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**U.S. Citizenship
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File: LIN-04-042-51737 Office: NEBRASKA SERVICE CENTER Date: **JUN 29 2005**

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)

IN 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.

Eric's Halda

f Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Delaware that provides laser micro-machining solutions for manufacturing processes in the semiconductor industry. The petitioner claims that it is the subsidiary of [REDACTED] located in Dublin, Ireland. The petitioner now seeks to employ the beneficiary for three years as an Applications Engineer.

The director denied the petition concluding that the petitioner failed to show that the beneficiary was employed abroad in a capacity that required specialized knowledge for one year out of the three years preceding the filing date of the petition.

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 for the petitioner asserts that the director applied an erroneous legal standard, and that the beneficiary's entire 17 months of employment abroad involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3). In support of these assertions, counsel submits a brief.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, 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 within the three years preceding the beneficiary's application for admission into the United States. 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 the present matter is whether the petitioner has established that the beneficiary was employed abroad in a capacity that required specialized knowledge for one year out of the three years preceding the filing date of the petition as required in the regulation at 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

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 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 or procedures.

In the initial petition filed on December 2, 2003, the petitioner described the beneficiary's past experience with the company's operations. Specifically, in an attached letter the petitioner stated the following:

Since June 2002, [the beneficiary] has been continuously employed in the specialized knowledge position of Applications Engineer by the Petitioner's Irish parent company Reporting directly to the Customer Support Manager, [the beneficiary] plays a key role in [the foreign entity's] overall customer service and customer relations activities as the primary customer contact and liaison for all technical needs.

As an Applications Engineer, [the beneficiary] provides on-site technical support and expertise to the customers of [the foreign entity's] proprietary laser micro-machining systems for high-volume manufacturing in the semiconductor industry. Specifically, he serves as a technical expert to customers on the installation, set-up, and configuration of [the foreign entity's] cutting-edge laser micro-machining equipment. He works closely with customers to analyze their product application needs and requirements so he may make specific technical recommendations to [the foreign entity's] research and development engineers on the design of customized solutions. He provides specialized technical guidance, assistance, and training to customers, and must ensure that all technical documentation is complete in accordance with company policies and procedures. He must also ensure that installation, set-up, and configuration activities are conducted according to health and safety regulations. He conducts product testing including electrical testing, debugging, and faultfinding,

downloading firmware, robot teaching, and set-up and calibration of on-board and laser systems. He determines all necessary equipment modifications and upgrades, and schedules such work. At all times in the execution of his duties, [the beneficiary] must protect [the foreign entity's] highly sensitive and proprietary product information.

On December 11, 2003, the director requested additional evidence. Specifically, the director requested more information and documentation to establish that the beneficiary was employed abroad for 12 months in a specialized knowledge capacity. The director further stated the following:

To be eligible for L1B classification, the beneficiary must have been employed for 12 months in the past three years in a specialized knowledge capacity. The evidence clearly shows that the beneficiary's work with the petitioning entity began on June 3, 2002. As this petition was filed on December 2, 2003, the beneficiary must have obtained his specialized knowledge prior to December 1, 2002.

In a response dated December 19, 2003, the petitioner submitted a statement addressing the director's concerns. As this statement is part of the record of proceeding, it will not be repeated entirely herein. However, in part the petitioner stated the following:

Based on his training, education, and experience, the Beneficiary was hired by the foreign employer in June 2002 as an Applications Engineer. As with all other newly-hired Applications Engineers of similar backgrounds, the Beneficiary underwent an intensive 12-month "training" program on the [foreign entity's] unique . . . methodologies and techniques used to install, set-up, and configure the foreign employer's proprietary laser micro-machining for high-volume manufacturing in the semiconductor industry, including Laser Dicing®, Via Drilling®, XISE 300d®, Xcam®, and Low-k Scribing® This long-term training went well beyond teaching basic familiarity with [the foreign entity's] nomenclature and procedures, and instead was designed to develop the Beneficiary's more basic technical knowledge to an advanced level of "specialized knowledge" of [the foreign entity's] unique products, services, research, equipment and techniques. In fact, the Beneficiary was specifically hired to be trained as a lead technical expert to provide on-site expertise of [the foreign entity's] unique products, services, equipment and techniques to the customers of [the foreign entity's] proprietary products.

During the first 12-months of employment with the foreign employer (June 2002 to June 2003), the Beneficiary worked at all times under the direct and close supervision of senior engineers to perform his assigned duties

* * *

After one full year [of] work closely monitored and supervised by senior engineers, the Beneficiary began to perform his job duties on a completely independent basis, including the exercise of independent decision-making authority.

* * *

During his entire 17-months of employment with the foreign employer, the Beneficiary developed an advanced level of knowledge and expertise in the use of [the foreign entity's] proprietary products, and in their application in international markets. The expertise now held by the Beneficiary is so specialized that it cannot be transferred to an individual without at least one full year of the same on-the-job "training" provided by [the foreign entity] to the Beneficiary.

* * *

[O]nly by an intensive one-year assignment with the foreign employer in Ireland can an individual acquire the advanced level of specialized knowledge of [the foreign entity's] products, services, research, equipment, and techniques, and their applications in international markets, to perform the Applications Engineer job duties.

On January 5, 2004, the director denied the petition. The director determined that the petitioner failed to show that the beneficiary was employed abroad in a capacity that required specialized knowledge for one year out of the three years preceding the filing date of the petition. Specifically, the director stated that:

By the petitioner's own statement, the entire 12 month initial training period is required to obtain the level of specialized knowledge held by the beneficiary. Therefore, given that the beneficiary has only been employed by the petitioning entity for 17 months, the beneficiary clearly falls short of the 12 months of employment in a specialized knowledge capacity.

On appeal, counsel asserts that the director applied an erroneous legal standard, and that the beneficiary's entire 17 months of employment abroad involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3). In an attached brief, counsel states the following:

The denial is based upon the CIS Officer's belief that the Beneficiary's 17 months of work abroad in the parent company "falls short of the 12 months of employment in a specialized knowledge capacity."

* * *

The 17 months abroad most certainly did include at least 12 months of employment in a specialized knowledge capacity The regulations require evidence that the one year abroad "*involved* specialized knowledge", which is not the standard used by the Officer in the decision. The CIS Officer required a much higher standard that would not include any training, even [if] it clearly "*involved* specialized knowledge." It is here that I believe the CIS Officer has used the wrong interpretation of the law

* * *

The "training program" which is the source of concern to the CIS Officer was NOT a situation where the Beneficiary sat in a classroom all day in order to then become a person with specialized knowledge. Rather, the evidence presented shows it was an on-the-job mentoring program designed specifically to utilize "*Advanced* specialized knowledge" and to ultimately make the Beneficiary the "lead" technical expert. This does not in any way mean he was not a person of specialized knowledge for the full 17 months. The viewpoint that the CIS Officer is taking truly takes the entire description of the training program out of context.

[The] Beneficiary's duties throughout the 17 month period he worked at the parent company were consistent with a [sic] the definitions of specialized knowledge as stated in the Regulations and the "Puleo" and "Ohata" Memoranda:

The knowledge of the Beneficiary from his first day at [the foreign entity] was *different and advanced* from that generally found in the industry and even more advanced than that found in other workers at [the foreign entity] who did not participate in the Advanced Training program. The evidence showed that he started on the very first day [and] "at all times" the Beneficiary was doing work that is just clearly [sic] different and advanced from his peers:

- Conferring with customers to analyze their [needs] with respect to [the foreign entity's] proprietary software, and then conferring with [the foreign entity's] R&D teams to design the customer solution using [the foreign entity's] proprietary . . . products;
- Following [the foreign entity's] unique procedures to conduct testing, calibration, and downloading;
- Applying his advanced understanding of [the foreign entity's] equipment and products to determine all necessary modifications . . .

The Beneficiary's knowledge throughout the 17 months was uncommon not just because he worked strictly with [the foreign entity's] proprietary products, but because he was under the special training to become a Lead expert.

The proprietary nature of the products and the advanced training received by the Beneficiary make his skills *not easily transferable to an individual with a similar degree and experience in the field.*

(Emphasis in original). Counsel further asserts that the Act and relevant regulations do not require the beneficiary to have been employed for one year out of the preceding three in a specialized knowledge capacity. Counsel notes that 8 C.F.R. § 214.2(1)(3) requires a petitioner to submit evidence that the beneficiary's prior one year of employment abroad was in a position that *involved* specialized knowledge.

Counsel asserts that, "[b]y its plain meaning, 'involved' is not the same thing as being 'fully and completely' a person of specialized knowledge, but this is the standard that the CIS Officer demanded."

Upon review, the petitioner has not demonstrated that the beneficiary was employed abroad in a specialized knowledge capacity for at least one year out of the preceding three. *See* section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B); 8 C.F.R. § 214.2(i)(1)(ii)(D).

In examining whether the beneficiary was employed abroad in a specialized knowledge capacity, the AAO will look to the petitioner's description of the foreign job duties. *See* 8 C.F.R. 214.2(i)(3)(iv). The petitioner must submit a detailed description of the services 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 for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53.

It should be noted that 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

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 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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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.

Moreover, 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 further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the subcommittee 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. 117, 119 (Comm. 1981). 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.")

