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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: LIN 00 019 53982 Office: Nebraska Service Center Date:

APR 23 2001

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)

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Wynne L. Rosenberg*  
Robert P. Weimann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a cable TV engineering and installation company, seeks authorization to employ the beneficiary temporarily in the United States as its manager of cable TV installation and maintenance. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a specialized knowledge capacity.

On appeal, counsel argues that the beneficiary is employed in a specialized knowledge capacity.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2 (1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The U.S. petitioner states that it was established in 1999 and that it is a wholly-owned subsidiary of [REDACTED] (Brazil), located in Brazil. The petitioner declares five employees. It seeks authorization to employ the beneficiary for three years at a weekly salary of \$500.

At issue in this proceeding is whether the beneficiary has been and will be employed in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

(A)n 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.

The petitioner describes the beneficiary's duties with the foreign entity as follows:

Mr. [REDACTED] currently serves as Manager of Cable Installation for the Brazilian office. As such, he possesses a high level of expertise and experience with the company's procedures and operations, and specifically, with its highly technical services and procedures in the cable and communications industry. He is responsible for overseeing the installation and activation of cable networks, including hardware and cable systems, and laying with splicing coaxial, optical and overhead and underground cables. His duties also include responsibility for routine maintenance of the networks.

Mr. [REDACTED] proposed position of Manager of Cable Installation in the United States will entail the same basic duties he has been performing for the company abroad based upon his detailed knowledge of [REDACTED] highly specialized services, equipment and procedures. He will be responsible for supervising the activation and installation of television cable networks. He will be

able to assist in the training of the company's U.S. workforce as well.

In a letter dated January 18, 2000, the Service requested that the petitioner respond to the following:

The record indicates that the business of the petitioning entity is to install television cable for such clients as AT&T. It appears that such knowledge is common among those in a government-regulated, standardized industry.

The evidence of record does not establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the beneficiary's field of endeavor. In addition, the evidence does not establish that the position abroad and the beneficiary's proposed position in the United States required a person with specialized knowledge.

Submit evidence that the beneficiary possesses special knowledge of your 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. Although the beneficiary may possess an advanced knowledge of the processes and procedures of the company, evidence must be submitted to describe and distinguish that knowledge from the elementary or basic knowledge possessed by others. In addition, the evidence must establish that the beneficiary's duties abroad for the qualifying employment abroad, and the duties in the United States, require a person with specialized knowledge.

In response to the request for additional information, the petitioner states that it has been contracted to work with a U.S. company to "rebuild a large amount of the existing Denver, Colorado cable television system," and that it will be responsible for converting existing analog cable. The beneficiary's duties were further described as follows:

Mr. [REDACTED] [sic] has been working for [REDACTED] in Brazil since 1996. He currently serves as a Manager of Cable Installation (Team Leader) and was selected to be one of the team members for the US company based upon his high level of expertise and experience with the company's procedures and operations and specifically, with its highly technical services and procedures in the cable and communications industries. Because of the considerable

time pressure of having a current contract, we must provide already trained personnel that has the specialized knowledge of our company's methods for the activation and installation of cable television networks. It is not only their knowledge of the company's operations, but their specialized knowledge of the technical nature of the company and their ability to train workers on the procedures to perform this work that makes them essential. These individuals, including this beneficiary, was [sic] selected to come to the US subsidiary temporarily because of their specialized knowledge and ability to train and supervise workers in this highly specialized field.

The petitioner further explains that the work in the United States will entail "re-building [Colorado's] infrastructure to switch from analog to digital broadband technology." The petitioner claims that this involves the use of "new technology in the United States" with which the petitioner's staff from Brazil is already highly experienced.

On appeal, counsel argues that the beneficiary "is one of a small group of key employees who hold the level of specific knowledge required...which is critical to the interests of the Petitioner." Counsel describes the foreign entity's work in broadband cable sector as follows:

██████████ is renowned for its engineering technology. With more than sixty years of experience in the engineering market, ██████████ has come to the forefront of the cable TV industry where, over the past fifteen years, it has developed innovative systems and a philosophy of mechanics for the management, strategic planning and execution of large-scale projects, including but not limited to installation, retooling and conversion of delivery systems, as well as a unique philosophy of the provision of its services. ██████████ employs in excess of two thousand five hundred individuals. ██████████ developed this unique system of execution for such projects 'inhouse.' ██████████ maintains a Training Center where its [sic] provides training in ██████████ proprietary systems for construction distribution and telecommunication network services; and quality and productivity engineering for its key employees. The Training Center also offers training professional developments and ISO 9002-94 compliance.

\* \* \*

The foreign affiliates' proprietary systems and unique philosophy of the mechanics of the procedures are clearly

different from those of other firms. The Beneficiary, who is a key employee, maintains a body of engineer/technological/management knowledge gained during his employment with ALUSA-Brazil.

The record does not establish that the beneficiary has unusual, advanced or special knowledge of the petitioning organization. The petitioner has not established that the beneficiary's duties are so unique and out of the ordinary that they require specialized knowledge. The beneficiary's employment experience with the foreign organization may have given him the knowledge required to perform his duties competently, but cannot be considered to constitute special or advanced knowledge. In fact, contrary to the petitioner's former counsel's assertions, the beneficiary's knowledge of the company product, or of the processes and procedures of the foreign company, has not been shown to be substantially different from, or advanced in relation to, that of any cable TV installation and maintenance manager of any cable TV engineering and installation company.

Based on the evidence presented, it is concluded that the petitioner has not established that the beneficiary has specialized knowledge, or that he has been or would be employed in a capacity involving specialized knowledge, or that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the foreign entity is doing business, that the U.S. entity has secured sufficient physical premises to house the new office, or the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business. As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.