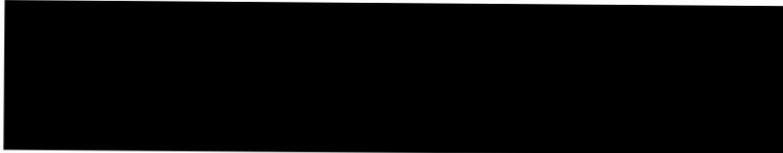




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File: LIN 05 132 52095 Office: NEBRASKA SERVICE CENTER Date: OCT 23 2006

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 BENEFICIARY:



**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, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of response commander of a hazardous materials emergency response team 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 mining and chemical production company and claims a qualifying relationship with the foreign employer, [REDACTED] of Canada. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the process for decontamination and clean up of the petitioner's proprietary and unique chemical products and that this knowledge is not readily available in the job market. Counsel further asserts that the director erred in comparing the beneficiary's knowledge to hundreds of similarly trained response commanders worldwide in concluding that the beneficiary's knowledge was not sufficiently specialized.

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. 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 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) 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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity which involves specialized knowledge.

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

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 dated March 24, 2005 appended to the initial petition, the petitioner described the beneficiary's job duties as follows:

- Responsible for organizing and directing the team (Technical Specialists) performances and participating throughout the emergency action, with authority to act on behalf of the Company at the emergency site including all dealings with other agencies, authorities, public and media;
- Responsible for keeping the Base Commander up-to-date with information as required during emergencies;  
Determines the modes and arrangements to provide the most suitable and expeditious response;
- Ensures arrangements are made to cover all aspects of the specific emergency incidents;
- Consults with Technical Advisors and provides telecommunications to those first arrived on scene (e.g. First Responders – Fire Fighters) regarding hazards and appropriate steps that should be taken at the scene to preserve public safety;
- Responsible for alerting and arranging team members (Technical Specialists) and determine and arrange for specialized in-house equipment that is necessary for the specific incident to reduce or eliminate hazardous contaminations;
- Supervises the performance of the Technical Specialists to ensure all the Company's in-house safety and response procedures are followed throughout the incident; and
- Supervises the performance of the team members (Technical Specialists) to ensure all in-house procedures are followed in a safe and effective manner.

In the same letter, the petitioner summarized the beneficiary's duties in Canada, which are materially identical to his proposed duties in the United States as these relate to actual emergencies. However, the petitioner also provided a summary of the beneficiary's Canadian duties before and after an emergency as follows:

Pre-Emergency:

- Assists the Base Commander in taking a lead role on the team;
- Provides training of specialized in-house procedures, product knowledge and utilization of in-house special equipment to the members (Technical Specialists) of the team; and  
Takes a lead role in developing and presenting [emergency response team] information packages to customers and other related governmental parties.

\* \* \*

Post-Emergency:

- Completes written report of incident for the Base Commander for distribution and record keeping; and
- Upon return from the accident scene, ensures all vehicles and equipment are returned to appropriate conditions to ensure those are ready any time for the next emergency.

Also in the letter, the petitioner explained why it considers the beneficiary's knowledge to be specialized as follows:

To ensure the safe usage and transportation of the chemical products, the Company has developed special in-house Emergency Response training programs. The 20 members of the ERT [emergency response team], including the Base Commander, 5 Response Commanders and the 14 Technical Specialists are specifically selected among the 6000 Company employees to receive an advance level of trainings on emergency response on hazardous materials and are knowledgeable about specialized in-house procedures on how to deal with and manage emergency situations with specific in-house chemical products. Also included in the special training is the utilization of special in-house equipment when called for response to emergency situations. The ERT members have to be trained on the know-how of utilizing special equipment such as [a]cid pumps, compressors, and capper kits, etc. All members in the [foreign entity's] ERT are specifically trained to follow specialized in-house decontamination procedures, hazardous goods response management, tank car depressuring techniques, and product transloading techniques. All ERT members are trained and qualified to handle and response [sic] to the Company's hazardous materials.

Finally, the petitioner provided supporting documentation establishing the beneficiary's credentials as an experienced emergency responder to accidents involving certain hazardous materials, the beneficiary's training and experience, the toxicity of the petitioner's products, and the existence of guidelines for dealing with releases of the company's products.

On April 4, 2005, the director requested additional evidence. Specifically, the director requested evidence

establishing that the beneficiary's knowledge is indeed specialized.

In response, the petitioner provided a letter dated April 21, 2005, providing more details regarding the beneficiary's purported specialized knowledge as follows:

The Company's Emergency Response Team is a highly specialized team where each of the team members is equipped with special training which exceeds the industry level. In addition, each of the team members has to be trained and [sic] complete internal and external Emergency Response Programs. The [foreign entity's] in-house emergency programs were carefully designed and planned to meet all the special characteristics of the [foreign entity's] chemical products as well as special procedures in emergency situations, such as plant accidents, and fire and chemical spills during transportation.

The petitioner specifically refers to a material safety data sheet for thallium nitrate, one of the foreign entity's products, to illustrate the toxicity of the product as well as the emergency handling procedures, accidental release measures, and firefighting procedures with which the beneficiary is allegedly familiar.

On or about May 11, 2005, the director denied the petition concluding that the petitioner failed to establish that beneficiary has been or would be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel narrows his argument and asserts that the beneficiary has specialized knowledge of the process for decontamination and clean up of the petitioner's proprietary and unique chemical products and that this knowledge is not readily available in the job market. Counsel states in his brief:

[I]n support of this L-1B petition, the Petitioner also provided evidence of the Beneficiary's extensive specialized knowledge training in these specific hazardous materials. As noted in the record, the Petitioner utilizes proprietary and unique chemical compounds and materials, and holds government patents for some of these compounds. As such, the Beneficiary is trained to conduct effective decontamination and clean-up activities after accidents involving hazardous materials of that type. Due to the proprietary nature of the hazardous materials utilized, such knowledge of how to deal with these chemical materials is acquired exclusively through specialized advanced training conducted in-house by the Petitioner.

