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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 086 51263 Office: NEBRASKA SERVICE CENTER Date: DEC 13 2004

IN RE: Petitioner: [redacted]
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: 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, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 the employment of its senior LINC consultant as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in consulting and software development. The petitioner's breakdown of ownership of the foreign and U.S. entities indicates that the petitioner and the foreign entity are affiliates. The foreign entity is located in Latvia. The petitioner now seeks to extend the beneficiary's stay for an additional one year and five months.

The director denied the petition, concluding that the petitioner failed to submit sufficient evidence to establish that the beneficiary's knowledge is special or advanced within the petitioning organization or throughout the relevant industry.

On appeal, the petitioner disputes the director's conclusion and directs the AAO's attention to previously approved petitions filed by the same petitioner. The petitioner also submitted a number of letters and other additional evidence discussing the beneficiary's duties in the context of the petitioner's organization.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

The key issue in the instant matter is whether the beneficiary possesses specialized knowledge.

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.

In a letter dated January 14, 2003, submitted with the petition, the petitioner stated that the initial petition was approved based on the beneficiary's "specialized knowledge of [the] Petitioner's unique processes, procedures, and techniques for designing and developing complex business information systems using LINC 4th generation software development tools and methodologies." The petitioner further stated that LINC developers are not readily available in the marketplace and that as a result those who possess such knowledge are considered to be "highly skilled workers." The petitioner generally claimed that its employees are trained in using LINC to meet the needs of its clientele. The petitioner provided the following breakdown of duties for the beneficiary's proposed position as senior LINC consultant:

- Consulting (30%) – review operational procedures and potential new systems, recommend new procedures and replacement systems,
- Analysis (10%) – work with end users to define new requirements
- Design (20%) – develop technical design specifications and prototypes; review with end users
- Development (10%) – develop enhancements to systems and custom reports in LINC; develop user and system documentation
- Testing (10%) – unit test new modules, system test with real data
- Support (10%) – handle support calls from end users; diagnose problems; determine and correct faults in LINC code, data errors, configuration and network problems

In a letter dated December 1, 2002, [redacted] he director of development and training for the foreign entity, stated that the "specialized knowledge of unique LINC development techniques, processes, and procedure" is imparted on all of the company's employees by virtue of intense training and hands-on experience.

On February 25, 2003 the director issued a notice requesting additional information to establish that the beneficiary possesses specialized knowledge as claimed in the petition. The director notified the petitioner that even though the record clearly suggests that the beneficiary is a professional in his field, it cannot be concluded that he possesses specialized knowledge. The director further stated that in order to be considered proprietary, the beneficiary's particular knowledge must be something that exclusively relates to the petitioner's business and the beneficiary's employment must be critical to the petitioner's proprietary interests.

The petitioner submitted a response in the form of a letter, dated May 14, 2003, in which the petitioner stated that all of its prospective employees are required to successfully complete a LINC programming class and to then complete a software development project using LINC in order to demonstrate their ability to apply the knowledge gained through training. The petitioner stated that after a candidate is hired that new employee is trained in the company's proprietary techniques, processes and procedures. The petitioner did not specify the actual techniques, process and procedures referred to in the record. The petitioner also resubmitted all of the supporting documents previously submitted in support of the petition.

In a decision dated June 18, 2003 the director denied the petition, concluding that the description of the beneficiary's duties does not establish that the beneficiary's knowledge is specialized. The director noted further that the petitioner did not establish the proprietary nature of the beneficiary's knowledge and therefore failed to distinguish the beneficiary's knowledge from general knowledge of the systems with which the beneficiary has been working. Finally, the director determined that the petitioner failed to provide any details or evidence establishing the level of complexity of its proprietary tools and procedures.

On appeal, the petitioner submits a brief, dated July 15, 2003, asserting that the beneficiary has proprietary knowledge of the techniques and processes that are unique to the petitioner and its foreign affiliate. The petitioner claims that the beneficiary's ability to combine his LINC programming skills with his proprietary knowledge distinguish him from other LINC programmers in the industry. The petitioner also states that it has "unique LINC techniques and processes," which include LINC-related system structure standards and templates, code standards, system testing processes, migration processes and conversion utilities, coding techniques, templates, and various libraries. While this list suggests that LINC has its own unique techniques and processes, it falls short of defining any specific techniques and processes that are proprietary and unique to the petitioning organization. The AAO does not dispute the likelihood that the beneficiary is a highly skilled individual who understands LINC programming and is able to apply it within the context of the petitioner's specific environment. Although the petitioner repeatedly points out the unique features of LINC software design and development tools, the beneficiary's knowledge cannot be deemed knowledge of the petitioner's processes and procedures, as there are other LINC programmers in the industry that are not employed by the petitioner or its affiliate. The petitioner has not provided any specifics regarding the beneficiary's knowledge that is unique to the petitioner. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Although the petitioner repeatedly refers to the beneficiary's proprietary knowledge of the petitioner's processes and techniques, no evidence was submitted to substantiate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, 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)).[1] 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' operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to produce a specialized product, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

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[1] 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 interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific 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, the cited cases, as well as *Matter of Penner,* remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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. 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 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.*, 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 case, the beneficiary appears to be one among a large number of the petitioner's employees who possesses similar training and knowledge and who the record shows is also one of many other beneficiaries on whose behalf the same petitioner has filed a significant number of L-1B petitions.

The petitioner points out the apparent inconsistency perpetuated by CIS's approval of the initial petition and subsequent denial of this petition to extend the initial period of employment. However, the director's decision does not indicate whether he reviewed the prior approval of the other non-immigrant petition. If the previous nonimmigrant petition was approved based on the same facts and assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Based on this reasoning, any other appeals filed by the petitioner and subsequently sustained by the AAO, if based on evidence similar to that found in the instant record of proceeding, would also be deemed to have been made in gross error. The AAO will not perpetuate such gross

error by sustaining the appeal in the instant case where the petitioner has not established the necessary factors of eligibility.

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 does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.

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