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U.S. Citizenship and Immigration Services

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File: LIN 05 029 52072 Office: NEBRASKA SERVICE CENTER Date: FEB 02 2007

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 BENEFICIARY:

[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, 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 employ the beneficiary in the position of senior field support technician 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, a corporation organized under the laws of the State of Missouri, is engaged in producing narrow web flexographic printing equipment. The petitioner claims that it is an affiliate of the beneficiary's foreign employer, Dover Corporation (Canada) Limited ("DCCL"). Both the petitioner and DCCL are allegedly subsidiaries of the Dover Corporation. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad for one continuous year in a position that was managerial, executive, or involved specialized knowledge. Further, the director concluded that the position offered does not require an employee with specialized knowledge and that the beneficiary does not have such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the design, installation, and support of slitter/rewinder equipment, a type of equipment newly manufactured by the petitioner which addresses the finishing phase of the manufacturing process for labels or flexible packaging. Counsel submits a brief, a declaration signed by the petitioner's vice president describing the beneficiary's purported specialized knowledge, and a declaration from a recruiter describing the petitioner's failed efforts to hire an employee in the United States knowledgeable of slitter/rewinder equipment.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity which involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

> [S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a letter dated November 1, 2004 appended to the initial petition, the petitioner described the beneficiary's job duties abroad and in the United States as follows:

> As noted, we seek to obtain L-1B status for [the beneficiary] on the basis of specialized knowledge. [The beneficiary] has been employed by [the foreign entity] since July 2003 in the position of Sr. Field Support Technician. As Sr. Field Support Technician, [the beneficiary] handles field installation for [the petitioner's] presses and equipment and repairs of all electrical, mechanical and printing related problems. He also troubleshoots all electrical, mechanical and printing related problems of [the petitioner's] equipment. [The beneficiary] trains customers on safe and efficient utilization of all equipment and provides preventative maintenance on all equipment, in addition to making recommendations to customers. He is responsible for the documentation of all work required, i.e., service reports, expense exports, installation feed back forms and whatever else is needed. [citation omitted].
>
> Over the last year, while employed by [the foreign entity], [the beneficiary] has developed a unique understanding of [the petitioner's] innovative printing presses and accessories,

> including our enhanced registry systems, servo controls and tension controls. [The beneficiary] has a distinctive expertise for electrical and mechanical service and repair of rewinder accessories. He will directly utilize his expertise of [the petitioner's] equipment in the U.S., providing installation and service of our company's presses and special rewinding equipment for customers in the U.S.
>
> If [the beneficiary] is approved for L-1B status, he will be performing many of the same job duties in the U.S. as he does now in Canada. Though employed by [the foreign entity], he has worked extensively on, and received training regarding, [the petitioner's] products and processes.

On or about February 4, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary has been or would be employed in a specialized knowledge capacity. Given the beneficiary began working for the foreign entity in July 2003, the director concluded that he would have needed to acquire the alleged specialized knowledge in only four months in order to establish that he had worked in a specialized knowledge capacity for one year prior to the filing of the petition. The director concluded that a type of knowledge that can be acquired and mastered in four months "can hardly be considered not easily transferable or specialized in nature."

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the design, installation, and support of slitter/rewinder equipment, a type of equipment newly manufactured by the petitioner which addresses the finishing phase of the manufacturing process for labels or flexible packaging. Counsel submits a brief, a declaration signed by the petitioner's vice president describing the beneficiary's purported specialized knowledge, and a declaration from a recruiter describing the petitioner's failed efforts to hire an employee in the United States knowledgeable of slitter/rewinder equipment.

In the declaration signed by the petitioner's vice president dated April 29, 2005, the petitioner explained that it is one of very few manufacturers of narrow web flexographic printing equipment and that the petitioner is the only major manufacturer based in the United States. The petitioner also asserts that this segment of the industry has been in decline and that it has had difficulty in finding qualified technical support personnel to install and troubleshoot the equipment once sold to customers. Furthermore, the petitioner explained that, in 2004, it expanded its business to include the manufacture of slitter/rewinder finishing equipment, thus becoming the only manufacturer of such equipment in the United States. However, even though it added this equipment to its product line, the petitioner alleges that it did not employ any field service technicians qualified to service slitter/rewinders. Therefore, the petitioner seeks to employ the beneficiary, an employee of an affiliated company in Canada, who has experience with the design, installation, and support of slitter/rewinder equipment. The petitioner explained that the beneficiary worked for an unaffiliated, now defunct Canadian company, which designed and manufactured slitter/rewinders, until July 2003 when he began working for the foreign entity. The petitioner further explained that, not only will the beneficiary assist with the training of field support technicians on the slitter/rewinder product line and provide technical support of this new product line, but he will also support other product lines of the petitioner in both the United States

and Canada.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has been, or will be, employed in a specialized knowledge capacity as defined 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) and (iv). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a senior field support technician with knowledge of flexographic printing equipment, the petitioner fails to establish that this position requires an employee with specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced field support technicians employed by the petitioner or in the flexographic printing equipment industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

In support of its assertion that the beneficiary's knowledge of flexographic printing equipment constitutes "specialized knowledge," the petitioner relies heavily on its position that the slitter/rewinders now manufactured by the petitioner are so unique and specialized that the beneficiary's mastery of their field support constitutes "specialized knowledge," and that this knowledge was gained through his extensive experience servicing these machines in Canada.

