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20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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File: WAC 07 208 52876 Office: CALIFORNIA SERVICE CENTER Date: **APR 03 2008**

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of Enterprise Content Management/Business Process Management (ECM/BPM) consultant 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 California corporation, which claims to be a software development services company. 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 beneficiary has been or will be employed in a capacity involving specialized knowledge or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity.

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.

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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a capacity involving specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

The petitioner described the beneficiary's duties abroad in a letter dated June 8, 2007 as follows:

[The beneficiary] has held the qualifying position of Senior Software Development Engineer. In this position, [the beneficiary] has primarily lead [sic] Software Developers in research, design, development, coding, debugging, implementation, documentation and support of proprietary software application for GEM Frame product of [the petitioning organization] and BMO STP project for the company's client in the United States, utilizing various software development tools under FileNet P8 ECM/BPM platform. Now, as the project has advanced into the integration, testing and delivery phase, [the beneficiary's] services are needed in the United States as he possesses specialized knowledge of this proprietary product as well as advanced level of knowledge of our company's processes and procedures.

The petitioner indicated that the beneficiary has been employed in this capacity since April 1, 2005, approximately 25 months prior to the filing of the instant petition.

The petitioner also described the beneficiary's proposed duties in the United States in the letter dated June 8, 2007 as follows:

- Researching and analyzing custom software requirements to determine design feasibility of computer systems supporting FileNet and other software products;
- Applying established designing processes and procedures and FileNet expertise to create software solutions to ensure optimum performance and compliance with company standards and customer contracts;
- Designing and developing testing methodologies for software technologies, as well as programming and documentation procedures;
- Developing and implementing procedures for effective software integration and

- automated script programming;
- Analyzing and resolving technical software problems through debugging and testing, and organizing the end-user delivery and training support systems;
- Developing and maintaining codes of all user interfaces.

On July 11, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence addressing the duties performed by other workers employed by the petitioning organization and an explanation addressing how the beneficiary's training or experience imparted knowledge which is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the filed of endeavor.

In response, the petitioner submitted a letter dated July 27, 2007 in which it asserts that it "tried to recruit on the U.S. soil but failed to find qualified employees." The petitioner also repeated the same foreign job duties ascribed to the beneficiary in the June 8, 2007 letter, but inserted these duties under the heading "Beneficiary's Training or Experience." The petitioner did not specifically describe the beneficiary's training, if any, and thus implied in the July 27, 2007 letter that the beneficiary's purported specialized knowledge was imparted through the performance of his job duties abroad.

On August 16, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary has been or will be employed in a capacity involving specialized knowledge or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in a position involving specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) or that the beneficiary possesses specialized knowledge. The record is also not persuasive in establishing that the beneficiary was employed abroad in a capacity involving specialized knowledge for the requisite one-year period.

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). **The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge.** In this matter, the petitioner fails to establish that this position requires an employee with specialized knowledge or that the beneficiary has been employed in a specialized knowledge capacity for the requisite one-year period abroad.

Although the petitioner repeatedly asserts that the beneficiary's position requires "specialized knowledge" and that the beneficiary had been employed abroad in a "specialized knowledge" capacity, 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 similarly experienced workers employed by the foreign entity 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).

The petitioner asserts that the beneficiary has specialized knowledge of one or more software products as well as an "advanced level of knowledge of [the petitioning organization's] processes and procedures." However, despite these assertions, the record does not establish how, exactly, the pertinent software products or the petitioner's "processes and procedures" as they relate to this software are so materially different from those of other software products that a generally experienced and similarly educated software worker could not perform the duties of the position. The petitioner never establishes the difference between the petitioner's products, processes, and procedures and other software products, and related processes and procedures, which requires noteworthy or uncommon knowledge not possessed generally by similarly educated software workers.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by software professionals generally throughout the industry or by other employees of the petitioning organization. The fact that no other employee possesses very specific knowledge of certain aspects of proprietary software does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. All employees can be said to possess unique and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced software employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's product do not establish that any knowledge of this software is "specialized." Rather, the petitioner must establish that qualities of the product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other professionals may not have very specific, proprietary knowledge regarding the petitioner's product, or its implementation, is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced software employee.

