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U.S. Citizenship and Immigration Services

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File: LIN 01 155 52945 Office: NEBRASKA SERVICE CENTER Date: FEB 01 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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed a motion for reconsideration. On February 20, 2002, the director granted the motion but concluded that the grounds for the denial had not been overcome. On March 11, 2002, the petitioner filed an appeal, and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a Michigan limited liability company and is allegedly a provider of engineering services to the automotive industry. The petitioner seeks to employ the beneficiary in the position of lead engineer as an L-1B nonimmigrant intracompany transferee having 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 director denied the petition after concluding that the petitioner failed to establish that the beneficiary was employed abroad in a capacity involving specialized knowledge.

On appeal, counsel asserts that the beneficiary has been employed in a position involving specialized knowledge.

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.

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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad in a capacity involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv).

In support of its petition, the petitioner submitted a letter dated April 5, 2001 in which it describes the beneficiary's duties abroad and purported specialized knowledge as follows:

> [The beneficiary] has been employed by [the foreign employer] from November, 1999 until the present. Throughout this period, he has held the position of Design Engineer (CAD & Prototyping), where he has been responsible for design of complete seating systems for [a third party] using IBM CATIA software. This includes meeting design requirements from concept design to complete packaging of the designed product; conceptual design, design iterations for structural metal parts to meet ECE regulations for safety; preparation of large assembly drawings using ANSI standards and GD&T; handling responsibilities of CATIA administration; reviewing designs of sheet metal components for manufacturability, interchangeability and cost effectiveness; prototype development; training new engineers in design procedures; and related duties.
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> [The beneficiary] has obtained valuable specialized knowledge in the course of his employment with [the foreign employer] in India which is essential for this position with [the petitioner]. He is very familiar with [the foreign employer's] and [a third party's] automotive seating systems and manufacturing processes, and their application to the international automotive supply market, especially relating to specifications and systems for modeling techniques for foam that have been developed by [the third party] over the past few years and introduced as a standard internal practice at our design facilities. He also has extensive knowledge of [a third party's] internal design, engineering and quality policies and protocols, including our documentation and maintenance of GD&T data and use of the PLUS system. He has also undergone the JCI five-phase GENERIC program training cycle.

On April 23, 2001, the director requested additional evidence. The director requested, *inter alia*, evidence establishing that the beneficiary's knowledge is advanced and can be distinguished from elementary or basic knowledge possessed by others. The director also requested an explanation addressing the amount of time the beneficiary spent in the training which purportedly imparted specialized knowledge to him.

In response, the petitioner submitted a letter dated May 21, 2001 in which it further explains the beneficiary's training and purported acquisition of specialized knowledge as follows:

> When a new design engineer is hired into the Johnson Controls system, it takes at least a full year of specialized training and experience before that person has developed adequate knowledge of Johnson Controls' unique products, customer requirements, design and quality protocols and procedures, in order to take full design responsibility for a project.
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> * * *
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> In his time working for [the foreign employer] in India, [the beneficiary's] assignments have all involved specialized knowledge, and he now possesses an advanced level of specialized knowledge of [the petitioning organization's] and [the third party's] organization, products, design and quality procedures and customers.

It is noted that the beneficiary began working for the foreign employer in November 1999 and that the instant petition was filed on April 12, 2001, approximately 17 months later.

On June 1, 2001, the director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a capacity involving specialized knowledge. The director reasoned that, since the beneficiary had only been employed by the foreign employer for approximately 17 months and that, according to the petitioner, it takes one year of training to impart the purported specialized knowledge to a newly hired employee, it was not possible for the beneficiary to have been employed abroad in a position involving "specialized knowledge" for one year.

On June 13, 2001, the petitioner filed a motion for reconsideration. In the motion, counsel argues that the Act and regulations do not require the beneficiary to have actually acquired the purported specialized knowledge prior to his one-year of foreign employment. Counsel argues that the Act and regulations only require that the petitioner establish that the beneficiary was employed abroad in a position that "involved" specialized knowledge and that this one-year period of employment may include the training sessions and work experience which eventually served to impart the specialized knowledge to the beneficiary.

On February 20, 2002, the director granted the motion but concluded that the grounds for the denial had not been overcome. On March 11, 2002, the petitioner filed an appeal on a Form I-290B incorporating the arguments made in the motion for reconsideration.

