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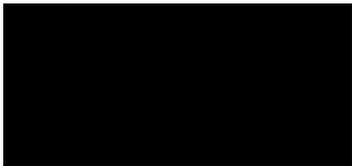


FILE: LIN 03 120 51864 Office: NEBRASKA SERVICE CENTER Date: JUN 10 2005

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)

ON BEHALF OF PETITIONER:



**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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was established in the United States in 1986 and claims to be in the sales and service of high-speed motion analysis systems and cameras business. The petitioner claims to be a subsidiary of Optikon Corporation, Ltd., located in Ontario, Canada. The petitioner claims four employees and \$4.6 million dollars in gross annual income. The petitioner seeks to employ the beneficiary in the United States as a high-speed imaging specialist for a period of three years, at a yearly salary of \$94,268.00. The director determined that the evidence submitted was insufficient to establish that the beneficiary possesses specialized knowledge and would be employed by the U.S. entity in a specialized knowledge capacity.

On appeal, counsel disagrees with the director's decision and states that the evidence is sufficient to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (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)(1)(ii) states, in part:

*Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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 with 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 serves 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 this proceeding is whether the beneficiary possesses specialized knowledge and will be employed by the U.S. entity in a "specialized knowledge" capacity as defined in the Act and the regulations.

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.

The petitioner described in the petition the beneficiary's past duties as: "Manages and has ultimate responsibility for all U.S. sales and support of High Speed Image System product line, including; recommending design and detailed engineering modifications of the product line to meet customer needs, evaluating orders for technical acceptability."

The petitioner further described the beneficiary's proposed duties as: "Oversee all U.S. sales, support and implementation of High Speed Imaging System product line, including: recommending design and detailed engineering modifications of product to meet customer needs; evaluating ordered of [sic] technical acceptability; leading planning, designing, and manufacturing and installation of system orders."

In a letter of support, dated February 26, 2003, the petitioner described the beneficiary's proposed duties as:

[The beneficiary's] primary responsibility will be overseeing all U.S. sales and support related to our High Speed Imaging System products, which will include: recommending design and detailed engineering changes of company products to fit the particular needs of customers; evaluating orders for technical acceptability; establishing new clients; being responsible for the planning, designing, procuring, manufacturing, and installation of the entire High Speed Imaging System product, as well as, the overall responsibility for the commissioning of the system for each order. [The beneficiary] will also meet with in-house technical personnel to discuss potential areas of improvement with current projects. His additional management duties will include; overseeing all U.S. sales and support personnel related to our High Speed Imaging System products; recommending the hiring, firing, and giving of raises to the independent contractors whom he will oversee; and negotiating or terminating contracts with the sub-contracted companies whose work he will also oversee.

The petitioner submitted a copy of the beneficiary's resume in which the beneficiary described his experience as a product manager for the foreign entity to include: "sales and marketing of High Speed Imaging system in North America; design and detailed engineering for special applications; project planning, procurement, manufacturing and installation of system; and commissioning of system."

The petitioner submitted copies of a Bachelors of Engineering degree from the University of Calcutta and a diploma for a Master of Technology Degree in Electrical Engineering from the Indian Institute of Technology received by the beneficiary, and an academic evaluation written by Gerald L. Itzkowitz.

In response to the director's request for additional evidence on the subject, counsel asserted that the beneficiary has received six months of extensive training from the foreign entity, including one-on-one technical training with the company president and senior technologies officer. Counsel also asserted that during the six-month period the beneficiary was engaged in "hands-on experimentation"-self-taught training. Counsel further asserted that the beneficiary had received a degree in electrical engineering and had many years of work experience in the field. Counsel noted that the beneficiary's work experience is advanced and specialized in nature. In addition, counsel described the beneficiary's duties and percentage of time spent performing those duties as:

Recommending design and detailed engineering changes of company products to fit the particular needs of customers 15%

