U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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File: SRC-04-116-50588 Office: TEXAS SERVICE CENTER Date: JUN 28 2005

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)

IN BEHALF OF PETITIONER:

[redacted]

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

DISCUSSION: The Director, Texas 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 corporation organized in the State of Texas that states that it is a GSM cellular and paging company. The petitioner claims that it is the parent of Barash Communication Technologies, Inc., located in Ashgabat, Turkmenistan. The petitioner now seeks to employ the beneficiary for three years as a general manager.

The director denied the petition concluding that the petitioner failed to establish that: (1) the beneficiary possesses specialized knowledge; and (2) the prospective duties in the United States require an individual with 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 beneficiary possesses specialized knowledge, and that such knowledge is required for his position in the United States. In support of these assertions, counsel submits a brief, additional evidence, and previously submitted documents.

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 first issue in the present matter is whether the petitioner has established that the beneficiary's prior employment abroad was in a position that involved specialized knowledge, such that the beneficiary possesses specialized knowledge. *See* 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 an affidavit from the petitioner's chairman submitted with the initial petition on March 17, 2004, the petitioner described the beneficiary's job duties with the foreign entity as follows:

> [The beneficiary] has worked with [the foreign entity] in Turkmenistan since 1996 when he was hired as a Lead Expert. He was promoted to Deputy General Manager in 1999, and then the General Manager in 2001. As general manager, he has been responsible for all functions of the company. Specifically, he has been responsible for conducting negotiations and solving economic and political problems with the Turkmenistan government. He has been responsible for expansion planning, reinvestment planning, marketing, public relations, and quality control on expansion of coverage for the company, as an executive. He formulates and develops business strategies and solutions for improving company performance. He monitors and analyzes business performance. He has developed and overseen the implementation of GSM network in Turkmenistan. He negotiates and facilitates arrangements for international roaming agreements. In addition, he is responsible for personnel decisions, including hiring and firing, and oversight of operations for approximately 6 regional offices and 10 local offices in Turkmenistan. He reports each day to the undersigned the results of every-day activities.
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> Through his experience with the company, [the beneficiary] has specialized knowledge of the company products, services and management and its application in international markets. He

> is not simply a skilled worker, in that he has held an executive position for the company since 1999 to the present. He possesses skills, knowledge and understanding of the company's business and how it operates successfully on an international scale that is invaluable to our expansion goals in the U.S.
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> He has been utilized as a key employee in Turkmenistan and has been given specific assignments, which have enhanced our productivity, competitiveness, image, financial position, and has secured our leadership in a truly global market for technology. Our products, services, and business plan is [sic] knowledge that is proprietary and can only be obtained through extensive experience with our operations.

On March 30, 2004, the director requested additional evidence. In part, the director instructed the petitioner as follows:

> You must provide evidence that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the field. The evidence must also establish that the beneficiary's knowledge of the processes and procedures of your company is apart from the elementary or basic knowledge possessed by others.

In a response dated April 2, 2004, counsel for the petitioner submitted a letter that further discusses the beneficiary's prior experience with the foreign entity as follows:

> [T]he beneficiary has specialized knowledge of the petitioner's **product**, namely cellular and paging GSM ("Global System for Mobile") technology. He has been responsible for the development and implementation of our company's GSM network in Turkmenistan, a country which until recently had no cellular GSM technology. He has also been responsible for facilitating arrangements for international roaming agreements. Intimate knowledge of the technology is necessary for successful completion of this assignment.
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> The beneficiary has special knowledge regarding the company's **management**. He has served in management capacities since 1999, more than half the time the company has been in existence . . . . The combination of legal and management experience in the company are [sic] very unique and is apart from the knowledge possessed by others.
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> The beneficiary has special knowledge as to the application of company procedures, techniques and products to **international markets** . . . . As one of the beneficiary's job duties, he is responsible for negotiating and facilitating the execution of . . . international roaming agreements. His ability to speak Turkmeni, Turkish, English and Russian have [sic]

> also played a key role in his successful negotiation of the international roaming agreement vital to the petitioner's ability to provide access to its cellular customers.

