



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

D7



File: LIN 05 800 00362 Office: NEBRASKA SERVICE CENTER Date: OCT 03 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

SELF-REPRESENTED

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 extend its employment of the beneficiary in the position of systems software engineer 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 claims to be engaged in the business of software development and consulting and claims a qualifying relationship as a branch of Mascon Global Limited, located in Chennai, India.¹

The director denied the petition, concluding the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been and would be employed in the United States in a capacity that requires specialized knowledge.

On appeal, the petitioner asserts that the beneficiary is a member of a special team within the company, that he has undergone intense and in-depth training on the company's processes, programs, and proprietary software products, and uses his "specialized knowledge" throughout his work.² In support of these assertions, the petitioner submits further evidence.

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.

¹ It should be noted that, according to Illinois state corporate records, the petitioner's corporate status in Illinois has been revoked as of July 1, 2006. Although the reason for this revocation is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

² Upon review of Citizenship and Immigration Services (CIS) records, it is noted that the petitioner and its apparent U.S. affiliates and/or subsidiaries have filed approximately 2,100 petitions with legacy INS and CIS since 2001. As many of these petitions have been filed for "specialized knowledge" employees, the petitioner's claims regarding a limited and select team of specialized workers within the company is suspect.

- (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 possesses specialized knowledge, and that he has been and would be employed in the United States 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 November 14, 2004, submitted with the initial petition, the petitioner described the company's proprietary technology as a "windows-based, integrated business management software suite" called "Advanced Integrated Management Suite (AIMS)." The petitioner further described the software as follows:

AIMS links a company's production, sales, materials, quality and financial operations. AIMS runs on multiple relational databases and is currently available on SQL Server (Microsoft), SQLBase (Centura Corporation) and Oracle databases. AIMS is positioned in the US for the printed circuit board assembly, plastic processing and medical device manufacturing industries. AIMS has got a custom report generator, which enables the user to create and use any report from the database, using Crystal Reports and keeps it under this module. This report generator object is connected [to] almost all the major programs and hence, the programmer automatically get used to using crystal reports, which is predominantly used in the industry for writing reports.

In the same letter, the petitioner described the job duties of a systems analyst with the foreign entity as follows:

[A systems analyst a]nalyzes business or operating procedures to devise most efficient methods of accomplishing programming. Plans study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis. Gathers and organizes information on problem or procedures including present operations procedures. Analyzes the data gathered, develop information and consider available solutions or alternate methods of proceeding.

[A systems analyst] also organizes and documents findings of studies and prepares recommendations for implementation of new [s]ystems, procedures or organizational changes. Confers with personnel concerned to assure smooth functioning of newly implemented [s]ystems or procedure: He may install new [s]ystems and train personnel in application; may also conduct operational effectiveness reviews to ensure functional or project [s]ystems are applied and functioning as designed. May develop or update functional or operational manuals outlining established methods of performing work in accordance with organizational policy.

The petitioner also provided a copy of the beneficiary's resume, which indicates that the beneficiary received a master's degree in computer applications in 2000 and that he has worked in the field of computer systems and software applications since July 2000. Based on his resume, the beneficiary was a programmer trainee for Realsoft Cyber Systems (P) Ltd., India from July through September 2000, a programmer with Reliance Infocomm, India from October 2000 through February 2003, and has been employed by the foreign entity since December 2002.³

On November 24, 2004, the director issued a request for further evidence (RFE). The director stated that the evidence submitted has not established that the beneficiary could be considered to have specialized knowledge. The director requested evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor, and that the beneficiary's knowledge of the processes and procedures of the company is apart from the elementary or basic knowledge possessed by others. The director also requested (1) an explanation of why the petitioner is requesting an extension when the beneficiary's stay does not expire until October 29, 2006; (2) a copy of the beneficiary's I-94 card; and (3) a detailed description of the duties to be performed by the beneficiary, indicating the percentage of time to be spent on each duty.

The petitioner responded to the RFE on February 14, 2005 and provided the following description of the duties to be performed by the beneficiary, along with the percentage of time to be spent on each duty:

[The beneficiary] is involved in Mascon's Product Development. Mascon is in the process of

³ It is noted that there is no explanation for the overlap between the beneficiary's tenure with Reliance Infocomm and his employment with Mascon Global Limited from December 2002 through February 2003.

developing a People Plus Learning System for Walgreens. This system is entirely developed by Mascon, and requires an advanced level of experience in Mascon's products, practices, procedures, processes, techniques and service.

[The beneficiary's] specific input in this product development involves the following:

- Developing the People Plus Learning System as per Mascon guidelines, processes and procedures, and upgrading the Systems from Docent 5.0 to Docent 6.5. [40%]
- Managing a team involved in the creation of the online courses developed using Trivantis Lectora and Docent Outliner, as per Mascon processes and service policies. [25%]
- Integrating Docent 6.5 with external systems viz., CD-Rom, AICC (Aviation Industry CBT (Computer Based Training) Committee), CDS (Content Delivery Server) systems. [10%]
- As per Mascon guidelines, designing the server side interface for client communication. [10%]
- Designing 'Download Now and Play [Later]' mechanism (DNPL) for launching the course as per Mascon requirements, processes and techniques, as well as implementing bi-lingual architecture framework and implementing new communication framework methodology and analyzing performance of the system for downloading the course. [15%]

[The beneficiary] has the advanced knowledge [sic] of Mascon's practices and techniques, as he has been employed with Mascon from 2002 until the present with the organization [sic], and has gained in-depth training and experience in the product development techniques, guidelines and processes of the organization.

