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FILE: LIN 02 225 53301 Office: NEBRASKA SERVICE CENTER Date: FEB 5 2004

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)

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 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 temporarily employ the beneficiary in the United States as a tuner of tower-mounted amplifier systems at an annual salary of approximately \$18,264.00. 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 asserts that the director erroneously concluded that the beneficiary's work experience as a tuner did not constitute specialized knowledge. Counsel further claims that the beneficiary's previous work abroad provided him with the skills necessary to work as a specialized knowledge professional in the United States. Counsel submits a detailed 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(l)(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 (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.
- (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(l)(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(l)(1)(ii)(E) as:

[A]n individual who has specialized knowledge as defined in paragraph (l)(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 position to be held by the beneficiary in the United States as one requiring "highly technical knowledge of amplifier systems and [radio frequency (RF)] tuning," and "highly skilled employees, with specific expertise in [the petitioner's] products." The petitioner further claimed that as a result of the beneficiary's work experience abroad, the beneficiary possessed the necessary technical knowledge and expertise. The petitioner also stated that the beneficiary's knowledge was valuable to its competitiveness in the United States, and that such knowledge could not be easily transferred to another individual.

In regards to the job responsibilities of a tower-mounted amplifier systems tuner, the petitioner stated that the beneficiary will provide analysis and measurement of the petitioner's amplifier systems, and ensure that the systems comply with applicable state and federal standards, the customers' standards, and the petitioning company's internal standards for quality and performance.

In a request for additional evidence, the director asked that the petitioner submit supplemental evidence establishing the following: (1) that the beneficiary possesses special knowledge of the petitioner's product, service, equipment, or techniques, or an advanced level of knowledge or expertise in the petitioning organization's processes and procedures; (2) the length of time the beneficiary has been performing the described duties, and the estimated length of time needed to attain specialized knowledge for the position as a tuner; and, (3) in-house or outside training courses taken by the beneficiary which contributed to his attaining specialized knowledge.

The petitioner, guided by two CIS office memoranda, outlined its response to the director's request by highlighting the following characteristics of an individual who possesses specialized knowledge: (1) possesses knowledge that is valuable to the employer's competitiveness in the market place; 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.

As the petitioner's letter is part of the record, a complete recitation of the petitioner's assertions will not be made herein. Specifically, the petitioner asserted that the beneficiary possessed knowledge that is valuable to the employer's competitiveness because without the beneficiary's expertise in specialized tuning of the petitioner's proprietary products, the petitioner will not meet its contractual obligations. The petitioner further claimed that the beneficiary's knowledge could only be gained through his six months of training and eighteen months of work experience with the foreign company, because during this period, the beneficiary learned tuning and pretuning instructions that are proprietary, confidential, and subject to non-disclosure and non-compete agreements. Finally, the petitioner contended that the beneficiary's knowledge is not easily transferred to others because the training provided by the foreign company is specialized to the petitioner's products.

In regards to the duties performed by the beneficiary as a tuner, the petitioner provided the following:

Tower-Mounted Amplifier Systems Tuners . . . are specialized workers within [the petitioning organization] who work at manufacturing facilities as part of the engineering staff and utilize various specialized tests, techniques, protocols, and measurements, to physically "tune" [the petitioner's] products (in this case amplifiers), to ensure that the products comply with our customers' specifications and meet internal company standards for quality. The products must comply with state and federal regulations with respect to telecommunications, and international standards, as appropriate. Tuners utilize knowledge of both proprietary and specialized techniques, as well as proprietary and specialized knowledge of [the petitioner's] products.

The petitioner also indicated that since the beneficiary's employment with the foreign company in June 2000, the beneficiary has undergone an extensive six-month internal training program, and "has performed at a technical level for one and one-half years beyond attaining minimal competence."

In her decision, the director concluded that the beneficiary's "introductory on-the-job training" and one and one-half years of work experience with the foreign company were not sufficient to establish that the beneficiary possessed specialized knowledge. The director noted that the record did not contain evidence that the beneficiary received specific education or training relative to the field of radio frequency tuning prior to his employment with the foreign organization. The director concluded that it was reasonable to believe that an individual with a more extensive educational background than the beneficiary could successfully work as a tuner. Therefore, it was likewise reasonable to conclude that the beneficiary's knowledge could easily be transferred to a competent individual within the field.

The director further claimed that the record failed to establish how the beneficiary's knowledge is different from that of a skilled worker. As noted by the director, the documentation submitted by the petitioner did not establish that the beneficiary's knowledge is advanced beyond the basic knowledge necessary to perform the normal tasks associated with the position. Consequently, the director denied the petition.

On appeal, counsel for the petitioner asserts 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 cites the two memoranda distributed to CIS employees as an explanation of the governing law for the standard of

specialized knowledge. Counsel asserts that based on the standard provided in the memoranda, the evidence “convincingly establishes that the beneficiary qualifies as a ‘specialized knowledge’ worker.” Counsel also submits two affidavits from two experts in the area of radio frequency tuning, who attest 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 asserts 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, a senior engineer at the petitioner’s headquarters who is familiar with the petitioning organization’s proprietary wireless components, 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] corporation.” He claimed that during the six-month training period and subsequent time working as a RF tuner, the tuners have used proprietary protocols and procedures related to tuning and pre-tuning, and sophisticated measuring equipment.

In regards to the director’s finding that the beneficiary’s knowledge is equivalent to that of a skilled worker, counsel, citing a previous AAO case, asserts that the beneficiary is carrying out a key process for the petitioner, namely the proper tuning of proprietary RF filters, and utilizing protocols and sophisticated measuring equipment. Therefore, the beneficiary’s knowledge is both specialized and advanced beyond that of a skilled technician or worker.

On review, the petitioner has provided an extensive amount of documentation, including expert affidavits and a detailed description of the services provided 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 that the beneficiary will be employed in a specialized knowledge capacity.

The petitioner submits two lengthy affidavits, which describe the knowledge and experience necessary for an RF tuner as “significant,” “considerable,” and at an “advanced stage.” Throughout the record, however, it is noted that the beneficiary has completed six months of training and eighteen months of work experience. Being employed for two years as a tuner does not constitute “advanced” or “significant” experience. Essentially, the petitioner claims that any tuner that is employed for more than two years 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 appears that it would be an exaggeration to describe the beneficiary's two years of training and work experience as significant or at an advanced stage.

Finally, it is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The term "specialized knowledge" is relative and cannot be plainly defined. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce. Here, the petitioner, through the affidavit of its expert witness, has indicated that any tuner with a year of experience with the company would possess specialized knowledge. As the petitioner essentially indicates that any experienced tuner possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Counsel's expansive interpretation of the specialized knowledge provision is also objectionable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, supra at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)). Reviewing the congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker.

As stated above, counsel and the petitioner's 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 CIS 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 [CIS] decisions are to serve as precedents" and "are binding on all [CIS] 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. Moreover, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988).

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. 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.