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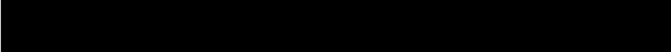
U.S. Citizenship  
and Immigration  
Services

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File: LIN-04-150-52140    Office: NEBRASKA SERVICE CENTER    Date: **AUG 03 2007**

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, 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 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 software consulting corporation formed under the laws of the State of Delaware. The petitioner is a subsidiary of Onward Technologies, Ltd., located in Kondhwa Pune, India.

The director denied the petition concluding that beneficiary did not possess 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 two 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 abroad in a capacity that utilized such 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 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, the petitioner described and specialized knowledge as follows:

[The beneficiary] possesses an advanced level of knowledge of [the petitioner's] methodologies, applications and software packages . . . [the beneficiary's] advanced level of knowledge with [the petitioner's] software engineering standards and his expertise in applying those standards using specialized software, applications, methodologies and training sets [his] knowledge apart and makes him uniquely qualified to continue these services for our clients in the United States. . . . In particular, [the beneficiary] possesses specialized domain knowledge for Espera Solutions, Inc. (the project on which he will be working in the U.S.).[.] Furthermore, he possesses an advanced knowledge of the client requirements based upon his experience working off-shore on the project.

\* \* \*

[The beneficiary] joined [the petitioner] in August 2001 and worked for [the petitioner] performing the responsibilities of a [s]oftware [e]ngineer until August 2002 and has since worked for [the petitioner] from April of 2004. In this capacity, [the beneficiary] was responsible for the same software engineering duties as described in the proposed position above. Specifically, [the beneficiary] performed system design and modeling using software tools. He also performed system implementation, provided software engineering support and maintenance and monitored post-implementation system performance. He trained customers in the use of the above-mentioned software packages, conducted customer-specific system benchmarking, and provided expert consulting services regarding the use and optimization of the noted software packages.

On May, 7, 2004, the director sent the petitioner a request for additional evidence (RFE). The director specifically requested a more detailed explanation of the specialized knowledge the beneficiary received while employed abroad and supporting documentation such as training classes, certificates, or educational sources.

In response, counsel submitted letters written by representatives of the petitioner and the foreign entity listing the beneficiary's experience but failed to provide any supporting documentation. In a letter of response to the director's RFE, the petitioner described the beneficiary's specialized knowledge as:

[The beneficiary] has also been trained in ISO 9001:2000 [c]ertification [p]rocess and is an internal [q]uality [a]uditor for a number of [s]oftware [p]rojects.

\* \* \*

[The beneficiary's] advanced and specialized knowledge and expertise gained through working at [the petitioner] consists of the following factors:

- Galil DMC Serial Drivers for Galil Motion Control Cards and Open Inventor Graphics Library for designing complex 3D images as used in [the petitioner] and as will continue to be used . . . .
- He has excellent knowledge in [c]urrent [g]eneration technologies such as C/C++, VC++, MFC, COM/DCOM, C#.NET, ASP.NET
- He has specialized knowledge and experience in design and development of complex CAD/CAM [t]ools like Digitizer, Auto Sculpt and Auto Carver that are used for design and actual automated construction of artificial limbs for the [p]rosthetic [i]ndustry.

On November 18, 2003, the director denied the petition. The director determined that the beneficiary did not possess specialized knowledge and that neither the position abroad nor the United States position requires a person with specialized knowledge.

The petitioner subsequently appealed. On appeal counsel for the petitioner asserts that the director was erroneous in his determination.

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>

In making a determination as to whether or not knowledge possessed by a beneficiary is special or advanced the AAO relies on the statute and regulations, prior precedent decisions, and legislative history. This yields a multiple pronged analysis to determine whether the petition has employed and will employ the beneficiary in a specialized knowledge capacity. In examining whether an alien has "special knowledge" of the petitioner's product and its application in international markets or an "advanced level" of knowledge of its processes and procedures, the AAO will consider whether the beneficiary: 1) is part of the petitioner's "key personnel" (*See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750); 2) is more than a specialist or a skilled employee (*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982); 3) has knowledge that qualifies as "special" under the plain meaning of the term; 4) performs a key process or function for the petitioner (*See Matter of Penner, id.*); and 5) possesses certain characteristics that have been deemed to be illustrative of specialized knowledge. *See* Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., Immigration and Naturalization Serv., *Interpretation of Special Knowledge*, 1-2 (Mar. 9, 1994) (copy on file with *Am. Immig. Law. Assn.*).

