

**PUBLIC COPY**

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

D7

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass. Ave., 3rd Floor  
425 Eye Street N.W.  
Washington, D.C. 20536



NOV 21 2003

File: LIN 01 191 51777 Office: NEBRASKA SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:



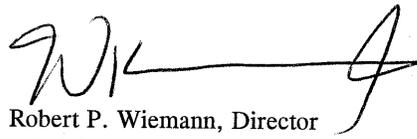
**INSTRUCTIONS:**

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 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

6

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

The petitioner is described as an engineering service for the automotive industry. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as its design engineer. The director determined that the petitioner failed to establish that the beneficiary had the requisite one year of employment abroad in a capacity involving specialized knowledge.

On appeal, counsel asserts that the beneficiary possesses specialized knowledge and claims that she has been and will be 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.

The regulation at 8 C.F.R. § 214.2(1)(3) states, in part, 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 United States petitioner was incorporated in the year 2000 and states that it is a wholly-owned subsidiary of Tata Johnson Controls Automotive, Ltd. The petitioner declares two employees and approximately \$1.2 million in gross revenues. The petitioner seeks to employ the beneficiary as a design engineer for \$54,000 per year for three years.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a capacity that involves specialized knowledge.

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

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.

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(D) states:

*Specialized Knowledge* means special 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.

In support of the petition, counsel provided a statement claiming that the beneficiary possesses specialized knowledge of the foreign entity's "organization, products, design and quality procedures and customers." Counsel further stated the following:

When a new design engineer is hired into the Johnson Controls system, it takes at least a full year of specialized training and experience before that person has developed adequate knowledge of Johnson Controls' unique products, customer requirements, design and quality protocols and procedures, in order to take full design responsibility for a project.

Counsel also stated that the petitioner "has undergone the JCI five-phase GENERIC program training cycle" and that she has been employed with the foreign entity since August 1999. The petition

was received on June 5, 2001. At that time the beneficiary had been employed by the foreign entity for 22 months.

On June 27, 2002, the director sent the petitioner a notice requesting that additional evidence be submitted. The director noted that according to the petitioner, it takes at least one year of training and experience to perform the beneficiary's job abroad. Since the beneficiary has been employed by the foreign entity for 22 months, as claimed by the petitioner, the director concluded that the beneficiary could not have been employed by the foreign organization in a capacity involving specialized knowledge for longer than 10 months, two months short of the requisite one year. Consequently, the petitioner was instructed to submit additional evidence to establish that the beneficiary's duties abroad required a person with specialized knowledge.

In response, counsel submitted a letter stating that despite the fact that the beneficiary received at least one year of training, she had acquired specialized knowledge prior to the end of her one-year training period. Counsel also submitted a statement from the petitioner in which the petitioner described how the foreign and U.S. companies function and provided the following description of the job capabilities acquired by the beneficiary during her employment with the overseas organization:

Throughout his time working for TJC in India, [the beneficiary's] assignments have all involved specialized knowledge, and he now possesses an advanced level of specialized knowledge of TJC's and Johnson Controls' organization, products, design and quality procedures and customers. He [sic] is also quite familiar with specific design work that has been done in India which will now be transferred to the U.S. In his [sic] time with us, he [sic] has played a key role in design projects . . . and has received extensive training in Johnson Controls' proprietary methods . . . . This training is unique to Johnson Controls' employees, and is not available in the industry at large. . . . [sic]

Again, the petitioner reiterated that "[o]nce a design engineer is hired into the Johnson Controls system, at least one complete year of specialized training and experience concurrent with employment before that employee will have developed the knowledge . . . that would allow the employee to take full design responsibility for a project." Although counsel emphasizes that the employment and training are concurrent, the petitioner consistently emphasizes that the beneficiary would not be fully qualified for the position until one year of training is completed.

The director denied the petition, noting that the certificates that were submitted as evidence of the beneficiary's training were undated. The director concluded that the petitioner failed to

submit sufficient evidence to establish when the beneficiary's training ended, thereby failing to establish that the beneficiary had been working abroad in a specialized knowledge capacity for at least one year prior to filing the petition.

On appeal, counsel asserts that the beneficiary possessed specialized knowledge during her entire 22-month employment with the overseas company. Counsel resubmitted the statements previously provided in support of the original petition, and in response to the request for additional evidence. No new evidence was submitted, nor did counsel respond to the director's comment and subsequent conclusion regarding the absence of dates on the beneficiary's training certificates. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Thus, the petitioner has failed to establish that the beneficiary's training was completed at least one year prior to the date of the filing of the petition that is the subject of the instant proceeding. As such, the petitioner has not submitted sufficient evidence to establish that the beneficiary was employed abroad, for at least one year prior to filing the petition, in a capacity that involved specialized knowledge. The petitioner consistently emphasized that the beneficiary would not be fully qualified for the position until one year of training is completed. Contrary to counsel's insistence, where a beneficiary's claim to specialized knowledge is based on special training, the time during which the beneficiary was in training for the position she ultimately assumed cannot be counted towards the requisite one year of employment in a specialized knowledge capacity. For this reason, the petition may not be approved.

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.