of it if you write to us about this case, or if you file another application based on this decision. Our address is:

USCIS - CALIFORNIA SERVICE CENTER
P.O. BOX 10590
LAGUNA NIGUEL, CA 92607-0590
800-375-5283



EAC1714352363

If you are requesting consulate/embassy notification, provide the following evidence in duplicate. Any document submitted to U.S. Citizenship and Immigration Services (USCIS) containing a foreign language, must be accompanied by a full English language translation that has been certified by the translator as complete and accurate, and that the translator is competent to translate from the foreign language into English.

H-1B Specialty Occupation

Specialty Occupation means an occupation which requires the theoretical and practical application of a body of highly specialized knowledge and which requires the attainment of a baccalaureate or higher degree or its equivalent, in a specific specialty, as a minimum, for entry into the occupation in the United States.

Provide the following to establish that the present petition meets the criteria for H-1B petitions involving a specialty occupation:

EVIDENCE PERTAINING TO THE PROFFERED POSITION

In order to qualify as a specialty occupation, the position must meet one of the following standards for a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, evidence that this particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

U.S. Citizenship and Immigration Services (USCIS) interprets the term *degree* in the above criteria to mean not just any degree, but a degree in a specific field of study that is directly related to the proffered position.

When determining whether a particular job qualifies as a specialty occupation, USCIS does not use a title, by itself. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the USCIS considers. Each position must be evaluated based upon the nature and complexity of the actual job duties to be performed with that specific employer.

In this instance, you have titled the proffered position as a "Senior Engineer/ Senior Developer". The Labor Conditional Application (LCA) has been certified for the occupation of "Computer Programmers". The duties and responsibilities are generically described and insufficient to determine whether the position requires the services of someone who holds the minimum of a baccalaureate degree in a specific field of study.

In addition, you offer the position to the beneficiary, who has obtained a Bachelor of Science in Electronic Engineering, without demonstrating that there exists a nexus between the nature of the beneficiary's degree (or equivalent) and the position duties.

The field of engineering is a broad category that covers numerous and various disciplines. The assertion that the duties of the proffered position can be performed by a person with a degree in any of one of those disciplines

indicates that the proffered position may not meet the statutory and regulatory definition of specialty occupation.

Although you appear to have required a bachelor's degree for the proffered position, it is evident that you do not require that the degree must be in a specific specialty. This fact alone indicates that the proffered position may not meet the statutory and regulatory definition of specialty occupation.

You have not shown that the position offered to the beneficiary is a specialty occupation. You may submit additional evidence to satisfy this requirement. Evidence may include, but is not limited to:

- A detailed statement to:
 - explain the beneficiary's proposed duties and responsibilities;
 - indicate the percentage of time devoted to each duty; and
 - state the educational requirements for these duties.
- A copy of a line-and-block organizational chart showing your hierarchy and staffing levels. The organizational chart should:
 - list all divisions in the organization;
 - identify the proffered position in the chart;
 - show the names and job titles for those persons, if any, whose work will come under the control of the proposed position; and
 - indicate who will direct the beneficiary, by name and job title.
- Job postings or advertisements showing a degree requirement is common to the industry in parallel positions among similar organizations.
- Letters from an industry-related professional association indicating that they have made a bachelor's degree or higher in a specific specialty a requirement for entry into the field.
- Copies of letter or affidavits from firms or individuals in the industry that attest that similar organizations routinely employ and recruit only degreed individuals in a specific specialty. Any letter or affidavit should be supported by the following:
 - The writer's qualifications as an expert;
 - How the conclusions were reached; and
 - The basis for the conclusions supported by copies or citations of any materials used.
- Copies of your present and past job postings or announcements for the proffered position showing that you require applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent.
- Documentary evidence of your past employment practices for the position, including:
 - Copies of employment or pay records; and
 - Copies of degrees or transcripts to verify the level of education of each individual and the field of study for which the degree was earned.
- An explanation of what differentiates your products and services from other employers in the same industry and why a bachelor's level of education in a specific field of study is a prerequisite for entry into the proffered position. Be specific and provide documentation to support any explanation of complexity.
- Copies of documentary examples of work product created by current or prior employees in similar positions, such as:
 - Reports;
 - Presentations;
 - Evaluations;

- Designs; or
- Blueprints.
- Additional information about your organization, such as:
 - Press releases;
 - Business plans;
 - Promotional materials;
 - Advertisements;
 - Patents; or
 - Articles.
- Any evidence you believe will establish that the position qualifies as a specialty occupation.

EVIDENCE PERTAINING TO THE BENEFICIARY'S QUALIFICATIONS

Beneficiary's Qualifications: The beneficiary has obtained a Bachelor of Science in Electronics Engineering.