The alien should possess a type of special or advanced knowledge that is different from that generally found in the particular industry. Where the alien has special knowledge of the company product, the knowledge must be noteworthy or uncommon. Where the alien has knowledge of company processes and procedures, the knowledge must be advanced. The petitioner must also establish that the alien has such specific knowledge of the employer's product or processes that it would be burdensome, or counterproductive to the petitioner's business plan to hire someone other than the alien to fill this position in the United States. *See generally*, Memo. from Fujie O. Ohata, Dir., Serv. Ctr. Operations, U.S. Citizenship and Immigration Serv., to Serv. Ctr. Dir., *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B status*, 4 (Sept. 9, 2004).

One key characteristic of a beneficiary with specialized knowledge is that they constitute the petitioner's key personnel. 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

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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.

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 an 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 such that the beneficiary's knowledge is relative to the petition at bar. *See 1756, Inc. v. Attorney General*, 745 F. Supp. 9, 15 (D.D.C. 1990)(concluding that specialized knowledge is a relative determination).

In this case the beneficiary has not received any training beyond what a similarly situated employee in that company or within this particular industry would receive. The record indicates that the beneficiary was hired abroad and immediately began consulting services with the foreign organization's clients. This indicates that the knowledge the beneficiary possessed before being employed by the foreign organization was sufficient to perform this position's duties during the year that he was employed abroad. The record does not support that the beneficiary was or is a key or crucial position within the foreign organization. The off-shore consulting arrangement described by the petitioner does not distinguish the beneficiary among other industry employees.

A second characteristic of a beneficiary with specialized knowledge is that they are more than skilled employees. In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. at 49. 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." *Id.* at 51. During the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Although counsel refers to the beneficiary as an "expert" by virtue of the minimal training in the petitioner's business procedures, the reality is that the beneficiary appears to be no more than a trained employee. In order to receive L-1B classification, the claimed specialized knowledge has to be examined in the context of those in the particular industry and within the petitioning entity itself to such a degree that the employee would qualify as key or crucial personnel with an uncommon or noteworthy knowledge. The beneficiary was hired abroad and immediately began consulting services. The failure of petitioner to distinguish the beneficiary's training or experience from other employees of the petitioner or from other software consultants in the industry prevents Citizenship and Immigration Services (CIS) from determining whether the beneficiary possesses a special knowledge or an advanced knowledge of the petitioner's process or procedures. The record does not support that the beneficiary is more than a skilled employee providing a product through skilled labor.

A third characteristic of a beneficiary with specialized knowledge is that they possess knowledge that meets the plain meaning of special. Special is defined as "surpassing the usual; distinct among others of a kind; peculiar to a specific person or thing." Webster's II New College Dictionary, 2001, Houghton Mifflin. *See*

also Webster's Third New International Dictionary, 2001 (defining special as "distinguished by some unusual quality; uncommon; noteworthy"). The record does not distinguish the knowledge the beneficiary would have gained from his employment abroad from what other programmers in other software companies would have to learn about their companies in order to be effectively employed. The AAO acknowledges that the petitioner has submitted marketing material on its business and has quoted the same sales material in its letters to CIS. However, these materials are not related to the beneficiary and do not distinguish the beneficiary's knowledge from other employees within the company or within this particular industry. Nor do they illustrate that the proprietary business methods or procedures of the petitioner, while not required, surpass the usual or make the beneficiary distinct among a kind for his knowledge of those procedures. For these reasons the record fails to establish that the knowledge possessed by the beneficiary, or any other trained employee employed by the petitioner for that matter, is specialized.

A fourth characteristic of a beneficiary with specialized knowledge is that he or she typically carries out key processes or functions. As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. at 52, the beneficiaries were considered to have specialized knowledge if they had 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 to be 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. In this case the petitioner has failed to articulate why the beneficiary's skills are distinct among the company's other employees except to say that it is "rare to find an employee with all of these skills." However, this assertion is not corroborated by evidence in the record or fully explained by the petitioner. Such assertions are not probative and do not establish any comparative distinction among the petitioner's other employees or similarly situated employees in this particular industry.

Finally, the agency has interpreted "specialized knowledge" to find that a qualified beneficiary should possess certain characteristics. In a 1994 memo written by James A. Puleo, Acting Executive Associate Commissioner, on the subject of "Interpretation of Specialized Knowledge," the legacy INS offered the following possible characteristics of an alien who possesses specialized knowledge:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
- Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position;
- Possesses knowledge which, normally, can be gained only through prior experience with that employer;

- Possesses knowledge of a product or process, which cannot be easily transferred or taught to another individual.

