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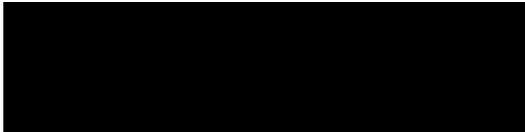
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FILE: EAC 02 261 52955 Office: VERMONT SERVICE CENTER

Date: APR 19 2004

IN RE: Petitioner:
Beneficiary:



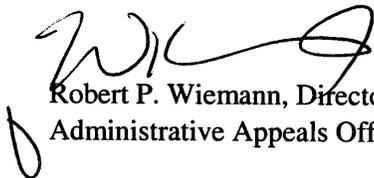
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont 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 technology and information services company. It seeks authorization to employ the beneficiary temporarily in the United States as its supervising monitor and technical support in a capacity involving specialized knowledge. The director determined that the petitioner had not established that the beneficiary has been and would be employed in a capacity involving specialized knowledge. On appeal, counsel disputes the director's findings and submits a brief in support of her assertions.

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(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 established in 1999 and states that it is the parent company of Relegence, Ltd, located in Israel. The petitioner seeks to employ the beneficiary in the U.S. for three years at a salary of \$30,000 per year.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been employed abroad and will be employed in the United States 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(l)(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 a statement submitted in support of the petition, the petitioner stated that its infrastructure includes communication equipment that needs to be monitored and administered by a team of individuals. The petitioner claimed that the beneficiary is currently in charge of the monitoring and administration function and therefore has the role of "senior member of the monitoring and support group" of the foreign subsidiary. The petitioner explained further that all monitors, including the beneficiary, must learn to operate the tools and monitoring applications that were designed to meet the needs of the petitioner's customers. The petitioner provided the following statements regarding the beneficiary's knowledge:

[The beneficiary] has been working as a monitor for nearly one and a half years. He is presently the most experienced and knowledgeable of all of [the foreign entity's] monitors and is the supervisor of the entire Monitoring and Support Group. There is no other member of the Group with the quantity or complexity of knowledge regarding [the company's] systems and procedures This experience and knowledge makes [the beneficiary] the best candidate for transfer to the United States position.

As a result of [the beneficiary's] high proficiency and understanding of the systems, he is also involved in the Quality Assurance of [the foreign entity's] Software Components and System. Although this task would normally be performed by trained engineers, it was delegated to [the beneficiary] due to the impressive level of skill acquired when working as a monitor. [The beneficiary] also has a good foundational background and education in related courses of study.

The petitioner also provided the following description of the beneficiary's duties abroad:

[The beneficiary's] technical duties include monitoring [the company's] Software and Hardware components, troubleshooting them and ensuring our System uptime. This task includes operating various proprietary and non-proprietary monitoring Software applications and when incurring any problem, [the beneficiary] is trained to quickly restore the System to full functionality. . . .

[The beneficiary] is experienced in troubleshooting [the company's] sophisticated systems and is uniquely skilled in checking the functionality of the service and checking the functionality of all aspects of the system. . . . [He] is superiorly [sic] skilled at identifying and using even the most complex troubleshooting processes.

On August 22, 2002, the director issued a notice requesting that additional evidence be submitted to establish that the beneficiary has specialized knowledge and that his positions, both abroad and in the United States, actually require a person with specialized knowledge.

In response to the director's requests, the petitioner stated that the beneficiary had been employed by the overseas entity for 17 months prior to filing the petition and that during that time period the beneficiary received on-the-job training as well as 414 hours of Microsoft training spread out over the course of 5-6 months. The petitioner did not specify how long the beneficiary's on-the-job training lasted. Therefore, the

AAO is unable to determine when the beneficiary's training was officially over and whether the beneficiary has the required one year of employment in a specialized knowledge capacity.

The petitioner also stated that the entire monitoring team is in Israel and claimed that the beneficiary's specific knowledge of the petitioner's systems cannot be duplicated.

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 states that the beneficiary has specialized knowledge of the petitioner's service, research, equipment, and techniques, as well as its processes and procedures. Counsel states that the beneficiary acquired his specialized knowledge by working alongside the members of the research and development team.

In a separate statement, the petitioner states that only someone with knowledge of its particular infrastructure can effectively train others to monitor the vital functions. The petitioner goes on to state that its systems and procedures are different from those of any other technology-based company. According to the petitioner, a significant number of the company's overseas employees could be described as having specialized knowledge simply by virtue of understanding its computer equipment. Contrary to the petitioner's belief, in the precedent decision of *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 [CIS] 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 task for the foreign entity and would likely be just as valuable to the U.S. petitioner, there is no indication that he is considered "key personnel" as was Congress's original intent. The petitioner clearly states that the beneficiary's knowledge of the petitioner's proprietary products and procedures was learned through approximately six months of training with the company's existing employees. Contrary to the petitioner's assertion, mere familiarity with an organization's product or service, such as knowledge of its security codes and procedures, does not constitute specialized knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he 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.

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ORDER: The appeal is dismissed.