The petitioner provided a copy of the beneficiary's I-94 and a letter explaining that the request for extension of the beneficiary's L-1B status was filed at that time as a precaution because the petitioner could not determine whether the expiration date on the I-94 was 2004 or 2006.⁴ The petitioner submitted no other evidence other than the above.

On March 17, 2005, the director denied the petition concluding that the petitioner has failed to establish that the beneficiary possesses specialized knowledge, or that the beneficiary has been and would be employed in

⁴ It is noted for the record that the written expiration date on the I-94 appears to read "29 Oct 2006," not "29 Oct 2004." Even so, as the blanket L petition under which the beneficiary was admitted to the United States expired on May 30, 2005, the beneficiary's L-1 status should be considered to have expired on that date unless the petitioner failed to file and ultimately obtain indefinite validity of its blanket petition. See 8 C.F.R. § 214.2(l)(11). While the present petition would also have been sufficient to seek an extension of status beyond May 30, 2005, it was denied, and the appeal of this decision has not been found to be sustainable for the reasons discussed herein. *Id.*

the United States in a capacity that requires specialized knowledge. Specifically, the director found that there is no evidence in the record to distinguish the beneficiary's claimed "specialized knowledge" from the experience and knowledge of other employees similarly engaged with the same technologies throughout the foreign company and its international corporate workforce. The director further observed that the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills or knowledge beyond that of a "skilled worker." As such, the director found, the beneficiary's role does not appear to be of "crucial importance" to the company, nor does he rise to the level of "key personnel" who would qualify for L-1 classification, as intended by Congress. The director further concluded that the evidence does not establish that either the beneficiary's position abroad or his proposed position in the United States would require a person with "specialized knowledge" as that term is discussed in the regulations.

On appeal, the petitioner asserts that the beneficiary is a member of a special team within the company and that he has undergone intense and in-depth training on the company's processes, programs, and proprietary software products and uses his "specialized knowledge" throughout his work. The petitioner describes the company's products at some length and submits additional evidence, including brochures describing the company's proprietary technology and a letter from the company's senior human resources executive certifying the training programs undertaken by the beneficiary. Based on the information submitted on appeal, the beneficiary took the following in-house training courses: (1) Role Based Quality Related Training on May 12 and June 18, 2003, (2) Project Management Information system-proprietary tool on May 12, 2003, and (3) Mascom Quality Systems May 5-8, 2003.

Upon review, the record does not demonstrate that the beneficiary possesses specialized knowledge, or that he has been and would be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

As a threshold issue, the AAO notes that the director specifically requested in the RFE "evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary's field of endeavor, and that the beneficiary's knowledge of the processes and procedures of the company is apart from the elementary or basic knowledge possessed by others." While the petitioner complied with the rest of the director's requests in the RFE, the petitioner failed to submit any evidence that could be considered responsive to the above request. The requested evidence was material to the determination of whether the beneficiary possesses specialized knowledge. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). 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 AAO acknowledges that on appeal, the petitioner submits a more detailed explanation of the company's proprietary products and the beneficiary's training to support its claim that the beneficiary possesses specialized knowledge of the company's proprietary processes and products. However, the petitioner was put on notice that further evidence was required on this issue and was given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence

and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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.* 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)).⁵ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business 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. 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

⁵ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [i.e., not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

"crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the 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, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In the instant matter, the petitioner has not submitted a sufficiently detailed description of the beneficiaries job duties to demonstrate that the beneficiary's position involves specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). The job description set forth in the petitioner's letter accompanying the initial petition appears to be a generic description of a systems analyst's job duties. Upon request by the director for a more detailed job description, the petitioner briefly described the "People Plus Learning System" software, the product which the beneficiary would be involved in developing. Although the petitioner repeatedly asserts that this system "requires an advanced level of experience in [the company's] products, practices, procedures, processes, techniques and service," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced systems analysts employed by the petitioner or in the industry at large. Additionally, the petitioner did not describe with adequate specificity its own line of products and services, nor has it established how or whether its products and services differ from those offered by any

other company. As such, the petitioner has not established how its "proprietary" products and applications might be more than customized versions of standard practices used in the industry.⁶ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. 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).

The AAO does not dispute the likelihood that the beneficiary is a skilled software professional who has been, and would be, a valuable asset to the petitioner. However, as explained above, there is insufficient evidence to distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other systems analysts employed by the petitioner or elsewhere. Additionally, the petitioner has failed to document adequately any materially unique qualities of the software products with which the beneficiary would be working. There is also insufficient evidence that the beneficiary has any knowledge that exceeds that of any general software professional or that he has received special training in the company's methodologies or processes which would separate him from any other software professional employed with either the petitioner or the foreign entity.⁷ Overall, the evidence of record does not persuasively establish that the beneficiary, while skilled, would be an employee of "crucial importance" or "key personnel."

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 that the evidence is insufficient to establish that the beneficiary possesses specialized knowledge, or has been and would be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

⁶ It is noted that a beneficiary is not required to possess knowledge of proprietary products or processes in order to be deemed to have specialized knowledge. Further, the fact that a beneficiary has experience with a proprietary product or procedure does not serve as *prima facie* evidence that the beneficiary possesses specialized knowledge. However, as in the present matter, when a petitioner asserts that a beneficiary has experience with proprietary products or procedures, CIS must carefully evaluate the claimed knowledge and the depth of the beneficiary's experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D).

⁷ The AAO acknowledges that on appeal, the petitioner listed several in-house training courses that the beneficiary attended. However, as previously noted, the AAO will not consider evidence submitted on appeal when it was requested and not provided prior to the director's decision. See *supra*. Moreover, even if the AAO were to consider the evidence submitted on appeal, the brief descriptions of the courses that the beneficiary attended are insufficiently detailed for the purposes of establishing that the beneficiary possesses specialized knowledge.

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.