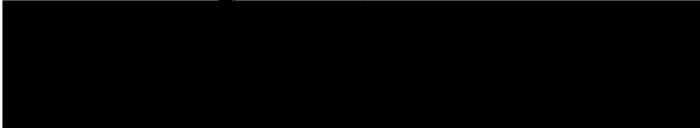




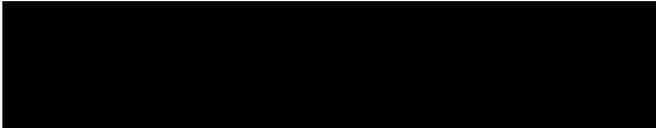
U.S. Citizenship  
and Immigration  
Services

77



FILE: EAC 02 247 54061 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



10/1/2004

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:



identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

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**PUBLIC COPY**

**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 AAO will dismiss the appeal.

The petitioner is engaged in the sale and distribution of industrial machine tools. It seeks to temporarily employ the beneficiary as a technical support engineer, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director denied the petition concluding: (1) that the beneficiary has not been employed abroad for one year “as an employee possessing specialized knowledge;” and, (2) that the beneficiary would not be employed in the United States in a specialized knowledge capacity.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the director misinterpreted the applicable regulations and case law, and relied “on factors that are not relevant to the adjudication of the L-1B specialized position of Technical Support Engineer.” Counsel submits a brief in support of the appeal.

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) 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 twofold: whether the beneficiary’s fifteen months of employment abroad, twelve of which included training administered by the foreign employer, qualifies him to perform in a “specialized knowledge” capacity in the United States as defined in the Act and the regulations, and, whether the beneficiary would be employed in the United States in a specialized knowledge capacity.

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

For purposes of section 101(a)(15)(L), 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.

Furthermore, 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 at 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.

In a letter submitted with the present petition, the petitioner claimed that the beneficiary is qualified for the proposed “specialized knowledge” position in the United States as a result of his “specialized and comprehensive training and employment with [the foreign company] in Japan.” The petitioner explained that upon the completion of mechanical engineering courses at a “technical school,” the beneficiary began training in the foreign company’s “Foreign Technical Support Training Program,” which was established by the company “to train qualified personnel to provide technical support for [the company’s] highly complex, computer-controlled machinery centers sold in the U.S., and throughout the world.” The beneficiary’s training included the following courses:

- Basic Theory of Numerical Control, including CAD, for Production Machining, including integration of Star Lathes with software drafting systems, three-dimensional modelers, finite element analysis packages, and database systems.
- CNC (computerized numerical control) Programming and Machining and Star CNC basic standards to perform factory-based repairs of CNC machines tools in the field.
- General and Star CHC-specific techniques for cutting, fluids, workholding, design, development, and Cim strategies.
- Mechanical Construction and Assembly of the Automatic CNC Sliding Headstock exclusive to Star machines.
- Programming of Star CNC Lathes, from graphical representation of toolpaths to use of generic and Star CNC custom computer commands.
- Complete Breakdown and Rebuild of each Star Automatic Lathe:
  - SW-7R for extremely small, complex components
  - SI-12 Lathe with Motion Control
  - SI-12/16 for small, turned parts
  - SA-12/16R for turning and other simultaneous machining operations
  - SR-16/20R with front and back end machining

- SR-32 with high rapid transverse rates and fast control response
- SV-12/20/32 for complex machining of hard materials.
- Detailed study of Star CNC Preventative Maintenance Procedures for all models.
- Electrical Engineering Design for auxiliary Numerical Controllers:
  - Fanuc Models 16-TB, 18i-TA, 18i-TB, 21i-TA
  - Yasukawa Siemens Model 840DI
  - Yasukawa Model MP920
- Programming and Production Estimating Process using Star CNC machinery.
- Production Operation and Alignment of all Star CNC Machine Tools.
- Tooling Up of Customer's Production Parts with special requirements and use of Star CNC unique features.

The petitioner further explained that following completion of the training in May 2002, two months prior to filing the petition, the beneficiary functioned in the foreign company as a technical liaison to the technical support engineers stationed throughout the world and serviced the foreign company's installed base of computerized lathes.

In addition, the petitioner stated that as a technical support engineer in the U.S., the beneficiary would be responsible for providing technical consultation, research, analysis and support services to the petitioner's staff and clients. The petitioner explained that specifically, the beneficiary would:

contribute his technical knowledge of all mechanical engineering issues related to Star CNC machine tools, especially to the extra-precision, computer-controlled automatic lathes that we have introduced into the U.S. market that are networked directly with and controlled by remote personal computer. Unlike traditional CNC machines tools that are only operated directly, the Star CNC tools incorporated a remote utility that allows an office PC from any networked location to remotely issue set-up instructions, control the operation, and continuously monitor the machining functions of a whole series of Star CNC machining centers. [The beneficiary] will also be responsible for installing and servicing both the hardware and software that make-up these proprietary computer systems.

