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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
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Services

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JUN 21 2004

FILE: WAC 03 228 53166 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

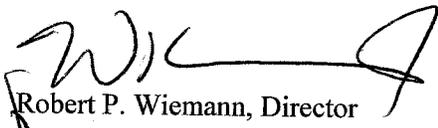
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California Service Center, denied the petition for a nonimmigrant visa. The director certified the decision to the Administrative Appeals Office (AAO) for review. The AAO will withdraw the decision of the director and approve the petition.

The petitioner is operating in the United States as a manufacturer of semiconductors. It currently employs the beneficiary as its senior buyer, and seeks to extend the temporary employment of the beneficiary for an additional two years. The petitioner filed a petition to extend the beneficiary's classification as a nonimmigrant intracompany transferee with specialized knowledge. The director denied the petition concluding that the beneficiary does not possess specialized knowledge of the petitioner's processes and procedures, and certified the matter to the AAO for review.

In response to the notice of certification, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning organization's techniques, as well as advanced knowledge of the petitioner's processes and procedures. Counsel submits a brief, in which she also refers to two Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memoranda, in support of the assertions.

Counsel also requests oral argument before the AAO. The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the written record of proceedings fully and adequately represents the facts and issues in this matter. Oral argument is therefore not necessary. Consequently, the request for oral argument is denied.

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.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(14)(i) allows a petitioner to extend an individual petition, except those involving new offices, without supporting documentation, unless requested by the director.

The issue in this proceeding is whether the beneficiary possesses “specialized knowledge” as defined in the Act and the regulations.

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.

In a letter submitted with the petition, the petitioner provided the following description of the beneficiary’s job duties as a senior buyer:

She will be responsible for: working closely with vendors to ensure product specifications are met; compiling and analyzing statistical data; tracking trends and manufacturing processes; releasing purchase orders; identifying and engaging in cost reduction activities; generating non-binding forecasts for suppliers; and negotiating corporate purchasing contracts.

Specifically, she will be responsible for ensuring TSM (Total Supplier Management) department goals and indicators are met; maintain management level interface with all key stakeholders, factory, and supplier; manage the TSM program through performance metrics; manage the TSM inventory reduction strategies; develop and drive TSM program process improvements; reconcile and validate SIMI (Supplier Inventory Management – Indirect) transactions prior to payment release; and participate in cross site team sharing of the processes and procedures BKM (Best Known Method).

The petitioner also explained that as a college graduate with a degree in Mechanical Engineering, the beneficiary is qualified to perform as senior buyer, in which she will be using the petitioner’s proprietary inventory business processes. The petitioner further explained that during the beneficiary’s nine years of employment with both the petitioner and its foreign subsidiary, she has been responsible for:

Managing inventory and suppliers of all factory operating supplies and commodities. She negotiated contract price and released purchase orders to suppliers. She participated in cost

saving and inventory reduction activities. She managed equipments, spares, and services to support the fabrication operation and led a team responsible for supply-chain risk assessment. She developed a tracking system to monitor all spares and their disposition. She has been responsible for ensuring the uninterrupted flow of packaging items, transport media items, equipment spares and service support to the factories. She also managed, monitored, and updated contracts; and drafted and presented negotiation plans and strategies to management.

Furthermore, the petitioner submitted a detailed curriculum vitae for the beneficiary highlighting her work experience at the foreign subsidiary and the petitioning organization. As the beneficiary's resume is part of the record, it will not be repeated herein.

On December 11, 2003, the director issued a notice of intent to deny, in which he referred to a 1994 CIS memorandum as a guide for interpreting the phrase "specialized knowledge." Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). The director requested that the petitioner provide evidence supporting the following: (1) that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality, and not generally known by practitioners in the field; (2) that the beneficiary's knowledge of the company's processes and procedures is different from the basic or elementary knowledge of others; and, (3) that the beneficiary's training, experience, and recognized expertise is unique to the petitioner's business.

In response, the petitioner stated that in addition to the beneficiary managing inventory, negotiating contracts, and purchasing materials, equipment and tools for the petitioner, the beneficiary will utilize "two proprietary . . . inventory processes which she developed in conjunction with her work at [the foreign subsidiary]: the Intel Breadman/Consignment Process and the Intel End of Life Disposition Process." The petitioner further explained:

The Intel Breadman/Consignment Process is a consignment reconciliation tool that is proprietary to [the petitioner]. This process, developed by [the beneficiary] at [the foreign subsidiary], is used to monitor and control inventory in situations in which [the petitioner] has outsourced the supply function to [outside] suppliers who do not merely deliver goods and materials to [the petitioner's] loading dock, but rather, enter [the petitioner's] facility to continually stock cabinets on-site at [the petitioning organization]. [The beneficiary's] specialized knowledge of this proprietary process makes her uniquely qualified to perform her current temporary assignment at [the petitioner's] Chandler, Arizona facility, in which she is involved in the establishment and management of the Total Spares Management (TSM) program at Fab 12 and Fab 22.