Evaluating orders for technical acceptability 5%

Establishing new clients 15%

Planning, designing, procuring, manufacturing, and installing the entire High Speed Imaging System product, as well as, the overall responsibility for the commissioning of the system for each order 30%

Meet with in-house technical personnel to discuss potential areas of improvement with current projects 10%

Overseeing all U.S. sales and support personnel related to our High Speed Imaging System products 10%

Recommending the hiring, firing, and giving of raises and negotiating or terminating contracts of the independent contractors he oversees 5%

Reporting and consulting with the president of the company on all ongoing projects 10%

The director denied the petition after determining that the evidence failed to establish that the beneficiary had been or would be employed in a specialized knowledge capacity. The director determined that the majority of the beneficiary's duties as described were in the areas of marketing, sales, and supervision. The director noted that such duties were not demonstrated to require specialized knowledge to be performed. The director stated that there was not enough evidence to show how the beneficiary's training and education received could be considered as advanced or specialized. The director also stated that the petitioner failed to establish the inability of another competent individual to learn the duties of the position with some training from the

company. The director concluded by noting that the U.S. entity's web site contained a vacancy announcement for a Sales Specialist and Technical Sales Consultant whose duties and educational requirements were similar to the requirements proposed for the beneficiary.

On appeal, counsel reasserts that the beneficiary underwent an initial six months of advanced training and that his training continues on an on-going basis. Counsel further asserts that the director erred in not taking into consideration the beneficiary's advanced degree in electrical engineering and years of experience in the industry as prerequisite to the specialized training. Counsel contends that the training received by the beneficiary at the foreign entity was advanced, unique, and attainable by only a few individuals in the industry. Counsel notes that although the beneficiary's position requires some knowledge of computer programming and project management, he is primarily an electrical engineer and is responsible for creating, maintaining, and implementing highly advanced proprietary photonic equipment. Counsel asserts that the beneficiary's knowledge acquired through his years of work experience and specialized training cannot be easily imparted to another individual without causing financial hardship and hampering the U.S. and foreign entities' business operations. Counsel further asserts that although some of the duties and responsibilities listed on the company's web site job announcements are similar to those of the beneficiary, they are not identical and that the primary purpose (sales) for the positions listed are different from that of the beneficiary. Counsel concludes by contending that the beneficiary's knowledge qualifies him to train the new hires who are hired to fill positions related to high-speed imaging.

On review of the record, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity as required by 8 C.F.R. § 214.2(l)(3)(ii). Counsel asserts that an individual applying for a Blanket L-1B classification only has to demonstrate six months of training to qualify in the specialized knowledge category. Counsel further asserts that the beneficiary possesses specialized knowledge of the organizations' products, processes, and procedures in that he has received six-months of initial one-on-one and "hands-on experimentation" training at the foreign entity. Contrary to counsel's contentions, this petition is not a blanket L-1B petition and therefore that standard of proof will not apply in the instant case. The petitioner has not presented any evidence that the training offered by the foreign entity equipped the beneficiary with specialized knowledge not common to other electrical engineers in the industry. There has been no evidence submitted such as certificates of completion, course descriptions, and official transcripts to establish that the beneficiary received specialty training regarding High Speed Imaging System products and processes from the foreign entity. Furthermore, the "hands-on experimentation" received by the beneficiary was self-taught. 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). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

Further, contrary to counsel's assertions, mere familiarity with an organization's product, process, or service, such as knowledge of its high speed imaging system technology and photonic product applications, does not constitute specialized knowledge as defined by section 214(c)(2)(B) of the Act. While the petitioner claims that the beneficiary's experience with the organization includes intimate familiarity with the foreign entity's integrated high speed imaging systems operations and proprietary products, including "automated air-bag development image analysis systems and microdensitometer systems," this statement alone is not indicative of specialized knowledge capacity. In addition, although the petitioner contends that the beneficiary will be

integral as a high speed imaging specialist at the U.S. entity, and will continue to utilize the training, knowledge and experienced gained, this claim is insufficient to establish that the beneficiary possesses specialized knowledge or will be performing tasks that require specialized knowledge.