Furthermore, while the petitioner implies that the beneficiary gained his purported specialized knowledge through the performance of his foreign job duties, the petitioner failed to support this claim with any evidence. Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The record is devoid of evidence establishing, exactly, what knowledge was imparted during the performance of these duties and why the purported specialized knowledge took this long to impart. Also, even though requested by the director, the petitioner failed to address whether the beneficiary received any training and, if so, whether this training imparted the purported specialized knowledge to him in whole or in part. 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).

It is noted that the director implies in her decision that, because the software products are not proprietary to the petitioner, the petitioner has failed to establish that knowledge of these products is specialized. Counsel

argues on appeal that a product need not be "proprietary" to a petitioner in order for knowledge of this product to be "specialized." See Memorandum from James A. Puleo, Acting Executive Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). The AAO agrees with counsel that the petitioner was not obligated to establish that the software in question was proprietary in order to establish that the beneficiary's knowledge of the product constitutes "specialized knowledge," and the director's decision will be withdrawn in part. However, as noted above, the petitioner nevertheless failed to establish that the beneficiary's knowledge of the product constitutes specialized knowledge because it has not been established that beneficiary's knowledge is substantially different from the knowledge possessed by software workers generally throughout the industry or by other employees of the petitioning organization. Crucially, the petitioner never establishes the material difference between the pertinent products and their implementation and other software products, which requires noteworthy or uncommon knowledge not possessed generally by similarly employed software workers. The fact that the software is proprietary, or not, is largely irrelevant to the analysis.

Finally, while it is acknowledged that the petitioner has asserted that it has tried, and failed, to hire a United States employee qualified to perform the beneficiary's proposed duties, this does not establish that the job requires "specialized knowledge." The unavailability of workers to perform the beneficiary's job duties is not relevant in these proceedings. The L-1B visa category was not intended to remedy a shortage of United States workers. Instead, the temporary worker provisions contained at section 101(a)(15)(H) of the Act provide a basis for admitting workers for whom there is a shortage. *Matter of Penner*, 18 I&N 49, 53 (Comm. 1982).

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the Acting Executive Associate Commissioner, *see supra*, 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." *Id.* 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.

In the instant matter, while the petitioner has presented evidence that it has tried, and failed, to find a qualified employee, it has not presented any evidence that software workers generally do not possess the same knowledge possessed by the beneficiary. Certainly, there are a finite number of experienced ECM/BPM software workers, and enticing one to leave his or her existing employer would likely be a challenge, just as it would be in almost any field of endeavor. However, even though the number of qualified employees may be small when compared to other occupations, and such employees may be difficult to recruit for a variety of reasons, this does not establish that the knowledge possessed by these workers is "specialized" as defined by

the Act and the regulations. In this matter, absent any evidence that the knowledge held by the beneficiary is not commonly held throughout the industry, the petitioner has not established that the beneficiary possesses specialized knowledge or that the job requires an employee who has specialized knowledge.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee 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. 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 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. 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 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*, 18 I&N 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* than 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.”)

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by software workers employed generally in the industry. As the petitioner has failed to document any materially unique qualities to the beneficiary’s knowledge, the petitioner’s claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced professional or that he has received special training in the company’s methodologies or processes which would separate him from other professionals employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

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 beneficiary will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge. For these reasons, the appeal will be dismissed.

Beyond the decision of the director, the petition will also be denied because, even assuming the beneficiary has specialized knowledge, the petitioner failed to establish that the beneficiary was employed abroad in a specialized knowledge capacity for the requisite one-year period. The petitioner asserts that the beneficiary began working for the foreign entity on April 1, 2005. Approximately 25 months later, on July 3, 2007, the

petitioner filed the instant petition. Therefore, at some point between April 1, 2005 and July 3, 2006, the beneficiary would have needed to have acquired the claimed specialized knowledge. However, the record is devoid of evidence addressing when, exactly, the beneficiary acquired the claimed specialized knowledge. As noted above, the petitioner failed to describe the beneficiary's training regimen, if any, or to describe the beneficiary's evolution from newly hired employee to the possessor of "specialized knowledge." Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Absent a detailed description of the beneficiary's acquisition of his claimed specialized knowledge, it cannot be concluded that the beneficiary was employed in a specialized knowledge capacity abroad for the requisite one-year period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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.