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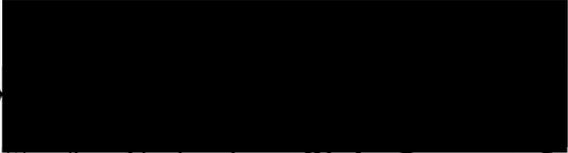
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File: WAC-04-182-53293 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the appeal will be sustained.

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 foreign petitioner is a digital entertainment software company formed under the laws of the state of California and provides digital entertainment software. The petitioner is a subsidiary of Sega Corporation, located in Tokyo, Japan.

The director denied the petition concluding that beneficiary's claimed specialized knowledge was not exclusive and significantly unique. The director reasoned that the beneficiary's duties were not so out of the ordinary as to require specialized knowledge.

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 failed to consider important evidence establishing specialized knowledge. In support of this assertion, the petitioner submits letters in support.

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 primary issue to be discussed in the present matter is whether the petitioner has established that the beneficiary's position in the United States will involve specialized knowledge as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii), and whether beneficiary was employed in a capacity that utilized such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii).

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 examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. 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 then 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. A specific occupation will not inherently qualify a beneficiary as possessing specialized knowledge. *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>

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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 regulation or precedent decisions 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.

A review of the record reveals that the petitioner has provided substantial probative evidence that the position in which the beneficiary will be employed is crucial to the coordination of accounting operations of the petitioner and its affiliates. Evidence in the record supports that the beneficiary is regarded as a key employee. The record also establishes a unique and complex operation with distinct needs and unique information collection procedures not commonly found in the digital entertainment or accounting industry. In support of these facts, the petitioner has submitted financial statements, annual reports, organizational charts and other corporate documentation. The petitioner has detailed the distinctions between the beneficiary and the petitioner's other employees, as well as the unique requirements of this position with regard to commensurate positions within this particular industry.

The foreign organization's size and position within the particular industry, along with a complex and varying organizational structure among its subsidiaries and affiliates, demonstrate a unique and complex operation having distinct needs and unique requirements not commonly found in the general accounting industry. The record indicates that a beneficiary would rely on an advanced knowledge of the company's process and procedure, and would require that the position being filled have a selection process to clearly distinguish an employee among a pool of industry candidates. The positional tier occupied by the beneficiary, as indicated by the record and as articulated by the petitioner, requires experience not common among the company's finance department employees or what might be available in this particular industry.

On review, counsel has demonstrated that the beneficiary possesses "specialized knowledge" as defined in section 214(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), and counsel demonstrated that the beneficiary would be employed in a capacity utilizing any such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii). Therefore, the appeal will be sustained.

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 the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General*, 745 F. Supp. 9, 16 (D.D.C. 1990). Based on the evidence presented, it is concluded that the beneficiary was employed abroad, and will be employed in the future, in a specialized knowledge capacity.

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 been met. Accordingly, the director's decision will be overturned and the petition will be approved.

**ORDER:** The appeal is sustained.