U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

D7

File: SRC 06 042 51790 Office: TEXAS SERVICE CENTER Date: MAY 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)

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.

Erica Haldan

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 rejected as untimely filed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of Project Lead 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 claims to be engaged in information processing, manufacturing, sales and service. The petitioner states that it is the parent company of the beneficiary's foreign employer, [redacted] located in India. 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 position offered to the beneficiary requires an employee with specialized knowledge or that the beneficiary possesses such knowledge.

The record reflects that the director's decision of December 22, 2006 was sent to the petitioner at its address of record. According to the date stamp on the Form I-1290B Notice of Appeal, the proper office received the appeal 35 days later on January 26, 2006. Thus, the appeal was untimely filed. [1]

Under the regulations, an affected party has 30 days from the date of an adverse decision to file an appeal. *See* 8 CFR § 103.3(a)(2). If the adverse decision was served by mail, an additional three-day period is added to the prescribed period. *See* 8 CFR § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i) an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct file. For calculating the date of filing, the appeal shall be regarded as properly filed on the date it is so stamped by the service center or district office.

Moreover, in reviewing the merits of the appeal, the instant petition was properly denied. On appeal, the petitioner disputes the director's decision and outlines the beneficiary's experience and specific specialized knowledge in the petitioner's software. The petitioner concludes that the beneficiary possesses advanced knowledge of the petitioner's processes and procedures and therefore qualifies for the benefit sought. The petitioner submits a brief in support of the appeal.

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

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[1] On appeal, the petitioner stated "due to the large mail volume at the U.S. Postal Service over the Christmas Holidays, your Denial Letter was received in my office on December 30, 2005; hence, the delay in filing this appeal to your office in Dallas." The petitioner did not submit documentation to corroborate this claim. The petitioner filed the I-290B and it was received by Citizenship and Immigration Services (CIS) on January 26, 2006, which was 35 days after the date of the decision.

or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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 job description of the services to be performed sufficient to establish specialized knowledge. *Id.* Based upon the vague job description of the proposed duties and lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner has repeatedly asserted that the beneficiary will work in the United States as the lead of a Central Customer Master System (CCMS) team and he will "design and develop applications for the project, implement and test applications, migrate data from legacy applications, and design and develop application enhancements." However, the petitioner does not establish that the beneficiary must possesses knowledge of business processes, procedures and methods of operation that are specific to the company in order to implement, customize, and modify the software package. There is no evidence in the record that the beneficiary actually participated in the development of such methodologies and processes that might lead to the conclusion that his level of knowledge is comparatively "advanced." The beneficiary's resume lists the duties he performed while employed for the company in India which indicates that he was responsible for modifying, implementing, maintaining and updating the software, but does not mention any experience in the development of internal policies or procedures. 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.

In addition, contrary to the assertions of the petitioner, there is no evidence on record to suggest that the processes and technology pertaining to CCMS project team positions within the U.S. company are different from those applied for other companies providing CCMS customization and integration services. In addition, the petitioner has not explained how the knowledge of the petitioner's systems technology amounts to specialized knowledge, particularly since the system is built upon general information technologies such as Java/J2EE, Versata, Oracle, and Acta, all of which are commonly used by computer programmers and system administrators in the industry. While individual companies will develop a computer system and methodologies tailored to its own needs and internal quality processes, it has not been established that there would be substantial differences such that knowledge of the petitioning company's processes and quality standards would amount to "specialized knowledge."

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed "advanced" knowledge of the company's processes, procedures and methodologies. In the original petition, the petitioner submitted a letter from the program manager of the foreign company that indicated that the beneficiary received nine days of training sessions with the petitioning organization. It is implausible that nine days of training provided the beneficiary with an advanced knowledge and it is reasonable to believe that a project lead employee with a

background in related technologies may learn the petitioning company's specific project methodologies and processes with minimum training.

In addition, the petitioner did not submit any documentation to evidence that the beneficiary received additional training that was not provided to other project leads employed by the foreign company, or individuals who work on the same team as the beneficiary. The petitioner did note that the beneficiary will be part of a team of 22 members for the project in the United States, and the beneficiary is the only project lead of the team, however, the petitioner failed to present any evidence to corroborate this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. The petitioner states that the beneficiary has been involved with the team in the United States and India for 20 months and thus "has extensive professional interactions with the member of the U.S. team, which create the rapport and trust vital to a project that relies heavily on international cooperation." Knowledge related to a specific clients' project cannot be considered "specialized knowledge" specific to the petitioning company. The beneficiary's familiarity with the U.S. clients' project requirements is undoubtedly valuable to the petitioner, but this knowledge alone is insufficient to establish employment in a specialized knowledge capacity. If the AAO were to follow the petitioner's logic, any team member who has worked on a CCMS application development team within the petitioner's organization would be considered to possess "specialized knowledge."

In addition, the petitioner did not submit documentation to evidence that the beneficiary has an advanced or special knowledge from other project lead employees in the information technology industry. According to the beneficiary's resume, it appears that once the beneficiary commenced his employment with the foreign company, he immediately began working on the project for the U.S. client involving the CCMS application systems. This fact provides further evidences that the petitioner does not utilize a proprietary system that differs from the system used by project leads in the information technology industry working with CCMS. Thus, the AAO cannot conclude that the beneficiary has an "advanced knowledge" of the petitioner's proprietary software over and above from other employees of the petitioner or other employees in the computer industry.

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

The AAO does not dispute the likelihood that the beneficiary is a project lead who understands the petitioner's technology and is able to apply it within the context of the petitioner's specific environment. 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)).[2] As stated by the Commissioner in

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[2] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or

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' 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

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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, that the cited cases remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* At 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that 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.")

In sum, the beneficiary's duties and technical skills demonstrate knowledge that is common among computer systems professionals working in the beneficiary's specialty in the information technology field. The petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large information technology companies. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and 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, the director properly concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge.

Any appeal that is not filed within the time allowed must be rejected as improperly filed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

ORDER: The appeal is rejected.