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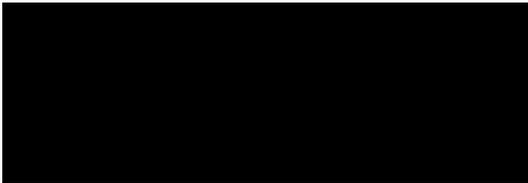
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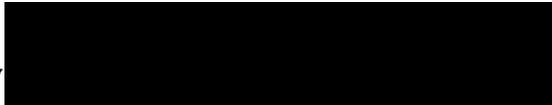
D7



FILE: EAC 03 165 52844 Office: VERMONT SERVICE CENTER

Date: MAY 11, 2005

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)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

According to the documentary evidence contained in the record, the petitioner was established in 1965 and claims to be a software services company. It claims to be the parent company with a branch office, Keane India Ltd., located in Noida, India. It seeks to employ the beneficiary temporarily in the United States as an assistant manager-projects for two years. The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary possessed specialized knowledge and had been employed by the foreign entity in a position requiring specialized knowledge. The director also determined that the position being offered by the U.S. entity did not require the services of an individual possessing specialized knowledge.

On appeal, the petitioner disagrees with the director's decision and asserts that the evidence submitted was sufficient to demonstrate that the beneficiary qualifies in the specialized knowledge category.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer, or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, has been employed by the foreign entity in a specialized knowledge capacity, and will be employed by the U.S. entity in a specialized knowledge capacity.

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.

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 petitioner stated in the petition that the beneficiary's past duties while employed by the foreign entity included "software design, analysis, coding, testing, installation and maintenance of software applications to meet client requirements using Keane's offshore/onsite business model with Keane's Knowledge Acquisition Process and Keane's Application Management and Productivity Management methodologies insuring CMM quality standards were met."

The petitioner stated in a letter of support, dated May 6, 2003, that the beneficiary had been employed by Metamor Global Solutions and its successor (the foreign entity) since May of 2000. The petitioner described the beneficiary's position as that of assistant manager-project. The petitioner stated that the beneficiary possessed a Bachelor's degree in Science and an Advanced Diploma in Systems Management, and that he had over six years of work experience and on-the-job training using "Keane's Knowledge Acquisition Process (KAP) with Keane's Application Management and Productivity Management methodologies." The petitioner also stated that the beneficiary acquired experience with Keane's onsite-offshore business model by working on client projects. The petitioner described the beneficiary's duties at the foreign entity as:

Reviewing design documents and collaborating diagrams, coding according to standards for each project, preparing user test plans, sample data testing and functionality testing, prepared unit testing review reports, and coordinating with the onsite and offshore team members.

....

Review of design documents and collaborate diagrams, preparation of Use Cases, Data Dictionary and Screen shots, preparing the Unit test Plans, preparing Trace Ability Matrix for

Use Cases and Unit Test Plan, sample Data Testing and Functionality Testing, preparing Review Defect Forms, and coordinating with the Onsite/Offshore team members regarding daily issue logs and closing of issues.

....

Analysis and designing of the Power Builder Scanner Module, creation of design documents and the logical flow of database on ErWin, creation of Use Cases, Collaboration Diagrams and Sequential Diagrams for the Power Builder Scanner Project on Rational Rose 2000, maintaining Database, Generation of Scripts, Created Tables, Stored Procedures, and Triggers, and developing and delivering Quality Software with in [sic] the stipulating [sic] time and consistent with the project requirements laid down and coordinated with the Team Members and the Onsite team.

....

Proper distribution of work based on the availability of resources and number of problem tickets on hand and assigned priority tickets to senior team members and providing knowledge and technical support to [sic] team member. As the communicator with the onshore/offshore clients, he analysis of all problem tickets logged on to work database, estimated work for Modifications and Enhancements requested by the onsite team, prepared the preliminary analysis document for coding enhancements to form the base for final estimate. He also was responsible for weekly meeting with on-site coordinators and interaction with other module coordinators at off shore and on-site, kept track of the time lag between offshore and on-site team, plan clarifications and queries raised by the team and solve the queries with the on-site coordinator. Additional responsibilities included to locate bugs reported by the end-users and replicate bugs on test environment system, prepare analysis documents for the bugs, preparation of estimates within the schedule requested by the on-site coordinator and fixing of bugs, prepare test plan and test data for the review of bugs and moving codes into production environment from the test environment.

....

Provides support to the users for the various systems that are running under Internal Automation Projects, gives training and conducts induction programmers to new resources, joining the different projects, provides full support on the exiting [sic] internal software. He is [sic] also analyzes all the requirements of the Finance Users, prepares the preliminary analysis documents for coding enhancements to form the base for final estimates, and escalates problems on the existing system and highlighting the bugs and getting them done at the tech-centers.