The Associate Commissioner also stated:

*From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor.*

*Id.* In a subsequent memorandum, the Associate Commissioner later added that "[a]ll companies are different, and it can generally be expected that no two companies will employ the same procedures. Standing alone, however, an alien's knowledge of minor variations in style or manner of operations cannot be considered specialized." Legacy INS memo, HQSCOPS, 70/6.1, "Interpretation of Specialized Knowledge" (December 20, 2002).

The record is not clear on how the beneficiary possesses particular knowledge that is crucial to the petitioner's competitiveness in the marketplace. While every employee can reasonably be considered important, otherwise there would be no rational economic reason to hire that individual, the fact that the beneficiary possesses the skill required by the employee to be hired does not distinguish the employee from other employees within the company or within the particular industry. The record indicates that the beneficiary is a software consultant and was employed abroad by the petitioner. However, the petitioner did not articulate a need for knowledge of foreign operating conditions in order to perform the intended duties in the United States. Other than to be effective within the manner of the petitioner's operations, the beneficiary's knowledge of foreign operating conditions is not relevant. The petitioner indicates that it is the beneficiary's knowledge, and not the employment abroad, which serves as the basis for the beneficiary's specialized knowledge. As pointed out before, the beneficiary immediately began consulting for the foreign organization upon hiring, indicating that the knowledge acquired prior to employment with the company was sufficient. This runs contrary to the assertion that the knowledge required for the position abroad could only be acquired through the petitioner.

The record also indicates that the beneficiary began consulting as soon as he was hired abroad. While the petitioner has submitted the beneficiary's resume and asserts that the beneficiary was employed with the foreign qualifying organization abroad, it has not been articulated, and the record does not support how the beneficiary's assignments were significant and how they enhanced the employer's productivity, financial situation or image. In general all customer accounts can reasonably be considered "important" to a petitioner's enterprise otherwise there be no rational economic reason to place an employee with that customer. However, without such a distinction made, the AAO does not have sufficient facts to make a determination that such an assignment was so significant that it enhanced the productivity, competitiveness, image or financial position of the foreign organization. Counsel for the petitioner makes numerous

conclusory assertions on appeal, but fails to support these assertions with probative documentary evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In the response to the RFE the petitioner makes several confusing statements and makes ambiguous, out of context references. As an example the petitioner states “[t]he [first] level of knowledge, while handling such projects, pertains to understanding and crystallizing customer requirements.” The AAO can not presume an assertion on behalf of a petitioner and can not extrapolate information from submissions without the petitioner making their relevance clear. It is the petitioner’s burden to prove, through the submission of probative evidence, that the beneficiary’s knowledge is specialized. Conclusory assertions do not constitute evidence, thus assertions must be accompanied by relevant and persuasive supporting documentation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Despite the director specifically asking for documentary support of the beneficiary’s specialized knowledge, it was not provided. Counsel’s response to the director’s RFE does not improve over the initial description and relies on conclusory assertions that the beneficiary is qualified without providing any supporting documentation. The response to the RFE reasserted repeats the assertion that the beneficiary had advanced procedural knowledge and specialized knowledge of software applications and technical products. Counsel referred to CIS policy memos relating to specialized knowledge, but failed to establish through the submission of any probative evidence that the beneficiary actually satisfied the criteria outlined by the memoranda. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On review, counsel has not 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), nor has counsel demonstrated that the beneficiary has been or would be employed in a capacity utilizing any such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

Finally, the job descriptions and submitted evidence do not demonstrate that the beneficiary's knowledge is out of the ordinary for any similarly situated employee in the petitioner's particular industry – software engineering. 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 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 that the beneficiary was not employed abroad, and will not be employed in the future, in a specialized knowledge capacity. Nor has it been established that the knowledge possessed by the beneficiary of the petitioner's business procedures is advanced.

The mere fact that each business has its own way of operating or that the beneficiary has gained knowledge, by virtue of his or her employment with the company, of particular techniques or procedures employed by the company in providing its product or service does not mean that the beneficiary's knowledge is sufficiently uncommon *within the field* of software engineering/development/consulting. All companies are different, and it can generally be expected that no two companies will employ the same procedures. Standing alone, however, an alien's knowledge of minor variations in style or manner of operations cannot be considered advanced knowledge of procedures and methodology.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.