The record does not demonstrate that the tasks described are not common to all electrical engineers in that field. The beneficiary's duties are described as being responsible for recommending design and detailed engineering changes; evaluating orders for technical acceptability; establishing new clients; planning, designing, procuring, manufacturing, and installing the entire High Speed Imaging System product; meet with in-house technical personnel to discuss potential areas of improvement with current project; overseeing all U.S. sales and support personnel; and reporting and consulting with the president of the company on all ongoing projects. The described duties do not require advanced expertise or establish that the beneficiary possesses a special knowledge of the organization's products and processes as opposed to skill and training in electrical engineering.

In addition, counsel states that the beneficiary's proposed tasks will consist of creating, maintaining, and implementing highly advanced proprietary photonic equipment. There has been no evidence submitted to establish that the tasks are so intricate that they require the services of one who possesses specialized knowledge in the field. Simply 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, supra*. It appears that the description given is common to all engineering firms in the imaging development business and does not differentiate the beneficiary from that of any other person employed as an electrical engineer.

The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product, procedures, or its application in U.S. and international markets. Counsel contends that the beneficiary's combined knowledge of the organization's proprietary products, namely high speed imaging systems, is significant and qualifies as "specialized knowledge." Contrary to counsel's contention, any experienced electrical engineer would necessarily possess knowledge of his or her company's proprietary products in order to function efficiently in the field. The beneficiary's employment experience with the foreign organization may have given him knowledge that is useful in performing his duties as a high speed imaging specialist, but it cannot be the case that any useful skill is to be considered special or advanced knowledge. One's knowledge of high speed imaging technologies is not, by itself, specialized knowledge. Contrary to counsel's assertions, the beneficiary's knowledge of the company's product or of the processes and procedures of the foreign company, has not been shown to be substantially different from, or advanced in relation to, that of any electrical engineer similarly employed. Simply 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, supra*. Without supporting documentation, the assertions of counsel do not constitute evidence. *Matter of Obaighena, supra; Matter of Ramirez-Sanchez, supra*.

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. See section 214(c)(2)(B) of the Act. Here, the evidence demonstrates that the beneficiary possesses the skill required to work as an electrical engineer dealing with various high speed imaging system applications, but not that he has specialized knowledge of the petitioner's processes and procedures.

Counsel contends that the beneficiary's knowledge acquired through his years of work experience and specialized training cannot be easily imparted to another individual without causing financial hardship and hampering the U.S. and foreign entities' business operations. However, there has been no independent documentary evidence submitted to substantiate counsel's claim or to show that an electrical engineer within the United States cannot be trained to create, maintain, and implement high speed imaging system products and equipment within a reasonable period of time so as not to negatively effect the overall operations of the U.S. and foreign entities. 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). Although counsel indicates that the job descriptions, educational backgrounds, and work requirements found on the U.S. company's web site with regard to the Sales Specialist and the Technical Sales Consultant are similar but not identical to the beneficiary's job duties and educational requirements, there has been insufficient evidence submitted to refute the director's decision in that respect. The evidence of record indicates that other than the sales experience, the job descriptions, required work related experience, and educational qualifications are too similar to distinguish the beneficiary's expertise from that of a Sales Specialist or Technical Sales Consultant.

Furthermore, the petitioner's description of the beneficiary's job duties fails to establish that an individual who possesses specialized knowledge is necessary for the proposed high speed imaging specialist position in the United States. The following job duties are common duty descriptions within the engineering field and thus appear not to rise to the level of specialized knowledge: oversees all U.S. sales, support and implementation of High Speed Imaging System product line, including recommending design and detailed engineering modifications of product to meet customer needs; evaluating orders for technical acceptability; and leading planning, designing, and manufacturing and installation of system orders. Accordingly, the petitioner has not established that the beneficiary would be employed in a specialized knowledge position or that the position requires an individual with specialized knowledge.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed