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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

[Redacted]

DEC 10 2003

FILE: LIN-02-225-53319 Office: NEBRASKA SERVICE CENTER Date:

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

PETITION: Petition for 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]

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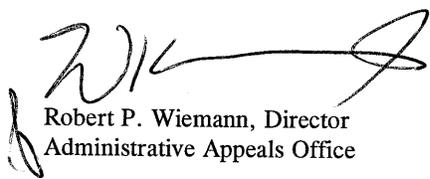
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Minnesota based company engaged in the design, manufacturing and marketing of telecommunications products. The petitioner seeks to employ the beneficiary temporarily in the United States as a tuner of tower-mounted amplifier systems. The petitioner filed a petition requesting the beneficiary be classified as an L-1B intracompany transferee with specialized knowledge. The director subsequently denied the petition concluding that the petitioner had failed to establish that the beneficiary would be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserted that the director erroneously concluded that the beneficiary's work experience as a tuner did not constitute specialized knowledge, and that the beneficiary's previous work abroad did not provide him with the skills necessary to work in that capacity in the United States. Counsel submitted a brief as well as several exhibits and affidavits in support of these assertions.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(1)(3) further 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 (1)(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.

The issue in this proceeding is whether the beneficiary's position as a tuner constitutes employment in a specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(1)(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.

A specialized knowledge professional is further defined in 8 C.F.R. § 214.2(1)(ii)(E) as:

[A]n individual who has specialized knowledge as defined in paragraph (1)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

The term "profession" as defined in the Act shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies or seminaries.

In a letter submitted with the petition, the petitioner described the beneficiary's proposed position as a tuner in the U.S. company as requiring highly technical knowledge of amplifier systems and RF tuning, and involving discretionary

analysis and engineering in accordance with customer specifications. The petitioner declared that only individuals with specialized expertise and education possessed the knowledge necessary for this particular position. The petitioner claimed that the beneficiary acquired the knowledge of specialized tools, equipment, devices and software as a result of his foreign work experience as a tuner. The beneficiary also has in-depth knowledge of signal generator, amplifiers, and duplexers, which will be necessary for reviewing and analyzing electrical measurements prior to final delivery of the product.

The petitioner submitted the beneficiary's foreign certificate of education, which indicated that the beneficiary successfully completed high school in 1996. Reference is also made on the certificate to a community college, however the record does not demonstrate that the beneficiary also graduated from college.

In a request for evidence, the director requested, in addition to other items, the following supplemental evidence: (1) that the beneficiary possesses special knowledge of the company's product, service, equipment, or techniques, or an advanced level of knowledge or expertise in the organization's processes and procedures; (2) the length of time the beneficiary has been performing the described duties; and, (3) the training courses taken either inside or outside the petitioning entity.

In response to the request, the petitioner, basing its response on two CIS office memoranda, outlined the criteria for the capacity of specialized knowledge as: (1) possesses knowledge that is valuable to the employer's competitiveness, or (2) possesses knowledge which, normally, can be gained only through prior experience with that employer, or (3) possesses knowledge of a product or process which cannot be easily transferred or taught to another individual. The petitioner asserted that the beneficiary satisfied all three criteria.

As the petitioner's letter is part of the record, a complete recitation of the petitioner's assertions will not be made herein. The petitioner's specific claims include the assertions that the beneficiary's specialized knowledge is immediately necessary to fulfill contractual obligations of the United States company, and that the tuning and pretuning functions of a tuner are proprietary, confidential, and subject to non-disclosure and non-compete agreements. The petitioner further described the beneficiary's knowledge and work experience as follows:

This special knowledge was gained by [the beneficiary's] experience with [the foreign organization], including both his six months of supervised, on-the-job training, supervision, and mentoring, . . ., as well as his sixteen months of practical experience as a tester and tuner in our manufacturing facility. The on-the-job training used by [the petitioning organization] includes tuning and pretuning instructions and detailed measuring equipment procedures which establish requirements, procedures, and specifications to be followed by qualified tuners.

In regards to the beneficiary's training, the petitioner further stated:

A qualified tuner at [the foreign organization] goes through intensive training and supervision for at least six months, developing the minimum competence in tuning [the foreign organization's] products, to customer specifications and company standards. Entry-level tuners are closely supervised and mentored by more experienced engineering staff in informal training and supervision. [The beneficiary] has completed such a training program and is fully competent as a tuner, capable of utilizing proprietary tuning and pretuning techniques. He is knowledgeable on the various production specifications, connections, and registers, among other things, required in tuning [the foreign organization's] products.

In her decision, the director concluded that the evidence was not sufficient to establish a finding that the beneficiary possesses specialized knowledge. The director found that the beneficiary, who completed the equivalent of a high school education and a six-month training program, is a skilled worker, rather than an employee who possesses knowledge so advanced or beyond the basic knowledge necessary to perform the normal, routine tasks associated with the position. Consequently, the director denied the petition.

On appeal, counsel for the petitioner asserted that the director erred in finding that the beneficiary's position as a tuner did not involve specialized knowledge. In the detailed brief submitted on appeal, counsel again cited the two CIS memos distributed to CIS employees as an explanation of the governing law for the standard of specialized knowledge. Counsel also submitted two affidavits from individuals claimed to be experts

in the area of radio frequency tuning, who attested to the beneficiary's employment in a specialized knowledge capacity. Because counsel's brief and the affidavits are part of the record, only certain sections will be repeated herein.

In regards to the affidavits, one expert, who has nine years of RF and wireless experience, declared that it was his "professional opinion that tuners who have worked for [the foreign organization] for over one year . . . have achieved an advanced level of knowledge not generally possessed by others in their field, with respect to the tuning of [the foreign company's] products." This expert further stated that the knowledge required by a tuner involves "significant time working with the relevant technologies, so any individual capable of doing the work presupposes that the individual has spent considerable time working with the technologies and is therefore at an advanced stage of knowledge." Counsel asserted that the expert's opinion, which was reached by reviewing the standard of "specialized knowledge" as it is defined in the two CIS memos, "should be given a great deal of weight."

The second expert also asserted that the work of a RF tuner is "highly developed, complex, and at a higher level than that of other individuals within [the foreign organization]." He claimed that the tuners have worked with proprietary protocols and procedures related to tuning and pre-tuning, and that they utilize sophisticated measuring equipment.

Finally, counsel asserted that the beneficiary's knowledge is both specialized and advanced beyond that of a skilled technician or worker. Therefore, the beneficiary's employment in the U.S. will satisfy both criteria of the definition of "specialized knowledge."

On review, the petitioner has provided an extensive amount of documentation, including a detailed description of the services performed by the foreign and U.S. companies. The job performance of the beneficiary is not in question. It is apparent that the petitioner considers the beneficiary well qualified to perform the services of a tuner. Nevertheless, the information does not establish that the beneficiary possesses specialized knowledge or will be employed in a specialized knowledge capacity.

The petitioner submitted two lengthy affidavits, which describe the knowledge and experience necessary for an RF tuner as "significant," "considerable," and at an "advanced stage."

However, throughout the record, it is noted that the beneficiary has completed six months of training and one year of work experience. Being employed for eighteen months as a tuner does not constitute "advanced" or "significant" experience. Essentially, the petitioner claims that any tuner that is employed for more than a year and a half possesses specialized knowledge. Such an assertion would necessarily include any tuner other than an entry-level tuner. The petitioner's basis for the specialized knowledge claim cannot rise to the level of "special" or advanced knowledge. Therefore, it would be an exaggeration to describe the beneficiary's eighteen months of training and work experience as significant or at an advanced stage.

As stated above, counsel and the claimed experts rely on two CIS memoranda for establishing that the beneficiary possesses specialized knowledge. These memos were issued in March 1994 and January 2002 by the Associate Commissioner of the Office of Operations and an adjudications officer of the Nebraska Service Center. Each was intended to serve as a guide on the interpretation of the term "specialized knowledge." However, counsel and the experts regularly refer to the memos as outlining the criteria for an employee who possesses specialized knowledge. Counsel's reliance on these memoranda is misplaced. Office memoranda intended as a guide for employees are not binding on the AAO. Furthermore, the Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official Bureau policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000). The regulation at 8 C.F.R. § 103.3(c) provides that only "designated Service decisions are to serve as precedents" and "are binding on all Service employees in the administration of the Act." Therefore, counsel's assertions that the beneficiary meets the qualifications outlined in the memoranda is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional.

There is no doubt that the beneficiary's work experience with the foreign company has provided him with the knowledge to perform his job competently. However, the successful and competent completion of one's job duties does not establish

employment in a specialized knowledge capacity. Therefore, the AAO cannot conclude that the beneficiary will be employed in a position requiring specialized knowledge.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests 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.