It should be noted that according to the statute and regulations, H-1B classification is not established merely by the beneficiary's possession of a baccalaureate degree (or equivalent). It must also be demonstrated that there exists a nexus between the nature of the beneficiary's degree (or equivalent) and the position duties proposed by the petitioner. The required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for performance of the position. In this context, USCIS interprets "degree" in all of the four criteria of Title 8 Code of Federal Regulations 214.2(h)(4)(iii)(A) as one in a specific specialty.

Provide evidence to establish either that the position requires the knowledge and education related to the Electronics Engineering field **or** that the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in a required specific field of study for the proffered position.

Right to Control

As an employer who seeks to sponsor a temporary worker in an H-1B specialty occupation, you are required to establish by a preponderance of the evidence that a valid employer-employee relationship will exist between you and the beneficiary, and that you have the right to control the beneficiary's work, which may include the ability to hire, fire, or supervise the beneficiary. Also, you should be able to establish that the above elements will continue to exist throughout the duration of the requested H-1B validity period. You have requested a validity period from 10/01/2017 to 08/18/2020.

In support of the petition, the following evidence was submitted to establish an employer-employee relationship:

- A support letter containing position description;
- Master Services Agreement between you and L'Oréal;
- Itinerary of Services.

Although you provided the relevant portion of Master Consulting Agreement signed between you and L'Oréal, for whom the beneficiary will provide services, this document is insufficient in demonstrating the availability of specialty work, as it indicates that the specific services to be performed and other pertinent information are to be stipulated in the Statements of Work (SOW). However, you have not submitted said

SOW, or any other independent, objective documentation that describes in detail the specific services and what duties are to be provided by the beneficiary and the timeline for the work to be performed at the location where he will be working.

Since the services to be performed by the beneficiary will be performed for L'Oréal at their place of business, the evidence must sufficiently establish the specific services and duties to be performed by the beneficiary at the location where he will be working. Without more documentation that is specific to the actual project, or other arrangement that the beneficiary will be contracted to work under, the evidence you have presented does not sufficiently establish what duties are to be provided by the beneficiary, if these duties equate those of a specialty occupation, or the timeline for the work to be performed within the time period you are requesting.

USCIS must determine if you have the right to control the employee through evidence that describes (with no one factor being decisive or exhaustive):

- the skill required to perform the specialty occupation;
- the source of the instrumentalities and tools required to perform the specialty occupation;
- the duration of the relationship between you and the beneficiary;
- whether you have the right to assign additional work to the beneficiary;
- the extent of the beneficiary's discretion over when and how long to work;
- the beneficiary's role in hiring and paying assistants;
- whether the specialty occupation work is part of your regular business;
- whether you are in business;
- the tax treatment of the beneficiary;
- whether you can hire or fire the beneficiary or set rules and regulations on the beneficiary's work;
- whether, and if so, to what extent you supervise the beneficiary's work; and/or
- whether the beneficiary reports to someone higher in your organization.

As such, it is requested that you demonstrate an employer-employee relationship with the beneficiary through the right to control the manner and means by which the product or services are accomplished for the duration of the requested H-1B validity period by providing the following or similar types of evidence. You may submit any and all evidence you feel would meet the employer-employee requirement.

- Copy of signed Employment Agreement between you and the beneficiary detailing the terms and conditions of employment;
- Copy of an employment offer letter that describes the nature of the employer-employee relationship and the services to be performed by the beneficiary.
- Copy of relevant portions of valid contracts between you and a client (with whom you have entered into a business agreement for which your employees will be utilized) that establishes that while your employees are placed at the third-party work site, you will continue to have the right to control your employees;
- Copies of signed contractual agreements, statements of work, work orders, service agreements, and letters between you and the authorized officials of the ultimate end-client companies where the

work will actually be performed by the beneficiary, which provide information such as a detailed description of the duties the beneficiary will perform, the qualifications that are required to perform the job duties, salary or wages paid, hours worked, benefits, a brief description of who will supervise the beneficiary and their duties, and any other related evidence;

- Copy of the position description or any other documentation that describes the skills required to perform the job offered, the source of the instrumentalities and tools needed to perform the job, the product to be developed or the service to be provided, the location where the beneficiary will perform the duties, the duration of the relationship between you and beneficiary, whether you have the right to assign additional duties, the extent of your discretion over when and how long the beneficiary will work, the method of payment, your role in paying and hiring assistants to be utilized by the beneficiary, whether the work to be performed is part of your regular business, the provision of employee benefits, and the tax treatment of the beneficiary in relation to you;
- A description of the performance review process; and/or
- Copy of your organizational chart, demonstrating the beneficiary's supervisory chain.