Upon review, the petitioner's assertions would not be persuasive in demonstrating that the beneficiary was employed abroad for one year in a position involving specialized knowledge as defined at 8 C.F.R.

§ 214.2(l)(1)(ii)(D) or that the beneficiary possesses specialized knowledge. The record would also not be persuasive in establishing that the beneficiary will be employed in the United States in a capacity involving specialized knowledge.

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). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge.

As a threshold issue, counsel's assertion that the Act and regulations do not require the beneficiary to have acquired his purported "specialized knowledge" prior to commencing his requisite one-year period of foreign employment is not persuasive. While it is noted that the regulations state that the beneficiary's "prior year of employment abroad [be] in a position that . . . involved specialized knowledge," the word "involved" clearly requires the beneficiary to have already acquired the purported specialized knowledge before the requisite one-year period of employment "involving" this knowledge commences. The Act clearly explains that "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...or an advanced level of knowledge...." Section 214(c)(2)(B) of the Act (emphasis added). Therefore, in order to establish eligibility for the benefit sought, the petitioner must establish that the beneficiary actually possessed specialized knowledge and worked in this capacity for one year abroad. Any training or experience, which was necessary to impart the specialized knowledge to the beneficiary, must have been completed prior to the one-year period of foreign employment.

Accordingly, the record is not persuasive in establishing that the beneficiary was employed abroad for one year in a capacity "involving" specialized knowledge even assuming the beneficiary's knowledge as described is indeed "special." As noted by the director, the petitioner claims that it would take one year of training to impart the beneficiary's specialized knowledge to a newly hired employee. As the beneficiary has been employed abroad for less than 17 months, it is mathematically impossible for the beneficiary to have acquired the purported specialized knowledge in time for him to have been employed in this capacity for one year abroad. Therefore, for this reason alone, the appeal will be dismissed.

Furthermore, the record is not persuasive in establishing that the beneficiary's knowledge is indeed "specialized," that he was employed abroad in a specialized knowledge capacity, or that he will be employed in the United States in a specialized knowledge capacity. Although the petitioner repeatedly asserts that the beneficiary's position in the United States requires specialized knowledge, that the beneficiary possesses specialized knowledge, and that the beneficiary has been employed abroad in a position involving specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced workers employed by the petitioning organization or in the 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).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "organization, products, design and quality procedures and customers" and that he is "very familiar" with "automotive seating systems and manufacturing processes, and their application to the international automotive supply market, especially relating to specifications and systems for modeling techniques for foam." Finally, the petitioner asserts that the beneficiary has specialized knowledge of certain "internal design, engineering and quality policies and protocols, including our documentation and maintenance of GD&T data and use of the PLUS system." However, despite these assertions, the record does not establish how, exactly, this knowledge is so different from similar industry products, processes, or procedures that a similarly experienced and educated worker could not perform the duties of the position.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by similar workers generally throughout the industry or by other employees of the petitioning organization. The fact that the beneficiary and a select group of workers possess a very specific set of skills does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. The petitioner has not established that the beneficiary's knowledge would be difficult to impart to another similarly educated worker without suffering significant economic inconvenience. All employees can be said to possess unique and unparalleled skill sets to some degree; however, a unique skill set that can be imparted to another similarly experienced and educated employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's process or product do not establish that any knowledge of this process is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary process or product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers may not have very specific, proprietary knowledge is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, similarly educated or experienced employee.

Finally, while the petitioner asserts that the beneficiary received one year of specialized training, it appears that all new design engineers receive similar training. This further undermines the petitioner's claims that the beneficiary's knowledge is noteworthy or uncommon. It also indicates that the beneficiary's knowledge is both common and generally known by a large number of similarly employed workers.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee 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. 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 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. REP. 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*, 18 I&N 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.")

A 1994 Immigration and Naturalization Service (now CIS) memorandum written by the then Acting Executive Associate Commissioner also directs 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 Executive 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 Executive 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.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioning organization or by workers employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced professional or that he has received special training in the company's methodologies, products, or processes which would separate him from other professionals employed with the foreign entity or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

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*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews

appeals on a *de novo* basis).

The petition will be denied for the above stated reasons with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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.