



U.S. Citizenship
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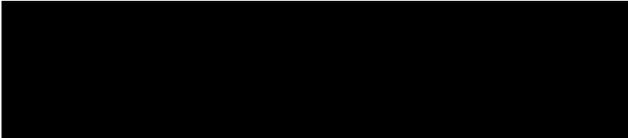
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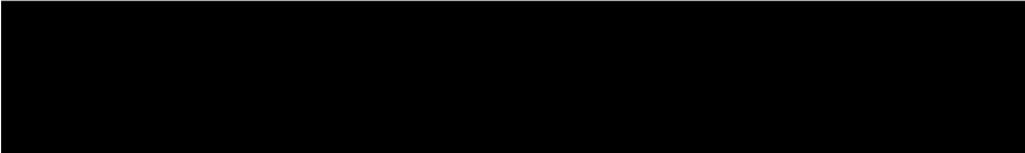
File: EAC 05 259 52240 Office: VERMONT SERVICE CENTER Date:

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)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further consideration and a new decision.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of director of technology 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 states that it is engaged in transcription services. The petitioner claims to be a wholly-owned subsidiary of the beneficiary's foreign employer, [REDACTED], located in India. The petitioner seeks to employ the beneficiary for a three-year period.

The director denied the petition on December 1, 2005, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

Counsel for the petitioner subsequently filed an appeal on January 3, 2006. On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary is a specialized knowledge employee, and that the director misapplied current standards set forth in the statute and regulations. Counsel contends that the law does not require a petitioner to: "show that it made efforts to hire someone else who could be training in a short time period"; "prove that the job responsibilities are highly complex that justifies hiring someone who has specialized knowledge"; or "establish the number of individuals within the company similarly trained." Counsel further states, "none of the employees in the United States is a hard core information technology professional who has [a] medical background." Counsel asserts that the U.S. company's services of providing transcripts is "very complex." Counsel submits a brief and a statement from the petitioner in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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.

The preliminary matter to be discussed is whether the petitioner represented that the beneficiary has been employed by the foreign entity in a a qualifying specialized knowledge capacity as defined at section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), or in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44).

The nonimmigrant petition was filed on September 30, 2005. In a letter dated September 20, 2005, the petitioner explains that the U.S. entity provides "transcription and information technology services to the medical establishments including, but not limited to, physicians and hospitals." In addition, the petitioner provided the following descriptions of the beneficiary's duties with the foreign company and the proposed duties with the United States entity as the following:

During his employment with the Indian office, he has been promoted several times and now heads the technical operations. He is responsible for managing all the technical aspects of customized software development, data transition between India and the U.S. office, software and data maintenance and upgradation. His educational background is unique and extremely suitable for the kind of work the petitioning and parent entity are engaged in. He has a Medical Degree as well as a Diploma in Computer Programming. As the petitioner and the parent entity cater to the medical field, [the beneficiary] is uniquely qualified to direct and supervise design and development of the software suitable for the medical industry. At present he manages and supervises a number of employees back in India and heads the technical operations. He has been working in management capacity in the Indian office for more than one year now. In that capacity, he has acquired specialized technical and management knowledge about the software and process the petitioning as well as the parent entity deploy in handling their customers and day to day business activities....

In the United States, [the beneficiary] shall be working as Director of Technology. His overall responsibilities shall include planning and managing of all technical aspects of the petitioner's business operations. He shall be directing this acquisition and implementation of new technology. He shall identify and hire technical personnel suitable to develop and maintain the software in use by the petitioner. All technical employees shall work under his direct or indirect supervision. The Indian technical personnel and technical managers shall report to him and shall be accountable for their actions to him. Due to his highly specialized qualification and technical and management experience, he is uniquely qualified for this

position and shall be instrumental in taking the U.S. operations much beyond its existing scope.

On October 13, 2005, the director issued a notice requesting additional evidence in order to process the petition. Specifically, the director requested clarification as to what classification the petitioner is requesting, either L-1A or L-1B classification. As the director believed that the petition was for an L-1A petition, the director requested additional documentation to establish that the beneficiary has been and would be employed in a managerial or executive capacity.