In the instant matter, counsel makes conflicting assertions regarding whether the petitioner is required to show that the beneficiary was employed abroad in a specialized knowledge capacity. Counsel interprets section 101(a)(15)(L) of the Act and the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(A), (D), and (E) to mean that the petitioner has no obligation to show that the beneficiary's employment abroad was in a specialized knowledge capacity. Counsel then states that the regulation at 8 C.F.R. § 214.2(l)(3) merely requires the petitioner to show that the beneficiary's employment abroad "involved" specialized knowledge, which counsel asserts is a lesser standard than showing that the beneficiary was "'fully and completely' a person of specialized knowledge." In assessing the requirements for classifying a beneficiary as an L-1B intracompany transferee

with specialized knowledge, the AAO looks to all applicable law and precedent as discussed above, to include the Act, the regulations, the Congressional record, and binding precedent decisions from federal courts, the Board of Immigration Appeals, and the AAO. When one source fails to reference a particular requirement, the AAO will not interpret that omission as a contradiction or indication that such a requirement does not exist. Thus, counsel's suggestion that section 101(a)(15)(L) of the Act and the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(A), (D), and (E) undermine a determination that the beneficiary must have worked in a specialized knowledge capacity abroad is not persuasive. By counsel's own admission, this requirement appears in other sources, such as the regulation at 8 C.F.R. § 214.2(l)(3). As discussed above, it is incumbent upon the petitioner to establish that the beneficiary was employed abroad in a capacity that involved specialized knowledge for one year out of the three years preceding the filing of the petition.

Counsel further claims that the director applied an unduly strict interpretation of what constitutes employment involving specialized knowledge. Specifically, counsel takes issue with the fact that the director excluded the beneficiary's time in training from qualifying as employment involving specialized knowledge. However, the petitioner stated that "only by an intensive one-year assignment with the foreign employer in Ireland can an individual acquire the advanced level of specialized knowledge of [the foreign entity's] products, services, research, equipment, and techniques, and their applications in international markets, to perform the Applications Engineer job duties." The petitioner further asserted that "[t]he expertise now held by the Beneficiary is so specialized that it cannot be transferred to an individual without at least one full year of the same on-the-job 'training' provided by [the foreign entity] to the Beneficiary." Thus, the petitioner explicitly states that the beneficiary could not have obtained specialized knowledge until he had completed one year of on-the-job training with the foreign entity. Accordingly, the director appropriately excluded the beneficiary's first year of employment with the foreign entity in determining the length of time that the beneficiary was employed abroad in a capacity involving specialized knowledge.

As the beneficiary was employed for a total of 17 months with the foreign entity as of the date the petition was filed, the director correctly concluded that the beneficiary was employed in a specialized knowledge capacity for five months. This falls short of the required 12 months of employment involving specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(iv).

Counsel claims that "[t]he knowledge of the Beneficiary from his first day at [the foreign entity] was *different and advanced* from that generally found in the industry" (Emphasis in original). However, the beneficiary's resume reflects that he graduated from Dublin City University with a bachelor's degree the same month he began his employment with the foreign entity. The petitioner has failed to explain how his knowledge and expertise distinguished him from similar recent college graduates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is further noted that knowledge and experience that the beneficiary gained while studying or working outside of the petitioner's family of companies cannot be deemed specialized knowledge, as such knowledge is not specific to the petitioner's or foreign entity's products, processes, or procedures.

Additionally, the petitioner has failed to distinguish the beneficiary's knowledge from that held by other employees within its family of companies, such to establish that he qualifies as key personnel. The petitioner stated that, "[a]s with all other newly-hired Applications Engineers of similar backgrounds, the Beneficiary underwent an intensive 12-month 'training' program on the [foreign entity's] unique . . . methodologies and techniques . . ." The petitioner has not indicated the number or percentage of the foreign entity's employees that received the same training, yet it appears that the beneficiary completed routine training that is afforded to many of the foreign entity's new staff members. While the petitioner indicated that the beneficiary was selected to be trained as a lead technical expert, it has failed to adequately describe how such designation has impacted the beneficiary's training or the level of knowledge he possesses. The petitioner has failed to identify who the beneficiary leads. Additionally, the petitioner has not indicated the number or percentage of its staff members who are targeted to become lead technical experts. The petitioner does specify that "nearly 70% of the company [is] intently focused on technology and process development . . ." This statement suggests that there are numerous employees in the foreign entity that received the same training and perform similar work as the beneficiary. Thus, the petitioner has failed to show that the beneficiary is truly distinguished among the foreign entity's employees such that he qualifies as key personnel with specialized knowledge.

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 should be considered a member of a "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the foregoing, the AAO concludes that the petitioner has not established that the beneficiary was employed abroad in a capacity that involved specialized knowledge for one year out of the three years preceding the filing date of the petition. 8 C.F.R. § 214.2(l)(3)(iv). For this reason, the appeal will be dismissed.

In visa 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 appeal will be dismissed.

ORDER: The appeal is dismissed.