[The beneficiary] will play a key role in the transfer of technological know-how from Japan to the U.S. He will educate and provide engineering consultation to our engineering support staff on the myriad technical intricacies of this new product line. He will oversee the installation and provide full instruction to each customer's technical personnel. [The beneficiary] will provide production engineering consultation on the use of the Star CNC epoch-making control systems that deliver CAM on multiple axes, driven fully by the servo units, and providing high-speed, precision machining. He will continually update the manufacturing and engineering staff of our customers on all technical aspects, improved operating procedures, and engineering modifications to our lines of precision machining centers.

Lastly, the petitioner stated that the beneficiary possesses a "significant body of advanced, specialized, and proprietary knowledge" of the petitioner's machines tools that could only be obtained from the one-year "special training within the parent company."

In a request for evidence, the director stated that it is "highly unlikely" that the beneficiary began employment in the foreign company in a specialized knowledge capacity. The director noted that "a certain amount of training must have been required for the beneficiary to assume the responsibilities of the [current] foreign position," and concluded that prior to the beneficiary's training, the beneficiary possessed the same general knowledge as the foreign company's other employees. The director therefore requested that the petitioner indicate on what date the petitioner "considered that the beneficiary's knowledge in the foreign position exceeded that of others who are similarly employed." In addition, the director requested evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by others in the beneficiary's field.

In response to the director's request for additional evidence, counsel asserted that the beneficiary possessed the requisite period of employment, fifteen months, as a specialized knowledge trainee of the foreign company's "unique line of products." Specifically, counsel disputed the director's finding that the beneficiary did not meet "the one-year employment requirement," and referred to a precedent decision, *Matter of Continental Grain Company*, 14 I & N Dec. 140 (Dist. Dir. 1972), as evidence that "time in a company training program is valid for consideration in meeting the one-year requirement."

Counsel also contended that the beneficiary possesses knowledge directly related to the foreign company's product, which is "unique and extremely complex pieces of integrated production equipment, [and] which incorporate precision machining, automated materials handling, high pressure hydraulic, and computerized control systems." Counsel further asserted the petitioner would not be able to sell the machinery without the support of the company's engineers to supervise installation, to train the purchaser's engineers, and to provide engineering trouble-shooting. Counsel explained that because of the complexity of the machines, the foreign company requires that all set-up and servicing of the equipment be performed by a factory-trained, in-house technical support engineer. Counsel again provided the beneficiary's training courses also outlined above.

Moreover, counsel stated that the beneficiary's proposed U.S. employment is in a specialized knowledge capacity because it involves both the company's traditional CNC tools and its newest line, which "has been designed and custom programmed for control by personal computer and integrated with a manufacturer's existing CAD/CAE/CAM network." Counsel again asserted that "[t]his knowledge, the majority of which is proprietary," can only be obtained through employment in the foreign company, and completion of the company's one-year "special training."

Furthermore, counsel referred to a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum, and asserted that the scenarios outlined in the memorandum "exactly describe the immediate case." Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). Counsel contended that the beneficiary possesses knowledge that is: a highly advanced and different level of knowledge, proprietary, noteworthy and distinguished, and known only to a limited number of the foreign company's employees.

In his decision, the director determined that the beneficiary "would not be capable of being employed in a specialized knowledge position in the United States since [he] does not have the required qualifying experience overseas." The director concluded that despite counsel's assertion that the beneficiary's training is "special" and "specifically designed for the position offered," any individual who completes the company's training program would possess specialized knowledge. The director therefore determined that the training

program completed by the beneficiary is only a requirement for entry into the specified position, and that the beneficiary is not a key employee of the company.

In addition, the director dismissed counsel's reference to the 1994 INS memorandum, noting that the memorandum states "the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge." The director also distinguished the precedent decision referenced by counsel, stating that the issue in that matter was not relevant to the present case. The director consequently determined that the beneficiary had not been employed abroad as an employee possessing specialized knowledge, and that the beneficiary would not be employed in the United States in a specialized knowledge position.

On appeal, counsel contends that the director misinterpreted the applicable regulations, case law, and the 1994 memorandum when denying the petition. In an attached brief, counsel states that the beneficiary's employment abroad "has been entirely involved with the specialized knowledge of the products of his employer," which are "complex and unique, computerized machining centers invented, designed, manufactured, and sold by [the foreign company]." Counsel also provides that the beneficiary's training, which was again outlined in the brief, was "highly focused on the knowledge demanded by the specialized duties of a Technical Support Engineer for [the foreign company's] product line." Specifically, counsel states that the beneficiary will apply his proprietary knowledge to the installation and technical support of the petitioner's "patented" machine tool centers, and asserts the following "uncontested" facts:

- The Petitioner's business requires the services of a Technical Support Engineer with specialized knowledge specific to the foreign Parent Company's unique and complex products and services.
- [The beneficiary] possesses such specialized knowledge acquired through a one-year, corporate training program in Japan designed for specific application to the Petitioner's products and services in the U.S.
- [The beneficiary's] foreign employment by the Parent Company wholly and continuously has involved this specialized knowledge, and
- [The beneficiary] has been employed, and was at the time of filing, for more than the requisite one-year period by this foreign entity of the Petitioner's.