In addition, [the beneficiary's] temporary U.S. position requires her to utilize her specialized knowledge of [the petitioner's] End of Life Disposition Process, which she also developed at [the foreign subsidiary]. This proprietary process is a business process which enables [the petitioner] to effectively disposition inventory during a factory shutdown or conversion. [The beneficiary] developed this process while at [the foreign subsidiary] in order to manage inventory during a factory shut-down in Asia. Her specialized knowledge of [the petitioner's] End of Life Disposition Process is required in the U.S. at this time to apply to the shutdown of Fab 12 in Chandler, Arizona, which is occurring to make way for the conversion to production of different types of microprocessor chips at the Chandler location. Consistent with [the

petitioner's] "copy exactly" philosophy, [the petitioner] has designated the End of Life Disposition Process as one of its best known methods ("BKMs"), and requires [the beneficiary's] continued presence in the U.S. at this time so that she can impart her specialized knowledge of this process to employees in Chandler and at other [sites of the petitioner's] within the U.S. who will be trained on this process.

The petitioner also stated that as the developer of the two above-named proprietary processes, the beneficiary's knowledge "is unique" and "more advanced" than other employees in both the U.S. entity and foreign subsidiary. The petitioner submitted "confidential" flow charts reflecting the "Breadman process" in the foreign subsidiary, and process charts outlining the "End of Life Disposition process."

In a decision dated March 9, 2004, the director determined that the beneficiary's responsibilities in the United States "are not duties that generally require an individual with specialized knowledge . . ." Specifically, the director stated that the beneficiary's duties such as managing large funds, negotiating contracts, and purchasing equipment do not require "knowledge from higher education and experience in the specific field in the industry."

The director also noted that the petitioner failed to provide "demonstrative evidence to substantiate that the beneficiary is the author of the programs [of the petitioner's] Breadman/Consignment Process and [the petitioner's] End of Life Disposition Process." The director stated that because the beneficiary has already been working for the petitioner in the United States for three years, the beneficiary "had more than sufficient time to train the petitioning entity's personnel on the usage" of the two processes. In addition, the director noted that because the U.S. entity was established more than thirty years prior to the beneficiary's employment with the petitioner, the petitioning organization likely had personnel capable of performing these processes. Furthermore, the director determined that considering the size of the U.S. entity, "it is reasonable to assume that there are other personnel working with the beneficiary to monitor and maintain the large inventory of goods and materials."

The director concluded that the beneficiary's job duties are not "out of the ordinary" as to require specialized knowledge. The director also determined that the beneficiary did not possess a distinctive and uncommon familiarity with the company's operating standards and policies. The director consequently denied the petition, and certified his decision to the AAO for review.

In response to the notice of certification, counsel asserts that the director erroneously interpreted the regulations, interjected standards that have no basis in the law, and summarily discredited the submitted evidence. Counsel contends that the beneficiary satisfies the regulatory requirements of specialized knowledge as a result of her special knowledge of the petitioning organization's techniques, as well as her "advanced level of knowledge or expertise in the organization's processes and procedures." Counsel refers to the 1994 CIS memorandum, and states that it "clearly infers that possessing proprietary knowledge constitutes 'specialized knowledge'." Counsel asserts that because the processes to be used by the beneficiary in the U.S. are proprietary, "the knowledge of the techniques that stem from these processes [is] 'noteworthy and uncommon'."

Additionally, counsel contends that the beneficiary's knowledge of the Breadman/Consignment process and the End of Life Disposition process represents an advanced level of knowledge or expertise in the organization's processes and procedures, as outlined in the regulations. Counsel states that because the

beneficiary developed the processes herself, her knowledge of these processes is more advanced and "clearly exceeds" the elementary knowledge of the petitioner's other employees. Counsel also contends that the director's determination that the petitioner employs personnel, other than the beneficiary, to maintain the inventory is "contrary to the regulations" and "[does] not detract from the fact that [the beneficiary] is a specialized knowledge professional under the regulations."

In addition, counsel refutes the director's finding of a lack of demonstrative evidence, noting that the petitioner's response to the director's notice of denial included a letter from the manager of its Human Resources-Legal Department, in which she confirmed that the beneficiary developed the two proprietary processes during her employment at the foreign subsidiary. Counsel also refers to various job descriptions included on the beneficiary's curriculum vitae, and explains that these job duties establish that the beneficiary has utilized her knowledge to develop the company's two proprietary processes. Counsel states that the beneficiary's specialized knowledge of the company's processes is required in the U.S. "to make way for the conversion to production of different types of microprocessor chips . . .," and to train employees on the End of Life process, which has been designated by the company as a "best known method."

