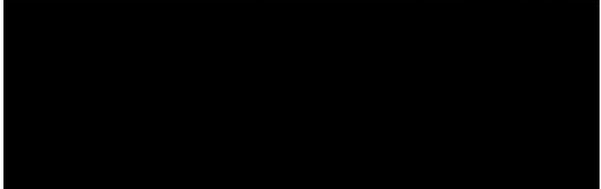




U.S. Citizenship
and Immigration
Services

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FILE: LIN 02 225 53350 Office: NEBRASKA SERVICE CENTER

Date: APR 19 2004

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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 appeal will be dismissed.

The petitioner is described as a company involved in designing, manufacturing, and marketing of telecommunications products. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge as its tower-mounted amplifier systems tuner. The director determined that the petitioner had not established that the beneficiary would be employed in a capacity involving specialized knowledge.

On appeal, counsel argues that the beneficiary qualifies as an individual possessing specialized knowledge under the definition contained in 8 C.F.R. § 214.2(l) and under INS precedent decisions.

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.

Regulations at 8 C.F.R. § 214.2(l)(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 organizations as defined in paragraph (l)(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.

The United States petitioner was incorporated in 1935 and states that it is the parent company of ADC Telecommunications (Scotland) Ltd. The petitioner seeks to employ the beneficiary in the U.S. for three years.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be 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.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(D) state:

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, the petitioner submitted a statement describing the beneficiary's prospective job duties for the parent company as follows:

The position requires an individual with highly technical knowledge of amplifier systems and RF tuning, particularly those systems developed with advanced ADC technologies, the knowledge of which is only gained by individuals with specialized expertise and education. The position involves discretionary analysis and engineering, including quality control, in accordance with customer specifications.

The petitioner further stated that the beneficiary's job abroad and the proposed position in the United States both require that she work with technologies specifically developed by the foreign entity.

On July 5, 2002, the director issued a notice requesting that additional evidence be submitted to establish that the beneficiary has specialized knowledge and that her positions, both abroad and in the United States, actually require a person with specialized knowledge to perform them.

In response to the director's requests, counsel provided a thorough explanation of the petitioner's products and services, as well as a detailed description of the services provided by the beneficiary and others in the same position.

Counsel also provided a copy of a memo written in 1994 by James A. Puleo, who was then the Acting Executive Associate Commissioner. In writing the memo, Mr. Puleo attempted to clarify and provide more insight on the definition of "specialized knowledge." Counsel itemized the points made in the memo and explained that the beneficiary fits Mr. Puleo's definition of "specialized knowledge."

Nevertheless, the director denied the petition, concluding that the evidence submitted indicates that the beneficiary is a skilled worker rather than an individual possessing specialized knowledge.

On appeal, counsel disputes the director's findings and once again reiterates his argument concerning the Puleo memo and explains how the beneficiary fits within Mr. Puleo's definition of "specialized knowledge." While counsel makes a number of valid points based on the Puleo memo, it must be noted that the memo serves only as a guiding resource; it is neither mandatory nor binding on CIS employees. Moreover, although the memo to which counsel refers is instructive, it is important to examine the underlying purpose of the specialized knowledge classification. In *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than just the "key" personnel that Congress specifically intended. *Id.*

The courts have previously held that the legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In *1756, Inc. v. Attorney General*, 745 F.Supp. 9

(D.D.C. 1990), the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court stated, "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to 'key personnel' and executives." *Id.* at 16.

In the instant case, while the beneficiary clearly performs a valuable service for the foreign entity and would likely be just as valuable to the U.S. petitioner, there is no indication that she is considered "key personnel" as was Congress's original intent. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that she has been and will be employed primarily 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.