Counsel further asserted that the beneficiary's duties and experience meet that definition of specialized knowledge as discussed in an internal Immigration and Naturalization Service memorandum from James A. Puleo. *See* Memorandum from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Service, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (Mar. 9, 1994). Counsel stated that:

> Considering the amount of experience the beneficiary has with the company, and his network of contacts with foreign governments and businesses, his language ability, and his familiarity with the company products, technology, management and business model, it would be extremely difficult to impart this knowledge to another without significant economic inconvenience at least and damage at worst to the US operations and its future goals.

On April 14, 2004, the director denied the petition. In part, the director determined that the petitioner failed to establish that the beneficiary possesses specialized knowledge. The director stated that "[the petitioner has] indicated that the position requires an individual who has an in-depth knowledge of [its] products and services, however [it has] not established that an understanding of these methods within [its] company is indicative of advanced knowledge."

On appeal, counsel for the petitioner asserts that the beneficiary's knowledge differs from that of other general managers in the communications field, in that he has both legal and managerial experience. Counsel discusses the descriptions of managerial positions in the United States Department of Labor *Dictionary of Occupational Titles* (DOT) and *Occupational Outlook Handbook* (OOH), and asserts that the beneficiary's duties do not fit within any of them. Counsel claims that this is evidence that the beneficiary possesses specialized knowledge. Counsel repeats the discussion of the beneficiary's duties that was provided to the director in response to the request for evidence, as quoted above.

On review, the petitioner 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).

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)).[1] As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

[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

(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.

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 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 (Comm. 1982). 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

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"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.

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. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In the instant matter, the petitioner explained that its "products, services, and business plan is [sic] knowledge that is proprietary and can only be obtained through extensive experience with our operations." However, the petitioner has failed to adequately describe its products such to distinguish them from those offered by other telecommunications companies. GSM technology is utilized and provided by numerous wireless communications companies worldwide, and thus more detail is needed to establish that the petitioner's technology is specific to its own family of companies. The petitioner asserts that "[i]ntimate knowledge of the technology is necessary for successful completion of this assignment." Yet, the petitioner has not established that the beneficiary possesses or requires technical knowledge that is not commonly found by other individuals working within the telecommunications field, such that his technical knowledge can be considered specialized knowledge. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner states that the beneficiary's foreign duties have led to "special knowledge regarding the company's management." The evidence of record shows that the beneficiary has functioned as a general manager for the foreign entity for over two years. Yet, the petitioner has not described the foreign entity's management methods, procedures, or structure such to differentiate them from those used by other companies. The mere fact that the beneficiary served as a manager does not distinguish his knowledge of the petitioner's management from the managerial experience held by other managers in the telecommunications field. More detailed is required in order for Citizenship and Immigration Services (CIS) to determine if knowledge of the foreign entity's management constitutes specialized knowledge. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner stated that the beneficiary's "ability to speak Turkmeni, Turkish, English and Russian have [sic] also played a key role in his successful negotiation of the international roaming agreement vital to the petitioner's ability to provide access to its cellular customers." While the beneficiary's language skills are valuable to the foreign entity and petitioner, they do not constitute specialized knowledge. Such skills are available to anyone wishing to study the named languages. Thus, mastery of languages cannot be deemed specialized knowledge of the petitioner's or foreign entity's particular products or processes. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D).

Counsel asserts that the beneficiary's knowledge differs from that of other general managers in the communications field, in that he has both legal and managerial experience. However, while the beneficiary may possess a unique combination of skills that is well suited to his duties, such skills, without further explanation, do not constitute specialized knowledge. The petitioner must clearly show that the beneficiary possesses knowledge that pertains only to the petitioner's family of companies. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D).