In response, the petitioner submitted a letter, dated November 14, 2005, responding to the director's request. In response to the director's request for evidence, counsel for the petitioner asserted that the petition is for an L-1B classification. Counsel stated "while the beneficiary is currently employed with the overseas parent in a managerial capacity and may qualify for a management executive category, the petitioner at this time is seeking an L-1B classification." Counsel further stated that the beneficiary "does possess specialized knowledge of the company's proprietary system and software which it uses for the medical industry to serve its clients' needs." Counsel further described the beneficiary's specialized knowledge as the following:

As stated earlier, over past [sic] 9 years of employment with the foreign parent, [the beneficiary] has acquired specialized and proprietary knowledge about the parent's technical operations. The business operations in India and the United States are interwoven with each other and cannot exist in isolation. The technical work process flow is seriously integrated as most of the petitioner's and the parent' business activities take place through the internet. The back office supports the front office in the United States. Without the front office operations, the back office cannot exist and without the back office support, the front cannot survive.

The petitioner caters to hospitals and doctors who call in to dictate. The data is transferred through the internet to the back office where it is transcribed. The final work product is transmitted back to the United States for the submission to the client. The turn around time in the industry is very short and routinely the final product has to be made available within 24 hours. To support this kind of system, the petitioner and parent's technical infrastructure has to be highly sophisticated. It required someone who has deep knowledge of the software and system in use by both parent and the subsidiary. Now he supervises all system support and software development.

Additionally, [the petitioner] is engaged in serous negotiations to acquire similarly situated companies. Therefore significant business expansion is on the horizon for the U.S. operations in the near future which will result in an immediate need to integrate the computer systems of the acquired companies with those of [the petitioner]. For this reason as well, the presence of the beneficiary in the United States is critical and immediately needed. We are attaching document evidencing petitioner's attempts to acquire new businesses.

He has a medical degree and equivalent of a Bachelor's in Computer Science. This combination provides the Indian parent and the U.S. petitioner with an edge in terms of placing itself one step ahead of the competition. To continue to increase the system efficiency, it is necessary that the beneficiary comes to the United States.

The director denied the petition on December 1, 2005, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge. The director stated, "while the beneficiary may need to draw on his experience with particular proprietary tools and methodologies, it appears that most of his duties could be performed by any qualified computer specialist." The director also noted that the petitioner failed to document the number of individuals similarly trained within the company, or the length of time required to train an individual on the petitioner's procedures and methodologies. The director further noted that the beneficiary does not design software or tools but instead alters and modifies "commercially available software." Finally, the director asserted that the petitioner has failed to demonstrate that the "level of the beneficiary's knowledge or expertise is significantly different from others in the same position both within the petitioning company and in the transcription industry as a whole."

Counsel for the petitioner subsequently filed an appeal on January 3, 2006. On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary is a specialized knowledge employee, and that the director misapplied current standards set forth in the statute and regulations. Counsel contends that the law does not require a petitioner to: "show that it made efforts to hire someone else who could be training in a short time period"; "prove that the job responsibilities are highly complex that justifies hiring someone who has specialized knowledge"; or "establish the number of individuals within the company similarly trained." Counsel further states, "none of the employees in the United States is a hard core information technology professional who has [a] medical background."

On appeal, the petitioner submits a statement further explaining the specific processes and procedures utilized by the petitioner, and the beneficiary's specialized knowledge as the following:

[The petitioner] has a non standard business model where the data is transported into [the petitioner's] computer systems from the client Hospital's computer systems which are Hospital Information System ("HIS") namely IDX-RAD, Seimens Novious, Meditech, Rislogix & HBOC. This data is processed by our in-house suite of software called USAP (Universal Service Access Platform), the output of this processing are Medical records and Insurance claims which are automatically send [sic] to the clients and insurance companies. To support this non standard and relatively new business model, [the petitioner] needs in-house computer system development to incorporate the business logic and business process. USAP has been able to successfully cater to this need for the interfaces developed so far.

[The beneficiary] had been actively involved in the design, development and implementation of USAP. He has been instrumental in converting the manual business processes into USAP to automate the interfaces and processing and hereby reduction in costs and increase in the quality of services. [The petitioner] needs him to be present in USA to gather the business requirements and oversee the future developments and feature enhancements in USAP so

that [the petitioner] is able to expand its [sic] client base by providing cost effective and efficient services to clients with different HIS (Hospital Information Systems).

Upon review of the totality of the record, the AAO concurs that the beneficiary's proposed position with the U.S. entity was represented as one involving specialized knowledge, rather than as a primarily managerial or executive position. Since the director did not request additional evidence to establish that the beneficiary qualifies for L-1B classification, the director's decision dated December 1, 2005 will be withdrawn.

