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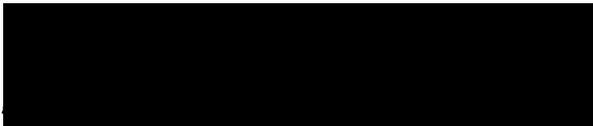
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U.S. Citizenship  
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Services

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File: LIN 03 123 53061 Office: NEBRASKA SERVICE CENTER Date: FEB 18 2005

IN RE: Petitioner: [Redacted]  
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:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. 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 extend the employment of its programmer analyst 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 is a corporation located in the State of Michigan that is operating as a computer consulting firm. The petitioner claims that it is the parent of the beneficiary's foreign employer in Mumbai, India. The petitioner now seeks to extend the beneficiary's employment for one year.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed under the extended petition in a specialized knowledge capacity. The director also noted that the beneficiary's initial approval as an L-1B nonimmigrant intracompany transferee was likely in error as the record did not demonstrate that the beneficiary possessed the requisite six months of employment abroad in a specialized knowledge capacity.<sup>1</sup>

On appeal, the petitioner claims that the beneficiary's knowledge is different from that ordinarily encountered in the beneficiary's field as "[the] beneficiary is not only skilled in the providing of general [information technology] services, [but the] beneficiary has specific specialized knowledge in the [petitioner's] processes (knowledge of which can be gained only through prior experience with [the petitioning organization])." The petitioner submits documentation pertaining to its two claimed proprietary processes, and contends that the beneficiary has been trained in the petitioner's proprietary processes and methodologies. The petitioner also submits a brief in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) 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.

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<sup>1</sup> The previous and instant nonimmigrant petitions are filed under the petitioner's blanket petition, thereby reducing the requirement of one-year of continuous employment to six months of employment abroad in a qualifying capacity. See section 214(c)(2)(A) of the Act, 8 U.S.C. § 1184.

- (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 issue in the present matter is whether the beneficiary would be employed by the United States entity in a specialized knowledge capacity.

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

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

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

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

A specialized knowledge professional is further defined at 8 C.F.R. § 214.2(l)(1)(ii)(E) as:

[A]n individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

The petitioner filed the instant nonimmigrant petition on April 25, 2003. In an appended letter, dated February 27, 2003, the petitioner provided the following description of the beneficiary's proposed employment in the petitioning organization:

[The beneficiary] will be providing services to Syntel in the position of programmer analyst. Such services will be provided as part of Syntel's Global Delivery Team located at our client site in Detroit, MI.

[The beneficiary] will not simply be providing services as directed by the client. [The beneficiary] will be reporting to the Syntel project manager on this Syntel designed and managed project as part of the Syntel Global Delivery Team. While perhaps any programmer could provide services at the direction of a client project manager on a client designed and managed project, specialized knowledge is necessary for this Syntel designed and Syntel managed project.

The Syntel Global Delivery Team, including, [the beneficiary] will be working with specialized knowledge programs developed by Syntel specific to Global Finance. [The beneficiary] has been working with these specialized Syntel designed programs and with the Syntel Global Delivery Methodology for more than 16 months. A more detailed list of these services can be found in the enclosed resume of [the beneficiary].

In addition to prior specialized knowledge concerning the specific Syntel designed programs, [the beneficiary] has advanced and specialized knowledge of Syntel's proprietary Global Delivery Methodology. Syntel's Global Delivery Methodology contains a unique process of interaction between Syntel's onshore and offshore delivery teams. Syntel's Global Delivery Teams use this training and experience to reduce time to market, provide a higher caliber of service regarding Syntel designed programs and systems, and to provide maximum cost efficiency for Syntel clients.

The petitioner stated that the specialized knowledge required for this position is not possessed by other programmers in the information technology field. The petitioner explained employment in this position requires "a highly skilled and trained individual" with at least six months of training and experience. The petitioner claimed that the beneficiary has received training in its "proprietary" Intellitransfer process and its Knowledge and Retention process (KARP). The petitioner submitted documentation explaining KARP. The petitioner also provided a final examination certificate confirming the beneficiary's successful completion of an accounting examination, a certificate of membership in the Institute of Chartered Accountants of India, final examination and membership certificates from the Institute of Company Secretaries of India, and the beneficiary's diploma confirming his receipt of a bachelor of commerce degree.