Counsel further asserts that the director erred in comparing the beneficiary's knowledge to hundreds of similarly trained response commanders worldwide in concluding that the beneficiary's knowledge was not sufficiently specialized.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has been, or will be, employed in a specialized knowledge capacity as defined 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(I)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a response commander of a hazardous materials emergency response team, the petitioner fails to establish that this position requires an employee with specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced hazardous materials response commanders employed and trained by the petitioner or in the industry at large. Going on record without 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)). 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).

On appeal, the petitioner asserts that the record establishes that the beneficiary has "unusual duties, skills, or knowledge beyond that of a skilled worker," and that the beneficiary has an "advanced level of knowledge of the Petitioner's processes and procedures, as well as the specialized knowledge necessary to perform [a] key supervisory role in extinguishing and decontaminating accidents involving the Petitioner's proprietary chemical and toxic products." The petitioner further asserts that "[t]he Beneficiary's extensive knowledge of the Petitioner's proprietary products, techniques and service, is plainly 'specialized knowledge related to the proprietary interests of the [Petitioner's] business,'" and that the "[e]xtensive skills and knowledge necessary for decontamination and clean-up involving the Petitioner's proprietary chemical products are not readily available in the job market."

However, while the petitioner relies heavily on its contention that the unique characteristics of its proprietary chemical products, coupled with the extensive training allegedly needed to effectively respond to an accident involving these products, establishes that the beneficiary possesses specialized knowledge, the petitioner fails to provide sufficient details to support this allegation. First, the petitioner never identifies any of the proprietary chemical products which the beneficiary allegedly has been trained to clean up. Specifically, although the petitioner provides one specific example of a highly toxic chemical product, thallium nitrate, which the petitioner produces and transports and which the beneficiary has been trained to clean up, the petitioner does not allege that the petitioner's thallium nitrate is materially different from thallium nitrate products produced and transported in general. Second, even assuming that the petitioner does produce and transport unique, proprietary chemical products, the petitioner provided no evidence that the clean up procedures for such chemicals differ materially from the clean up of chemicals having similar physical properties and toxicity risks. Third, and in view of the above, the petitioner fails to establish that the beneficiary, as a trained hazardous chemical response commander, possesses training, experience, and knowledge which distinguish him from similarly trained and experienced responders employed by both the petitioner and other companies in the United States job market. As correctly determined by the director, the record "does *not* sufficiently establish that the beneficiary's knowledge is uncommon, noteworthy, or

distinguished by some *unusual* quality that is *not* generally known by practitioners who are similarly educated and/or engaged within the beneficiary's field of endeavor." Again, simply going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.<sup>1</sup>

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced response commander who has been, and would be, a valuable asset to the petitioner. However, it is 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)). As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. at 52. 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 firm's 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.

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<sup>1</sup>The following general examples of specialized knowledge were provided in the Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

- The foreign company manufactures a product which no other firm manufactures. The alien is familiar with the various procedures involved in the manufacture, use, or service of the product.
- The foreign company manufactures a product which is significantly different from other products in the industry. Although there may be similarities between products, the knowledge required to sell, manufacture, or service the product is different from the other products to the extent that the United States or foreign firm would experience a significance interruption of business in order to train a new worker to assume those duties.
- The alien beneficiary has knowledge of a foreign firm's business procedures or methods of operation to the extent that the United States firm would experience a significant interruption of business in order to train a United States worker to assume those duties.

at 15. 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 the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

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. REP. 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, 91<sup>st</sup> 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. v. Attorney General*, 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.”)

A legacy 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the

memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are actually available in the United States to perform the beneficiary’s job duties.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other experienced response commanders of hazardous materials emergency response teams. The petitioner notes that the beneficiary has been trained in responding to accidents involving the petitioner’s chemical products and has led others in so responding. However, as the petitioner has failed to document any materially unique qualities to the petitioner’s chemical products, these claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any experienced response commander of a hazardous materials emergency response team in the United States, or that he has received special training in the company’s methodologies or processes which would separate him from the other response commanders employed with the foreign entity.<sup>2</sup>

The legislative history of the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not 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, supra at 16.* Based on the evidence presented, it is concluded

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<sup>2</sup>Although the appeal will be dismissed for those reasons stated above, the AAO notes that the director based her decision, in part, on an improper standard as well as on facts not in the record. The director should not have compared the beneficiary’s knowledge to the knowledge possessed by the “worldwide” job market. Such a comparison is beyond the scope of the analysis used to measure a beneficiary’s specialized knowledge. *See* Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). Moreover, the director repeatedly referred to “hundreds” of similarly trained response commanders in determining that the beneficiary lacked specialized knowledge. However, there is nothing in the record establishing the number of similarly trained responders in the United States or in the world, and the director should not have speculated as to the commonness of the beneficiary’s profession. That being said, the petitioner nevertheless failed to establish that the beneficiary’s knowledge is specialized given its failure to establish that the products and processes involved are not uncommon or unique in the industry. Therefore, while the director’s decision will be withdrawn, in part, as it relates to the use of the “worldwide” standard and its speculation as to facts not of record, the appeal will be dismissed for those reasons articulated above.

that the beneficiary has not been employed abroad, and would not be employed in the United States, in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Moreover, the petitioner's argument that prior approvals of petitions for arguably similar positions entitles it to an approval of the current petition is without merit. First, there is no evidence that the approved positions are the same as that offered in this matter. Second, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.