The petitioner stated that the beneficiary attended the in-house technical methodology training that is required of the foreign entity's employees. The petitioner also stated that the beneficiary had gained specialized knowledge through on-the-job experience of the company's proprietary methodologies working on client projects using Keane's Knowledge Acquisition Process in conjunction with Keane's proprietary Application Management and Productivity Management methodologies to develop software applications. The petitioner claimed that the beneficiary had gained special technical knowledge of the company's computer software production and its application in international markets through his in-house training. The petitioner also

claimed that the beneficiary has acquired advanced knowledge of the company's unique processes and procedures through his work experience and training.

The petitioner submitted copies of: the beneficiary's resume, the beneficiary's Bachelor's Degree in Science and transcripts from the University of Madras, the beneficiary's Advanced Diploma in Systems Management issued by the National Institute of Information Technology in January of 1996, an employment reference for the beneficiary from Synectics Consultants, the beneficiary's secondary school matriculation examination results from July of 1986, Keane's Knowledge Acquisition Process/Keane India Training details, Keane's description of Application Management Methodology, and Keane's Guide to Project Management. The beneficiary described his work experience in his resume as:

Having around 6 years and 4 months ... in IT as o[f] March 2003, in the areas of software design, analysis, coding, testing, installation, production support and maintenance using varied software including, Visual Basic, ASP, Unix, Informix, MS-SQL Server, Oracle 8i, MS-Access, and FoxPro.

I have worked extensively in onsite-offshore model on 4 projects and the main responsibility includes leading modules in the projects. The other role includes, solving critical problem tickets, understanding client requirements, conducting team meetings with client, extensive client interaction, [and] planning and trainings.

Recently, I was re-tooled and was in Production Support on Informix/Unix for 11 months and had worked earlier in VB/ASP/SQL-Server projects on three-tier Architecture with COM/DCOM and MTS. I can get accustomed easily with in a short span of time in Power Builder, Java Script and C and familiar with them.

In a request for evidence, dated May 13, 2003, the director stated in part:

Please explain how the beneficiary's specialized knowledge of Keane's proprietary development procedures, methodologies, and tools is different from every other assistant project managers that you employ.

Will the beneficiary be assigned to a project he has been working on abroad? If so, what specialized knowledge did he acquire through work on the project?

Submit evidence showing 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, or that his/her advanced level of knowledge of the processes and procedures of the company distinguish him/her from those with only elementary or basic knowledge.

Please submit evidence that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that is truly special or advanced.

....

Please submit a statement discussing the type of training (both formal education and in-house training) needed for an individual to be able to adequately perform the duties of the proposed position.

The director also requested that the petitioner submit evidence to show that the beneficiary:

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

The director requested that the petitioner identify the manner in which the beneficiary gained his specialized knowledge, including the total length of any classroom or on-the-job training courses and the minimum amount of time required to train a person to be able to work in the proposed position.

In a response letter, dated June 17, 2003, the petitioner stated that the beneficiary had been the project/module leader for three internal projects that involved enhancements to the company's project costing system. The petitioner also stated that the beneficiary was responsible for: "allocation of work to team members, training team members, reviewing work of team members done on test plans, test data, processes and coding." The petitioner stated that the beneficiary used Keane's Knowledge Acquisition Process (KAP) to perform the required analysis for the projects that he worked on. The petitioner also stated: "Once the system requirements were gathered, [the beneficiary] used Keane's productivity management methodology in conjunction with Keane's proprietary application management methodology's application development framework process to define the project and set up standards that met SEI's Capability Maturity Model Level 5 quality requirements."

The petitioner claimed that the beneficiary gained his experience of the organization's productivity and application management methodologies while using the company's offshore/onsite business model while working with teams on the Countrywide Housing Loan and LaQuinta Inns, Inc. projects. The petitioner also claimed that the foreign entity employed 900 employees of which 250 of them have been identified as senior level employees capable of managing client projects using the KAP method in conjunction with the productivity and application management methodologies. The petitioner further claimed that 12 to 18 months working on client projects is required to attain the skills and knowledge necessary to become a project team leader.

The petitioner stated that in order to meet client requirements, the petitioner needed to have senior level employees who have managed client projects abroad using the KAP system to come to the United States to work with the onsite technical teams and the client during the initial requirements gathering and systems application construction and implementation phases. The petitioner concluded by stating that a combination of the beneficiary's in-house experience coupled with his training makes him eligible for L-1B status. The

petitioner submitted as evidence copies of the company's definition of Productivity Management and a list of 6 principles, definition of Application Management Methodology, Application Management Framework's table of contents, Knowledge Acquisition process, a list of basic training courses, and information on the use of the Capability Maturity Model, which is incorporated into the company's Application Management Methodology.