The director issued a request for evidence on May 7, 2003 noting that it appeared "the beneficiary is performing the duties of a regular software analyst utilizing programs and languages common throughout the industry." The director further noted that the petitioner had not provided any evidence of its claimed proprietary products or methodologies. The director referenced a 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum as providing guidance for establishing a beneficiary's specialized knowledge, specifically noting that the petitioner must demonstrate that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality.

The petitioner responded in a letter dated July 22, 2003 stating that a beneficiary is considered to have specialized knowledge when he or she possesses knowledge that can be gained only through prior experience with a particular employer. The petitioner claimed that the 1994 CIS memorandum confirms that specialized

knowledge is present in an employee when that employee possesses knowledge of a process that cannot be easily transferred to another individual. With regards to the beneficiary's employment, the petitioner stated:

[The beneficiary] is and has been involved in modifying and implementing a customized PeopleSoft module for financial usage for Syntel, Inc. Since this program has been modified in the past and is currently in the process of being upgraded to a new version, the services of [the beneficiary] are needed. [The beneficiary] has specialized knowledge of how this system must be modified in order to be implemented by the client, Syntel, Inc.

In a decision dated August 12, 2003, the director determined that the petitioner had failed to establish that the beneficiary would be employed by the United States entity in a specialized knowledge capacity. The director stated that the petitioner did not provide evidence in support of its claim that the beneficiary has specialized knowledge of the system implemented by the petitioning organization. The director also noted that the petitioner did not explain the beneficiary's assignment on the PeopleSoft program, which the petitioner first addressed in its response to the director's request for evidence, and further noted that there is no evidence as to how the beneficiary possesses advanced or specialized knowledge of this program. The director also stated that the petitioner failed to demonstrate that the beneficiary's knowledge and skills are not easily transferable to others employed by the petitioner, or that the beneficiary's knowledge is distinguished from that of other practitioners in the field. Consequently, the director denied the petition.

The petitioner filed an appeal on September 9, 2003, claiming that the beneficiary's knowledge is different from that ordinarily encountered in the beneficiary's field as "[the] beneficiary is not only skilled in the providing of general [information technology] services, [but the] beneficiary has specific specialized knowledge in the [petitioner's] processes (knowledge of which can be gained only through prior experience with [the petitioning organization])." The petitioner states that the beneficiary's specialized knowledge of the petitioner's processes has been gained through formal classroom training and practical training provided only by the petitioning organization. The petitioner further states:

All Syntel IT employees must meet rigorous minimum standards to become employed with Syntel. These standards include a high quality university education which is the equivalent to at least a Bachelor's of Computer Science in the United States as well as passing a Syntel technology and intelligence qualifying test. Once an individual becomes a Syntel employee, only those that have shown the aptitude and perseverance necessary are allowed to receive the specialized training necessary to become a part of the Syntel global delivery teams. Some Syntel employees never qualify and, as result, never travel internationally with Syntel. Those that do receive the specialized training which includes formal written materials, testing, situational training, are allowed to move on to receive the practical training. Only after all the training is successfully completed is an individual certified as having successfully completed and gained the specialized knowledge necessary to effectively and efficiently function as part of a Syntel global delivery team utilizing our proprietary processes and methodologies.

The petitioner explains that of its approximately 3,000 employees, 25% have received specialized training in the company's proprietary processes and procedures.

The petitioner also contends that the beneficiary's knowledge is not generally known by other practitioners in the field of information technology, and claims that evidence has been submitted to establish that the beneficiary has been trained in proprietary processes and methodologies not available outside of the petitioning organization. The petitioner states that "[a]n IT Programmer, no matter how skilled in a particular programming language, is not and will not be able to effectively and efficiently participate with a Syntel global delivery team which provides its services premised upon the proprietary processes and methodologies." The petitioner also states that the beneficiary has also been specifically involved in the modification of PeopleSoft software, and provides "input of how this program needs to be upgraded for the financial needs of Syntel." The petitioner submits documentation of two processes, the KARP process and IntelliTransfer process, which the petitioner claims are proprietary to the organization.

On review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a specialized knowledge capacity.

