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U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 08 077 51945 Office: VERMONT SERVICE CENTER Date: OCT 02 2008

IN RE: Petitioner:
Beneficiary: [redacted]

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.

for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of "project leader (technical)" 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 New Jersey corporation, describes its business in the Form I-129 as "IS/IT professional consulting services." The petitioner seeks to employ the beneficiary for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity.

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.

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

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 petitioner describes the beneficiary's claimed specialized knowledge, past experience, and proposed duties in the United States in a letter dated December 3, 2007 as follows:

> Since October 2006, [the beneficiary] has been employed with [the foreign employer] in the capacity of Project Leader. In this capacity, he has worked primarily on the Global Hub project for BDP International, an affiliated company. The Global Hub project integrates logistics management and control. Prior to that he worked on the AGS (agent settlement) system for BDP International. The AGS System is a web based system used by agents to handle monthly settlements with Partners and agents and also updates the existing legacy system in real time. Prior to that he worked on the SAEL (South Africa E-Logistic) Integration project for BDP International. The purpose of the project was to integrate SAEL and BDP systems. SAEL messages were received over SMTP as an XML attachment proprietary to SAEL. [The beneficiary's] job was to co-ordinate and lead the onsite team on this project which resulted in the application that converted SEAL messages into GIF (Global Integration File) which is proprietary to BDP International.
>
> * * *
>
> Since commencing employment with [the foreign employer] he has worked on the activities as described above. Thus, he has the required and necessary specialized and advanced knowledge of our projects and their management, required for the position in the US as an employee of [the petitioner] working on the projects for BDP International. He is being transferred because of this specialized and advanced knowledge of these projects, the development of which he is going to coordinate and work on.
>
> The purpose of the transfer is to have him work on, coordinate and manage this family of projects, on-site, at BDP International in Philadelphia, PA. Currently, he has been working on the Global Hub project. His role has been to co-ordinate with the on-site team users to understand the business needs and requirements, prepare the specifications and lead the team

> in the development, implementation and integration of the software. He will continue to work on these and other similar projects.
>
> In the capacity of Project Leader (Technical), he will be working with BDP International Management and staff to determine user requirements; work with the Project Manager and Architect to devise a solution; put together the business specifications (a road map, as it were) and convert these to technical specifications; co-ordinate the on-site team to convert these specifications into code and integrate into the system. He may also be involved in per see [sic] software development and as a technical lead. However, do note that we are transferring him because of his advanced and specialized knowledge of the business and the projects rather than because of his managerial capabilities.

The petitioner also submitted a document titled "project plan" which describes the "global hub" project. The plan summarizes the project as the implementation of an accounting project across all of BDP International's offices using "Microsoft Dynamics AX – accounting software." The plan also describes the project as the "AX Integration Project."

On January 29, 2008, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary's proposed job duties require specialized knowledge; evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by practitioners in the beneficiary's field of endeavor; and evidence that the beneficiary's knowledge distinguishes him from those with only elementary or basic knowledge.

In response, the petitioner submitted a letter dated February 8, 2008, in which it claims that the beneficiary's knowledge could only be gained through prior experience with the described projects abroad and that "any other individual who has not worked on these projects will be unable to work in the US since he will lack the requisite specialize[d] and advanced knowledge."

On February 22, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in the United States 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). **The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge.** In this matter, the petitioner fails to establish that the proffered United States position requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary will be employed in the United States in a

"specialized knowledge" capacity, 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 and educated computer 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).