With regard to *Matter of Continental Grain Company, supra*, counsel states that the dicta of the case "clarified that a period that is purely training satisfies 'qualifying employment'" for purposes of establishing continuity of employment for an L-1B visa. Counsel asserts that the Commissioner accepted the beneficiary's specialized knowledge training as qualifying employment, and therefore, the beneficiary in the present matter "met the regulatory requirement for one-year of employment involving specialized knowledge on the day he completed his one-year of employment, which happens to have been in a qualifying training capacity."

On review, counsel's assertions are not persuasive. When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

The petitioner failed to provide evidence sufficient to establish the beneficiary's employment abroad in a specialized knowledge capacity. The majority of the evidence submitted pertains to the foreign company's "special" one-year training. Counsel asserts that because the beneficiary's knowledge can only be gained through

employment in the foreign company and participation in its training program, it is therefore "advanced, specialized, and proprietary knowledge." The fact that the beneficiary may gain knowledge in a particular area solely through the completion of a corporate training program is not determinative of whether the beneficiary possesses specialized knowledge. In fact, there is no evidence in the record, besides counsel's assertions, that the training courses involve advanced or specialized subject matter that would distinguish the beneficiary from other technical support engineers. Nor is there documentary evidence demonstrating that the beneficiary actually completed the supposed training. Moreover, although the beneficiary's knowledge need not be proprietary, if raised by counsel, counsel must provide evidence beyond a mere assertion to establish the beneficiary's knowledge of the foreign employer's proprietary information. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, as noted above, and as requested by the director, the petitioner neglected to distinguish the beneficiary's knowledge from that of other technical support engineers both employed in the foreign company and in the industry. 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 has not provided evidence that the beneficiary's knowledge qualifies him for classification as a key employee of the foreign corporation. Again, the petitioner failed to respond to the director's request for this particular information. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). While the beneficiary may be considered a skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).<sup>1</sup> As stated by the Commissioner in

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<sup>1</sup> Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that,

*Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, “the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought.” Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

*Id.* at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a service related to the foreign company's specialized product, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

There is also insufficient evidence in the record to demonstrate that the beneficiary would be employed in the United States in a specialized knowledge capacity. Again, although the petitioner contends that the beneficiary's proposed position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary would be employed in a capacity requiring specialized knowledge. The fact that the beneficiary's foreign employment, and specifically, the foreign company's training courses, are related to the beneficiary's proposed work in the U.S., does not establish that the beneficiary's job duties would amount to employment in a specialized knowledge capacity as asserted by counsel. Rather, it appears that the beneficiary would join the company's other “technical support engineers stationed throughout the world,” and would not play a “key role” in the U.S. company. Moreover, the petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of “technical support engineer” at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Additionally, counsel incorrectly relied on the 1994 Associate Commissioner's memorandum as a “precedent” for demonstrating specialized knowledge. The AAO notes that the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute or the regulations. Although memoranda may be useful as a statement of policy and as an aid in interpreting the law, such documents are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. 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, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is

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the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the alien's field of endeavor.

Lastly, counsel's reference to *Matter of Continental Grain Company* is misplaced. In *Matter of Continental Grain Company*, the District Director recognized the beneficiary's four-month training period in the United States as "qualifying employment," and determined that it did not interrupt satisfaction of the regulatory requirement that the beneficiary "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." *Matter of Continental Grain Company, supra*. Because the beneficiary in *Matter of Continental Grain Company* was employed and trained in a specialized knowledge capacity, counsel concludes that the beneficiary in the present matter "met the regulatory requirement for one-year of employment involving specialized knowledge on the day he completed his one-year of employment . . . ." Counsel's analysis fails to recognize that *Matter of Continental Grain Company* did not address the issue of specialized knowledge; the beneficiary's employment in a specialized knowledge capacity had already been established. The sole issue was whether the beneficiary's training in the United States disrupted his continuous employment in the foreign entity. Therefore, the present matter is not analogous to *Matter of Continental Grain Company*. Moreover, because the beneficiary attended training at the foreign company in Japan, rather than in another country, the issue of "continuous" employment abroad with a qualifying organization need not be addressed.

Based on the evidence presented, the AAO cannot conclude that the beneficiary was employed abroad in a specialized knowledge capacity; nor would the beneficiary be employed in the United States in a specialized knowledge capacity. Likewise, the record does not support a finding that the beneficiary possesses knowledge that is specialized.

Beyond the decision of the director, the record does not contain documentary evidence establishing a qualifying relationship between the foreign and U.S. entities. As general evidence of ownership and control of a corporate entity, the petitioner should submit corporate stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings. In the present matter, the petitioner asserted on the petition that the U.S. company is a subsidiary of the foreign company, yet provided none of the above-listed evidence. The only document in the record that addresses the issue of a parent-subsidiary relationship, the auditor's report, is insufficient to establish this relationship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra*. For this additional reason, the appeal will be dismissed.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.