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(1)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* Here, the petitioner's description of the beneficiary's job duties does not demonstrate employment in a specialized knowledge capacity. The petitioner claims that the beneficiary's participation on the petitioner's Global Delivery Team requires that he work with the petitioner's "specialized" Global Delivery Methodology program. The petitioner, however, has failed to demonstrate how the beneficiary's knowledge of this program, which the petitioner has not explained and has not proven is "specialized," differentiates the beneficiary's actual knowledge as specialized. The petitioner is required to define the actual duties of the beneficiary performed while on the Global Delivery Team that establish his knowledge as special or advanced. While the petitioner stated that the beneficiary's enclosed resume contained a detailed list of the beneficiary's services on the team, the petitioner neglected to provide a resume for the record. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also fails to substantiate the petitioner's claim that the beneficiary possesses specialized knowledge as a result of his training on the petitioner's proprietary processes and methodologies. The petitioner indicates that trained employees receive a certificate of completion following their classroom and practical training, yet failed to submit a copy of the beneficiary's certificate or any other evidence, such as employee training rosters or records, confirming that the beneficiary actually received the claimed training. This documentation is essential to the petitioner's claim that the beneficiary "has gained the specialized knowledge necessary to effectively and efficiently function as part of a Syntel global delivery team utilizing our proprietary processes and methodologies." Again, going on record without supporting documentary evidence is not sufficient for

purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193.

Even if the petitioner had supplied documentary evidence confirming the beneficiary's participation in the company training, the record does not support a finding that this training would differentiate the beneficiary from other programmer analysts employed by the petitioner or by other computer consulting firms. The statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc.*, "[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 term "specialized knowledge" is relative and cannot be plainly defined. 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 reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce. Here, the petitioner has indicated that approximately 750 of the petitioner's employees have received its claimed "specialized" training. As the petitioner implies that anyone with this training possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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 Dec. 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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker.

In the instant matter, the petitioner relies primarily on its claim that the beneficiary has received specialized training in the petitioner's processes and methodologies, which differentiate the beneficiary's knowledge as

specialized. However, the petitioner's failure to establish the completion of the claimed training by the beneficiary, as well as the indication that this training has been made available to approximately 25% of the petitioner's workforce raises doubts that the beneficiary should be considered "key personnel." Thus, the director correctly concluded that the beneficiary would not be employed by the petitioning organization in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

It is noted that the current petition is for an extension of a L-1B petition that was previously approved by a consular officer at the U.S. Consulate in Mumbai, India. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the consular officer. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988).

Beyond the decision of the director, the record does not contain evidence demonstrating the existence of a qualifying relationship between the beneficiary's foreign employer and the petitioning organization as required in the Act at section 101(a)(15)(L). The AAO recognizes that the instant petition was based on an L blanket petition. The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations under section 101(a)(15)(L) of the Act. *See generally*, 8 C.F.R. § 214.2(l)(4); *see also*, 51 FR 18591, 18592 (May 21, 1986). Upon approval of a blanket petition, CIS issues a Form I-797 approval notice that identifies the approved organizations and the petition's period of validity. 8 C.F.R. § 214.2(l)(7)(B)(1). Accordingly, the blanket approval is not probative of the pre-approved relationships without a CIS-generated list of the approved entities, which is typically included on the approval notice or a separate I-797. *See* 8 CFR 214.2(l)(4)(iii); *see also*, 22 CFR 41.54(a)(3)(i) ("In the case of a blanket petition, the alien has presented to the consular officer official evidence of the approval by INS of a blanket petition . . . listing only those intracompany relationships and positions found to qualify under INA 101(a)(15)(L)."). Here, the petitioner recognizes in an April 19, 2002 letter the CIS attachment required for confirming approval as a subsidiary or affiliate. The submitted Form I-797, Notice of Approval of Blanket L Classification, however, does not contain the necessary attachment. The AAO therefore, cannot conclude that the beneficiary's foreign employer is a subsidiary of the petitioning organization as claimed by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193. For this additional reason, the appeal will be dismissed.

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 AAO also notes that the instant petition was filed by the petitioner following the expiration of the beneficiary's status. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's original petition expired on March 23, 2003. However, the petition for an extension of the beneficiary's L-1A status was filed on April 25, 2003, almost one month following the valid status of the beneficiary. Therefore, the petitioner failed to file a timely petition extension, and thus is precluded from extending the L-1A status of the beneficiary.

Further, pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the beneficiary's status expired on March 23, 2003, and the extension petition was not filed until April 25, 2003, the beneficiary is ineligible for an extension of stay in the United States.

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.