Furthermore, and as noted above, the director specifically requested evidence establishing that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by practitioners in the beneficiary's field of endeavor. The director also requested evidence that the beneficiary's knowledge distinguishes him from those with only elementary or basic knowledge. However, in response to the Request for Evidence, the petitioner submitted a materially identical description of the beneficiary's knowledge and duties and adds, without any elaboration or corroborating evidence, that the beneficiary's knowledge could only be gained through prior experience abroad and that "any other individual who has not worked on these projects will be unable to work in the US since he will lack the requisite specialize[d] and advanced knowledge." Such conclusory, self-serving statements will not satisfy the petitioner's burden of proof. Therefore, the petitioner failed to submit any evidence responsive to the director's request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In this matter, the petitioner asserts that the beneficiary possesses specialized knowledge of the petitioning organization's "projects and their management," e.g., the Global Hub project for BDP International and other projects. However, despite this claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or in the industry at large. The record also does not establish why, exactly, this knowledge cannot be imparted to a similarly experienced and educated computer worker in a relatively short period of time. Finally, the record does not establish that this knowledge differs from general computer knowledge in the context of integration and data migration projects, or why experience abroad with the petitioning organization's projects is necessary for the proffered position. Again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). It is also important to note that neither counsel nor the petitioner corroborates any of their assertions regarding the beneficiary's purported specialized knowledge with evidence. The record is devoid of evidence addressing the knowledge of other workers employed by the petitioning organization as well as evidence pertaining to the beneficiary's knowledge. Without documentary evidence to support the claim, the assertions of counsel and the petitioner will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by computer workers generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's project does not alone establish that the beneficiary's knowledge is indeed uncommon, advanced, distinguished, or noteworthy. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced accountant is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's projects do not establish that any such knowledge is "special" or "advanced." Rather, the petitioner must establish that qualities of the projects 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 outside of the petitioning organization may not have very specific knowledge regarding the petitioner's ongoing projects 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, generally experienced computer worker.

Furthermore, while the petitioner asserts that the beneficiary acquired his purported "specialized knowledge" through work experience, the record is not persuasive in establishing that this truly imparted "specialized knowledge" to the beneficiary. The record is devoid of persuasive evidence establishing that the beneficiary's experience with the petitioning organization abroad instilled him with specialized knowledge. Again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)).

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 petitioning organization. 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.")

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 computer worker or that he has received special training in the company's methodologies or processes which would separate him from other workers employed with the petitioning organization 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, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary will not be employed in the United States in a capacity involving specialized knowledge. For these reasons, the director's decision will be affirmed and the petition will be denied.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary was employed abroad in a position which required specialized knowledge for the requisite one-year period. 8 C.F.R. § 214.2(l)(3)(iv).

For similar reasons, the petitioner has failed to establish that the beneficiary was employed abroad in a specialized knowledge capacity. 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 and educated computer workers employed by the petitioning organization. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Specifics are clearly an important indication of whether a beneficiary's duties involved 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, *aff'd*, 905, F.2d 41.

Moreover, the petitioner claims that the beneficiary began working for the petitioning organization in October 2006. The instant petition was filed approximately 15 months later in January 2008. Therefore, the beneficiary would have needed to have acquired the purported specialized knowledge in just three months of employment by the petitioning organization in order for him to have been employed for one full year in a specialized knowledge capacity. It is not credible that knowledge of a software project which can be imparted to a newly hired worker in just three months of on-the-job experience constitutes "specialized" knowledge possessed by a key employee.

Accordingly, petitioner has failed to establish that the beneficiary was employed abroad in a position which required specialized knowledge for the requisite one-year period, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying

organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Affiliate" is defined in pertinent part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*).

In this matter, the record is devoid of evidence establishing that the foreign employer and the petitioner are affiliates. The petitioner claims that it is 100% owned and controlled by a Singapore-based company called Cyberlog Technologies International Pte. Ltd. The petitioner submits organizational documents pertaining to this claim of ownership and control. The petitioner claims that the beneficiary's foreign employer is AurionPro Solutions Pte. Ltd., and that this company is wholly owned by AurionPro Solutions Limited, which is purportedly listed on the Bombay Stock Exchange.

However, the record is devoid of evidence establishing that the petitioner and the foreign employer share ownership and control. Although the petitioner claims that some of the same individuals occupy leadership posts in both companies, this does not establish that the companies are owned and controlled by the same parent or individual, or group of entities or individuals. In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 595 (Comm. 1988). Similarly, the record is devoid of evidence establishing that Arshiya International Ltd. truly owns and controls both the petitioner's and the foreign employer's controlling shareholders. Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, and the petition may not be approved for this additional reason.

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.