As a threshold issue, there is insufficient evidence that the beneficiary provided field support for slitter/rewinders during this 16 months of employment with the foreign entity or, if he did, how much time was spent servicing this equipment. According to the record, the beneficiary gained his knowledge of slitter/rewinders during his employment with a now bankrupt Canadian company, not with the foreign entity. While this alone is not disqualifying, the fact that his knowledge of slitter/rewinders is the crux of the petitioner's argument that his knowledge is indeed "specialized" compels the petitioner to establish that he was engaged in applying this purported specialized knowledge while working for the foreign entity. In this matter, the petitioner has not provided this evidence, and the petition may not be approved for this reason.

Regardless, the petitioner has not established that the beneficiary's knowledge of slitter/rewinders, or flexographic printing equipment generally, constitutes "specialized knowledge." The record does not reveal the *material difference* from a field service perspective between slitter/rewinders manufactured by the petitioner and other flexographic printing equipment, including slitter/rewinders, manufactured and sold by competitors. While the petitioner asserts that it is the only manufacturer of slitter/rewinders in the United

States, and that the manufacturing of flexographic printing equipment is a very narrow field, the petitioner has not established that its slitter/rewinders (and other equipment) are the only flexographic printing machines available and, importantly, that the servicing of its machines differ materially from other imported flexographic printing machines (including slitter/rewinders) available on the market. Again, simply going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165.

Moreover, as recognized by the director, the beneficiary began his employment with the foreign entity in July 2003. The instant petition was filed on November 9, 2004, approximately 16 months after he commenced his employment. This would have given the beneficiary only four months to acquire the specialized knowledge that he alleged applied during the one year preceding the filing of the instant petition. While the petitioner alleges that much of the beneficiary's specialized knowledge was acquired during his employment with an unaffiliated company (including his knowledge of slitter/rewinders), this admission undermines the petitioner's assertion that the beneficiary possesses truly specialized knowledge which is not general knowledge held commonly throughout the industry.

While it is acknowledged that the petitioner has asserted that it has tried, and failed, to hire a United States employee qualified to provide field support for its equipment (including slitter/rewinders), this does not establish that the job requires "specialized knowledge" because the unavailability of workers to perform the beneficiary's job duties is not relevant to these proceedings.

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the Acting Associate Commissioner allows CIS to compare the beneficiary's knowledge to the general United States labor market and the petitioner's workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that "officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary's knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary's skills and knowledge and to ascertain whether the beneficiary's knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary's knowledge, CIS would not be able to "ensure that the knowledge possessed by the beneficiary is truly specialized." *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary's job duties.

In the instant matter, while the petitioner has presented evidence that it has tried, and failed, to find a qualified field support technician for its equipment, it has not presented any evidence that the United States labor market engaged in servicing flexographic printing equipment (including slitter/rewinders) does not possess the same knowledge possessed by the beneficiary. Certainly, there are a limited number of skilled workers in this field, and enticing one to leave his or her existing employer would likely be a challenge for a recruiter in this situation. However, even though their numbers may be small when compared to other occupations and

difficult to recruit, this does not establish that the knowledge is "specialized" as defined by the Act and the regulations. Moreover, even if evidence of United States recruiting efforts were relevant, it is still irrelevant with regard to whether the same position with the foreign entity abroad is specialized. Regardless, absent any evidence that the knowledge held by the beneficiary is not commonly held throughout the industry of servicing flexographic printing equipment, the petitioner has not established that the beneficiary possesses specialized knowledge or that the job requires an employee who has specialized knowledge.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced field support technician who has been, and would be, a valuable asset to the petitioner. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

> A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Id.* at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 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 the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the

specialized knowledge category. 18 I&N Dec. 49 (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 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* than an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc. v. Attorney General,* 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other service technicians experienced in servicing flexographic printing equipment. The petitioner notes that the beneficiary is highly experienced in servicing its equipment, including slitter/rewinders. However, as the petitioner has failed to document any materially unique qualities to these machines which distinguish them from other similar machines on the market, these claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any experienced service technician, or that he has received special training in the company's methodologies or processes which would separate him from any other service technician employed with the foreign entity.

The legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16.* Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad, and would not be employed in the United States, in a capacity involving 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.