On review, the petitioner has demonstrated that the beneficiary possesses "specialized knowledge" as defined in § 214.2(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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)).¹ As stated by the Commissioner in *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

¹ 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, 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.

for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. The petitioner in the present matter provided an ample description of the beneficiary's U.S. job duties to establish employment in a specialized knowledge capacity. Specifically, the record demonstrates that the beneficiary "possesses an advanced level of knowledge . . . in the organization's processes and procedures." The specific job duties identified by the petitioner indicate that the beneficiary will be responsible for ensuring the completion of Total Supplier Management (TSM) goals, executing inventory reduction strategies, tracking and monitoring the petitioner's surplus inventory, and "ensuring the uninterrupted flow" of equipment to the petitioner's factories. Additionally, and more importantly, the petitioner explained that the beneficiary would execute the above-stated job duties by utilizing two processes - the Breadman/Consignment Process and the End of Life Process - developed by the beneficiary during her employment abroad, and unique to the petitioner's business.

The beneficiary's advanced and unique knowledge of the Breadman/Consignment and End of Life Disposition processes, as well as her application of this knowledge in the U.S. entity, qualify her for the classification sought. As described above, the Breadman/Consignment process is a reconciliation tool used by the beneficiary in her employment in the U.S. entity to monitor and control inventory delivered by outside suppliers. The petitioner explained that the beneficiary is presently applying this process to the establishment of a Total Spare Management program at two of the petitioner's fabrication plants. Alternatively, the End of Life Disposition process allows for the effective disposition of the petitioner's inventory during a factory shutdown or conversion. The petitioner stated that the End of Life Disposition process is currently needed at the U.S. entity, as one of the petitioner's fabrication plants will be shut down in order to convert production to a different microprocessor chip.

Applying the distinction provided in *Matter of Penner*, the beneficiary's knowledge is not needed, or in fact being used, in the U.S. entity solely for the petitioner's production of a product, specifically, microprocessor chips. *See id.* Nor is the beneficiary deemed to have specialized knowledge solely because of her job responsibilities, which include negotiating contracts, analyzing statistical data, and releasing purchase orders. Rather, it is the beneficiary's exclusive knowledge of the petitioner's proprietary Breadman/Consignment and End of Life Disposition processes, and the significance of these processes to the continuous operation and supply of the petitioner's fabrication plants that distinguish it as specialized. Moreover, the AAO accepts counsel's assertion in response to the director's notice of certification that the 1994 CIS memorandum implies that the beneficiary's knowledge of the company's proprietary processes, which are outlined in confidential flow charts included in the record, constitutes specialized knowledge. The record therefore establishes that the beneficiary is clearly "employed primarily for [her] ability to carry out a key process . . . which is important [and] essential to the business' operation." *Id.*

Additionally, consistent with legislative history and prior case law, the beneficiary is considered a "key" employee of both the foreign and U.S. entities. The statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). 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 economic 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.

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). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision noted that the House Report 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, id.* 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 in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. 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 the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

While it is insufficient to simply state that the beneficiary in the present matter possesses specialized knowledge as a result of developing proprietary processes, the petitioner demonstrated the beneficiary's "key" position through supplemental evidence. While employed abroad, the beneficiary represented the foreign company in a "Scope of Work" contract with an outside supplier. Although the specific terms of the agreement are confidential, it involved the execution of the Breadman/Consignment process, and identified the beneficiary as the "approval authority" of the foreign organization. The beneficiary's role in the foreign company included the use of her advanced knowledge to develop and implement a key process used by the organization to control and distribute its inventory. Equally as important is the beneficiary's position as a high-level employee, as exhibited by the authority given to her to represent the foreign company. The combination of the beneficiary's specialized knowledge, the application of her knowledge to the development

of a key process of the company, and her position of authority abroad establishes the beneficiary as a key employee with "unique" skills, superior to those of the petitioner's current employees.

In addition, it is evident from the record that the beneficiary's knowledge is more valuable to the operations of the foreign and U.S. entities than that of an average employee. The petitioning organization, which, as noted by the petitioner, follows a "copy exactly" work philosophy, has categorized the beneficiary's End of Life Disposition process as one of its "best known methods" for operating its business. The petitioner also noted that it is a process that the beneficiary implemented firsthand during a shutdown of the foreign company's factory. As noted by the petitioner, the beneficiary is responsible for training the employees of the U.S. entity on this "best known method," as well as the Breadman/Consignment process.

The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has demonstrated that the beneficiary may be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. The application of the beneficiary's knowledge to the development and execution of two of the company's proprietary processes, as well as her position as "key personnel," qualifies her as possessing knowledge that is specialized.

For the foregoing reasons, the decision of the director will be withdrawn and the petition approved. Although the decision will be withdrawn, the director is commended for recognizing this case as one that involves an unusually complex or novel issue of law and certifying it for review per 8 C.F.R. § 103.4(a).

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. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn and the petition is approved.