The issue in the present matter is whether the petitioner has established that the beneficiary has been employed by the foreign entity in a position that involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(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 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.

The job descriptions recited above represent the entirety of the petitioner's evidence regarding the beneficiary's employment in a position involving specialized knowledge, and the AAO finds the evidence insufficient to establish that that the beneficiary has been employed in a qualifying capacity abroad. Although the director requested additional evidence, the evidence requested was not relevant to the issue of the beneficiary's specialized knowledge qualifications pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(D). The record as presently constituted does not establish that the beneficiary possesses special knowledge 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.

However, due to the director's misclassification of the beneficiary's proposed U.S. employment capacity, the petitioner did not have notice of any deficiencies in the evidence and thus could not file a meaningful appeal on the issue of the beneficiary's specialized knowledge qualifications. Therefore, the petition will be remanded for a full adjudication of the beneficiary's eligibility for the benefit sought. The director is instructed to request additional evidence to establish that the beneficiary's foreign employment is in a specialized knowledge capacity.

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.*

When analyzing whether a beneficiary's knowledge rises to the level of specialized, 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*, 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' operation.

Id. at 53.

It should also 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 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

^[1] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. As will be discussed, other than deleting the former requirement that specialized knowledge had to be "proprietary," the Immigration Act of 1990 did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of 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.

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.

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 this matter, the petitioner has not adequately explained or documented the beneficiary's claimed specialized knowledge. To cure these deficiencies, the petitioner should provide a comprehensive description of all positions held by the beneficiary since joining the foreign entity, including the dates served in each position, all job duties performed, the specific knowledge and skills applied in each position, and the foreign entity's requirements for each position. The petitioner should also describe all projects to which the beneficiary has been assigned and any special or advanced assignments that would help to establish that the beneficiary should be considered "key personnel," as discussed above.

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has provided a description of the beneficiary's proposed responsibilities as a director of technology. However, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other directors of information technology employed by the petitioner or the computer industry at large. On appeal, the petitioner states that the beneficiary will manage the "in-house suite of software called USAP (Universal Service Access Platform)," however; it does not explain how this software is different from software utilized by other computer companies working with health care providers, nor provide any documentary evidence describing the software. Contrary to the assertions of counsel and the petitioner, there is no evidence on record to suggest that the computer programming processes pertaining to health care providers are different from those applied for any computer programming position. 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)). While individual companies might develop a computer system tailored to its own needs and internal quality processes or its clients needs, it has not been established that there would be substantial differences such

that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

If the beneficiary has undertaken specialized training with the foreign entity, the petitioner should identify the type and length of training, the purpose of such training, and evidence, such as course completion certificates or other records, to establish that the beneficiary actually completed the training. The petitioner should also describe the training program typically completed by similarly employed workers in the foreign organization. If all employees receive exactly the same training, mere completion of the training program is insufficient to establish that the beneficiary's knowledge is advanced.

There is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. The petitioner asserts that the beneficiary is unique because of his education in both the medical and computer programming fields. However, the petitioner failed to demonstrate that the beneficiary has received specific training in the company's processes, procedures and methodologies. Again, 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. at 165.

Further, although the L-1B visa classification does not require a test of the U.S. labor market for available workers, the memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991) ("Puleo Memo"), allows 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." *Memo, supra*. 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 available in the United States to perform the beneficiary's job duties.

The current record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other directors of information technology. The petitioner has not established that the beneficiary has been trained in and has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have "advanced" knowledge of the company's business processes, procedures and methodologies, as well as "specialized knowledge" in the intricate software created by and utilized by the company. However, as the petitioner has failed to document any specific training, or otherwise describe or document the purported knowledge, these claims are not persuasive.

The lack of detail and absence of supporting documentary evidence in the record as presently constituted makes it impossible to classify the beneficiary's knowledge of the petitioner's technology and processes as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization.

Although the knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products. As the petitioner did not have sufficient notice of the deficiencies in its evidence, the petition will be remanded, and the petitioner shall be given the opportunity to submit additional evidence in order to establish the beneficiary's specialized knowledge qualifications. The director is instructed to issue a request for evidence addressing the issues discussed above, and any other evidence deemed necessary.

ORDER: The decision of the director dated December 1, 2005 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.