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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

D7

FILE: SRC 05 071 50231 Office: TEXAS SERVICE CENTER Date: OCT 04 2006

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:

[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, Chief
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 appeal will be dismissed.

The petitioner is engaged in the business of deep water riser design and engineering. It seeks to temporarily employ the beneficiary as an engineer in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had not established that the beneficiary possessed the requisite specialized knowledge nor that the intended employment required specialized knowledge, and specifically noted that the beneficiary did not hold a "key personnel" position within the organization.

The petitioner subsequently filed an appeal. On appeal, counsel for the petitioner asserts that the director erred in denying the petition, claiming that the beneficiary did in fact have unique and specialized experience with the company's processes that other engineers did not possess. In support of these contentions, counsel submits a brief and additional evidence.

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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires 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 December 23, 2004, the petitioner claimed that as a company, it is committed to developing and providing riser engineering solutions for deep water covering depths up to 10,000 feet. With regard to the beneficiary, the petitioner stated that he held both a Master's degree and Bachelor's degree in Engineering. With regard to his proposed duties in the United States, the petitioner stated that they would "mirror" the beneficiary's duties abroad, which were described as:

- Holds responsibility for the engineering design and analysis of deep water riser systems, namely [redacted] and a variety of [redacted] systems.
- Utilizes knowledge of finite element analysis programs, both in-house and commercial programs, and industry practices and standards.
- Holds responsibility for client liaison on assigned projects[.]
- Conduct[s] technical presentations and meetings.

> In his position as Engineer, [the beneficiary] has acquired special knowledge of [the petitioner's] deep water riser system products and the company's in-house finite element analysis programs, which he has utilized for complex engineering design and analysis. Additionally, [the beneficiary] has acquired specialized knowledge of the company's research, equipment, techniques, and management.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on January 28, 2005, which requested more detailed evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Additionally, the director requested evidence that the beneficiary's knowledge of the processes and procedures of the company is apart from basic or elementary knowledge possessed by others in the company. Finally, the director requested information with regard to the beneficiary's training, in addition to a specific explanation as to why the beneficiary's knowledge was so uniquely different from other similarly trained engineers in the same project areas.

The petitioner responded on February 9, 2005. In response to the director's request, the petitioner explained that with regard to training, the beneficiary continuously worked with deep water riser analysis and had attended weekly in house training seminars for the past 18 months. With regard to the training, the petitioner indicated that these sessions were held "to broaden specialist knowledge of riser systems within the company." No training records were available according to the petitioner.

In addressing how the beneficiary's knowledge was different from that of other engineers, the petitioner claimed that the beneficiary had completed three projects in the last twelve months which dealt with

completion risers. The petitioner continued by stating that no other engineers had experience in this area, and further stated:

> [The beneficiary] has unique and specialized knowledge that other [engineers employed by the petitioner] do not possess. In particular, [the beneficiary] has gained specific and unique knowledge experience with [redacted]
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> * * *
>
> [The beneficiary] is considered key personnel in that he possesses this specific experience which is currently lacking in the company's Houston office. We need [the beneficiary's] specialized expertise in the area of [redacted] n order to assist with the future growth of the company. Please note that [the beneficiary's] experience in this area not only distinguishes him from his peers within [the petitioner] but is also considered knowledge that is specialized above and beyond the common knowledge of a typical Engineer in the riser engineering industry as a whole.

With regard to the director's request for more specific details about the beneficiary's specialized knowledge, the petitioner stated:

> The work that [the petitioner] undertakes on a day-to-day basis is in a highly specialized field. [redacted] is an emerging discipline which has only really become a necessity in the past 5-7 years due to the requirement to search and develop oil and gas reserves in water depths greater than 3,000 ft water depth. There are very few companies, and consequently very few experienced engineers, who are competent in this type of work. [The beneficiary] has spent 18 months working on the field of [redacted] esign and analysis on a daily basis, which equips him with an advanced level of knowledge and expertise in this field and is also considered uncommon in an engineering graduate of 18 months.
>
> As you can see from [the beneficiary's] resume, he has gained highly specialized knowledge and experience as an Engineer with our UK company. In less than two years time, he has held responsibility for hangoff, operation and fatigue analysis of [redacted] system for th[redacted] il development in the North Sea; for operation and fatigue analysis of a [redacted] string for the Schiehallion oil development in the North Sea; for all installation, hangoff and VIV fatigue analysis of the bp [redacted] n the Gulf of Mexico; for repeat analysis of the [redacted] non-rigid lockdown wellhead; for the finite element analysis of pile driven conductors for th[redacted] development in th[redacted] for design, analysis and optimization of the Kissanje East umbilical attached to the [redacted] offshore Angola; for the sizing and extreme storm loading o[redacted] hung off an FPSO vessel in offshore Angola; for assessment of a drilling riser wellhead-casing interaction point for the [redacted] development offshore Angola; for finite element analysis using ANSYS on a cranked flowspool for th[redacted] development in the North Sea; and for preliminary sizing of drilling and production Risers for [redacted] development offshore Indonesia.