The director subsequently denied the petition stating that it did not appear from the record that the beneficiary, as project manager possessed specialized knowledge or that the position required someone with specialized knowledge. The director noted that any programmer or systems analyst working for a consulting company would acquire unique experiences and skills based upon the projects they were assigned to. The director also noted that each software consultancy company would develop its own processes and procedures for conducting business and carrying out contracts. The director further noted that the described factors were insufficient to qualify a position or person in the specialized knowledge classification. The director stated that the training offered by the foreign entity was not unique and on average consisted of two to three day courses. The director also stated that the petitioning company was the same as other consultancy companies and that the services offered were also the same as that offered by other consultancy companies.

The director stated that although the petitioner repeatedly emphasized the uniqueness of the company's KAP system, there was nothing in the evidence that detailed the specific training, if any, provided by the Indian company to its employees. The director also stated that although knowledge of the KAP system may be unique to the Keane company, each programmer working for the company is more likely than not exposed to the KAP processes, and would eventually become familiar with such processes in the normal course of performing their duties.

The director stated that although the petitioner may alter and modify commercially available software for its own purposes as well as design programming tools, it does not design and sell software products. The director noted that the beneficiary did not work on a team that designs software, but rather simply uses what is made available to him and thereafter customizes and installs a finished product. The director concluded by stating that while the evidence demonstrated that the beneficiary had been employed by the foreign entity for three years as a qualified programmer and project leader, there was nothing in the record to establish that he possessed specialized knowledge, or that any other qualified programmer from outside, the petitioning company could not quickly learn the practices, policies, processes, procedures, and tools of the Keane companies.

On appeal, counsel argues that the beneficiary has extensive training in the foreign entity's Quality Management System processes and procedures and has used the proprietary in-house development tools in conjunction with the standards for quality control to develop and implement system applications for clients. Counsel contends that the beneficiary has received 35 days of in-house training that covered the foreign entity's processes and procedures used in developing, enhancing, or implementing application systems for clients. Counsel claims the beneficiary has been a project manager and has trained staff to use the company's developed tools. Counsel further claims that the beneficiary has experience in using the company's proprietary tools to bring the applications up to the CMM Level 5 quality standards, and also has the ability to develop and implement applications that meet the CMM Level 3 quality standards. Counsel also claims that the beneficiary is being transferred to the United States to insure that the systems applications developed by the U.S. technical team is effectively transmittable to India and to assure that the systems meet with CMM Level 5 quality standards. The petitioner notes that there is no formal classroom training for Keane's KAP process, but that the beneficiary gained his experience as a team leader who has worked on numerous client

projects using KAP. The petitioner submitted on appeal a copy of the previously submitted list of training courses offered by Keane India, copies of the company's Knowledge Acquisition Process, a description of tools and processes used by their Application Development Center, Quality Management System, and a press release containing CMM Level 5 information.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed by the foreign entity in a specialized knowledge capacity. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position, which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of project manager programmer at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *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). Furthermore, the petitioner stated that at least 250 senior level employees had been trained as the beneficiary had. Although the petitioner submitted a generic list of courses taken by all Keane's India employees, there has been no evidence submitted to demonstrate that the beneficiary took any official courses to obtain knowledge of the company's KAP system. In reviewing the petitioner's resume, there appears to be no information contained therein which would indicate his having an advanced level of knowledge or expertise in the organization's processes and procedures.

Furthermore, the record does not establish that the proposed position with the U.S. entity requires specialized knowledge or that the beneficiary will be employed in a specialized knowledge capacity. The petitioner initially described the beneficiary's proposed duties as: "[The beneficiary] will work with a team of US employees using Keane's offshore/onsite business model with Keane's Knowledge Acquisition Process and Keane's Application Management and Productivity Management methodologies to develop software applications for clients ensuring compliance with CMM Level 5 quality standards." In a letter of support dated, May 6, 2003, the petitioner described the beneficiary's proposed duties in part as:

[The beneficiary] will be project leader working with a team of Keane employees on the client project. He will train Keane U.S. workers in using Keane's Knowledge Acquisition Process in conjunction with Keane's Application Management and Productivity Management methodologies to ensure that the development of the software applications for the client meet the Quality Standard.

The proposed duties as described are insufficient to establish that the beneficiary possesses special knowledge of the petitioner's product or processes, which could not be easily imparted to another team leader or programmer within the petitioning company or within the industry. The petitioner failed to comply with the director's request for evidence with regard to whether the beneficiary received special training in the KAP process or whether he would be working on the same project in the United States as he did abroad. 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 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. Here, the petitioner has indicated that the beneficiary qualifies in a specialized knowledge capacity based upon his in-house training; educational background; three years of work experience; a working knowledge of the Keane's Knowledge Acquisition process; and experience working on four service projects. As the petitioner infers that anyone with the beneficiary's training and experience possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

The petitioner's interpretation of the specialized knowledge provision is also objectionable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. 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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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*, supra 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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker. There has been insufficient evidence submitted to establish that the beneficiary has been or will be employed in a specialized knowledge capacity and that the U.S. entity's position requires specialized knowledge. Accordingly, 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. The petitioner has not sustained that burden.

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Page 10

ORDER: The appeal is dismissed