Counsel discusses the descriptions of managerial positions in the United States Department of Labor *Dictionary of Occupational Titles* (DOT) and *Occupational Outlook Handbook* (OOH), and asserts that the beneficiary's duties do not fit within any of them. Counsel claims that this is evidence that the beneficiary possesses specialized knowledge. While the DOT and OOH are generally instructive regarding the descriptions of various occupations, the fact that a position does not fit neatly within a single definition contained in the guides does not establish that the position involves specialized knowledge. As discussed above, the fact that the beneficiary's duties abroad require an unusual combination of skills does not render his experience in the position specialized knowledge.

In the instant matter, the petitioner has not submitted a sufficiently detailed description of the beneficiary's foreign duties to show that they involve specialized knowledge as defined in 8 C.F.R. § 214.2(l)(1)(ii)(D). While the record reflects that the beneficiary is an experienced manager, evidence does not show that his responsibilities require a greater level of knowledge and ability than that possessed by other managers in the telecommunications field. 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 in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

The second issue 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).

In an affidavit submitted with the initial petition, the petitioner's chairman described the beneficiary's prospective duties as follows:

> While in the US, [the beneficiary] will be responsible for planning, directing and coordinating all operations and functions. He will formulate company policies and strategies for implementation on an international scale. He will manage daily operations through subordinate management personnel. He will be responsible for personnel decisions, including hiring and firing, and for financial development, records, and growth. He will be responsible for expansion planning, reinvestment planning, marketing, public relations, and quality control on expansion of cellular coverage for the company. He will formulate and develop business strategies and solutions for improving company performance and opening new offices. He will monitor and analyze business performance and develop the implementation of GSM network. He will facilitate arrangements of international roaming agreements and continue to report each day to the Chairman results of every-day activities.

In response to the director's request for evidence, the petitioner further described the beneficiary's prospective duties in the United States as follows:

> Considering the amount of experience the beneficiary has with the company, and his network of contacts with foreign governments and businesses, his language ability, and his familiarity with the company products, technology, management and business model, it would be extremely difficult to impart this knowledge to another without significant economic inconvenience at least and damage at worst to the US operations and its future goals.
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> The beneficiary has skills that are required for successful accomplishment of the goals set by the Directors of the US operations of [the foreign entity], namely continued international development and growing the operations and functions of the US office. The beneficiary's intimate knowledge of the petitioner's products, technology, management and procedures, and in particular how those are applied and exploited in international markets, is specialized and required. The knowledge he has cannot easily be imparted to another, and can only be gained through experience within the company. Because of his unique combination of management and legal experience, as well as his language ability, he has the skills the company needs to succeed.

In denying the petition, the director concluded that the petitioner failed to show that the prospective position in the United States requires an individual with specialized knowledge. The director stated that the beneficiary's prospective duties "do not appear to be significantly different from those of any other manager in the communications industry. Therefore, it has not been established that the duties warrant the expertise of someone possessing truly specialized knowledge."

On appeal, counsel's brief is framed as a simultaneous response to both grounds for denial. Thus, counsel's arguments discussed above also apply to whether the beneficiary will be employed in the United States in a capacity involving specialized knowledge. Counsel repeats the discussion of the beneficiary's prospective duties that was provided to the director in response to the request for evidence, as quoted above.

As with the beneficiary's duties abroad, the petitioner has not indicated that the beneficiary will utilize technical knowledge in the United States that is specific to the petitioner's family of companies. Nor has the petitioner shown that the position in the United States requires knowledge of management processes or procedures that are specific to the petitioner or the foreign entity. As discussed above, the petitioner has failed to adequately describe the management structure used by it and the foreign entity, such to establish that knowledge of the companies' management constitutes specialized knowledge. The beneficiary's prospective duties involve general managerial tasks, and do not reflect a need for skills or knowledge that are unique to the petitioner or foreign entity. Thus, the evidence of record does not support that the petitioner requires an employee with greater knowledge than that held by other managers in the beneficiary's field. Accordingly, the petitioner has failed to show that the prospective position in the United States requires an individual with specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(ii). For this additional reason, the appeal will be dismissed.

In visa 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 appeal will be dismissed.

ORDER: The appeal is dismissed.