> It would take over one (1) year for a new hire to develop the same proficiency with these programs that [the beneficiary] possesses. We have important projects out of our Houston office that require the expertise of [the beneficiary]. It would not be feasible to hire an Engineer who was not proficient in the use of our analysis programs. He/she would not be able to conduct the sophisticated engineering design and analysis of deep water riser systems that our US projects demand.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge, and concluded that the beneficiary was not "key personnel." The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified engineers. The director concluded that the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct and distinguished from other practitioners in the field, and consequently denied the petition.

On appeal, counsel for the petitioner submits a brief in support of its assertions that the beneficiary possesses specialized knowledge. Counsel insists that the petitioner has shown that the beneficiary's knowledge and skills were distinguishable from other company engineers, specifically as a result of his work on three projects in the last twelve months dealing with [redacted] Counsel further asserts, pursuant to the February 9, 2005 letter in response to the director's request for evidence, that it was clearly shown that another engineer, without experience working for the UK company, would not have the requisite experience needed to fill the position. Counsel concluded by requesting a more thorough look at the response to the request for evidence, and alleged that upon doing so, it would be determined that the beneficiary was in fact key personnel and possessed specialized knowledge.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a engineer. Despite specific requests by the director, namely, what specifically set apart the beneficiary's knowledge from other similarly trained analysts in the field, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. Despite the petitioner's detailed discussion of the various projects that the beneficiary has worked on, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work with the UK petitioner. No documentation has been submitted that distinguishes the petitioner from other engineering companies, and neither has the petitioner submitted any evidence of what other engineers under its employ do on a daily basis. It seems unlikely that the beneficiary is the only engineer that worked on the mentioned projects, or that the beneficiary handled them solely by himself.

Although the petitioner asserts on appeal that the February 9, 2005 letter provided sufficient evidence to establish the beneficiary's qualifications for the benefit sought, the fact remains that there is no other evidence to compare it against in terms of the qualifications of other engineers in the industry and/or employed by the petitioner. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possesses specialized knowledge, both prior to adjudication **and again on appeal. However, these assertions do not constitute evidence. 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)).

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 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation. *Id.* at 53. 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 provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. The petitioner acknowledged that it offered its employees weekly training sessions. However, no specific details were provided, and no documentation that such training was actually offered to the beneficiary exists. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that his colleagues appear to have attended the same training sessions.

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

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[1] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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.

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's only contention that the beneficiary's knowledge is more advanced than other engineers in the field is its assertion that the beneficiary's experience, specifically his work on the three Completion Riser projects, have allowed him to gain an expertise in his field. Again, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other engineers, both working for the petitioner and in the industry in general. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees. Moreover, there is no independent evidence corroborating the claims of the petitioner. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of deepwater riser design and technology as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, 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 Soffici*, 22 I&N Dec. at 165. The claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation of the training he received or the manner in which the beneficiary, who holds degrees in engineering, essentially became an expert in the petitioner's technologies within a period of eighteen months. In addition, although a limited discussion of the petitioner's products or services is submitted, it is somewhat hard to understand, thereby precluding the AAO from clearly understanding the actual role of the beneficiary in the petitioner's organization. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

Counsel's appeal essentially claims that the previously-submitted letter dated February 9, 2005 clearly outlines the beneficiary's unique and uncommon knowledge, and thus qualifies the beneficiary as an intracompany transferee with specialized knowledge. Once again, counsel and the petitioner overlook the fact that the beneficiary is undoubtedly one of many engineers in the workforce today. It is fair to conclude that most people employed in this line of work must also have an understanding of the basic premise of engineering despite specializing in different areas. The petitioner seems to focus on this aspect of the beneficiary's background as the key element of the beneficiary's qualifications. The petitioner does not,

however, offer any evidence that the beneficiary has uncommon, advanced, or proprietary knowledge of the petitioner's unique processes or procedures.[2]

Merely claiming that the beneficiary has specialized knowledge without distinguishing the beneficiary from other engineers in the field is insufficient for satisfying the burden of proof in this matter. It appears that at best, the beneficiary is akin to a professional or skilled worker as opposed to an employee possessing specialized knowledge.

Additionally, 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." *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 to all employees with specialized knowledge, but rather to "key personnel" and "executives.").

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.*, 745 F. Supp. 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.

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[2] Although the fact that a beneficiary has experience with a proprietary product or procedure does not serve as prima facie evidence that the beneficiary possesses specialized knowledge, when such a claim is made, Citizenship and Immigration Services (CIS) must carefully evaluate the claimed knowledge and the depth of the beneficiary's experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D). Thus, while a beneficiary is no longer required to have proprietary knowledge, such knowledge can still be a basis for this determination.

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.