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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-99-142-53137 Office: Vermont Service Center Date: 12 MAR 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:
[Redacted]

Public Copy

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

Myra L. Rosenberg
for Robert P. Wiemann, Director
Administrative Appeals Office.

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

The petitioner, a professional consulting and management services company, seeks to employ the beneficiary temporarily in the United States in a specialized knowledge capacity as its programmer analyst. The director determined that the beneficiary would not be employed in a specialized knowledge capacity or that the beneficiary possessed specialized knowledge.

On appeal, the petitioner, through counsel, asserts that the beneficiary has been and will be employed in a specialized knowledge capacity, noting that the beneficiary designed significant portions of the functions and systems used by the organization.

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.

8 C.F.R. 214.2(1)(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 organization as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, a 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.

The U.S. petitioner states that it was established in 1971 and that it is a wholly owned subsidiary of USX Corporation. The petitioner declares "8+" employees and an annual income of 7.7 million dollars. It seeks to employ the beneficiary for one year at a unspecified annual salary.

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

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 stated that the beneficiary will be utilized based on the following:

As a Programmer Analyst, [the beneficiary] will provide technical support for the latest in computer software technology. He will convert data from project specifications and statements of problems and procedures to create or modify a variety of computer programs. [The beneficiary] will convert detailed logical flow charts to language processable [sic] by computers and enter program codes into the system. As a Programmer Analyst, [the beneficiary] will correct program errors by analyzing and modifying program steps and write instructions to guide operating personnel. Further responsibilities will include analyzing, reviewing and rewriting programs to increase operating efficiency and to adapt programs to new requirements.

UEC (U.S. parent entity) and USIT (subsidiary foreign entity) have, over the last four years, jointly developed computer application software for the metals industry. These applications are complex systems, designed specifically for the production needs of a steel plant and include:

- . Steel processing tracking system;
- . Production planning & control system;
- . Computer managed maintenance system;
- . Materials management & purchasing system;
- . Roll management system, and
- . truck and rail traffic sy[s]tem.

These modules are jointly developed by UEC in the U.S., and USIT in India. Over the past three years, UEC and USIT have jointly customized and implemented the different modules for clients in India and Thailand. The modules have also been marketed in South Africa and Europe. UEC and USIT are in the final stages of development and implementation of these modules.

It is imperative that [the beneficiary] join UEC on a temporary basis to complete the development of these modules. [The beneficiary] possess[sic] the technical skills for the customization of the computer applications, the process knowledge of the steel industry, and most importantly the knowledge and experience of these specific applications gained over the development effort.

[The beneficiary] began working for the UEC SAIL Information Technology Ltd., in April 1997 as a Systems Analyst, and continues to hold that position at the present time. [The beneficiary] worked for UEC SAIL in India for one year prior to the submission of this application.

In a letter dated April 16, 1999, the petitioner was requested by the Service to:

Submit documentary evidence which would establish the beneficiary possessed specialized knowledge above that which is normally possessed by other computer programmer analysts employed by your foreign organization.

Submit documentary evidence which would establish the beneficiary possessed specialized knowledge above that which is normally possessed by other computer programmer analysts employed by your organization in the United States.

Submit a statement from your client(s) commenting on the beneficiary's individual contribution to the project(s) to which he was assigned.

In response, the petitioner, through counsel, restated the petitioner's earlier statements regarding the utilization of the beneficiary as a Programmer Analyst. No new insight into the specialized skills or knowledge of the beneficiary was provided. The petitioner submitted two separate information booklets pertaining to UEC Information Technology Limited, which according to the booklets, is a jointly owned subsidiary of UEC and Steel Authority of India.

In denying the application, the director stated that:

...An in-depth knowledge of the functions and systems of your organization does not appear to be unusual for an individual employed in computer programming/analysis to possess, and is, therefore, not considered to be indicative of the beneficiary's claimed advance expertise...

...As such, you have not shown the beneficiary's knowledge is substantially different in relation to others similarly employed and tasked by your organization in the United States.

On appeal, counsel states that the beneficiary's foreign employer (USIT) developed a sophisticated information system dedicated to the steel industry. Counsel further states that the system, ERP (Enterprise Resource Planning System), was developed within the company, is unique to the company, and is not taught in schools or computer training classes. Counsel states that ERM has multiple modules and that only individuals employed for several years by USIT have sufficient knowledge of the system to "interface with third party applications."

Counsel continues stating that:

[The beneficiary] is one of the key developers of the Sales and Distribution as well as quality manufacturing modules of the system...He is highly skilled in the steel making nomenclature and processes and how these have been used in this system...[The beneficiary] will be providing technical support for computer software, namely the ERP system, which he helped develop...Contrary to the Service's denial this knowledge of the ERP system is unusual, as only those involved in the system's development would be capable of the final development and implementation of the modules and system as a whole.

On review, the petitioner proposes to employ the beneficiary in the United States as a programmer/analyst, which the petitioner has not demonstrated to be a position requiring "specialized knowledge." The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's argument, mere familiarity with an organization's product or service, such as sufficient knowledge of the system to "interface with third party applications", does not constitute special knowledge under section 214(c)(2)(B) of the Act. Simply relying on the beneficiaries' familiarity with the parent

organization, his innate talent, and his potential to contribute to the petitioner's growth is not sufficient to establish that he possesses specialized knowledge or has been and will be employed in a capacity involving specialized knowledge.

The record indicates that the proposed employment, as stated, is on the job training and as such, does not require an advanced level of knowledge or expertise. None of the beneficiary's described duties either abroad or in the proposed position in the United States have been shown to require special or advanced knowledge. Accordingly, the record is not persuasive that the petitioner has established that the beneficiary has specialized knowledge, or that he has been or would be employed in a capacity involving specialized knowledge. In fact, the beneficiary's knowledge of the company's standards, or of the processes and procedures of the foreign company's marketing of computer programs and technological services, has not been shown to be substantially different from, or advanced in relation to, any programmer specialist of any company that provides technological support. The petitioner has not demonstrated that the beneficiary has specialized knowledge or would be employed in a specialized knowledge capacity. For this reason, the petition may not be granted.

Beyond the decision of the director, the record does not contain evidence that the petitioner, which was founded in 1971, has been doing business in the United States. As the appeal will be dismissed on the grounds discussed, the issue need not be addressed 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.