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20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: EAC-00-161-50526 Office: VERMONT SERVICE CENTER Date: JUN 29 2005

IN RE: Petitioner:
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:



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, Vermont Service Center. The director certified his decision to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed and the petition will be denied.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 states that it was established in 1967, and that it is a branch of the foreign office of [REDACTED], located in London. The petitioner declares 74,000 employees and a gross annual income of approximately \$14.7 billion. It seeks to extend its authorization to employ the beneficiary for two years at an annual salary of \$22,560.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge and that the intended employment requires specialized knowledge.¹

In response to the notice of certification, counsel asserts that the beneficiary possesses specialized knowledge and that the intended employment requires specialized knowledge.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

This case presents two related, but distinct, issues. The first is whether the beneficiary possesses specialized knowledge. The second is whether the intended employment is in a capacity that requires specialized knowledge. In order to prevail in this appeal, the petitioner must prove, by a preponderance of the evidence, that each of these requirements is satisfied. That is to say, the petitioner must establish both that the beneficiary possesses specialized knowledge and that the employment requires a person who possesses this specialized knowledge.

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 special

¹The AAO is aware of the judgment of the United States District Court for the District of Columbia in *Delta Air Lines v. United States Department of Justice, Immigration and Naturalization Service*, Memorandum, No. 98-3050-LFO (D.D.C. 1999). The Court held that the AAO had erred in revoking, on the grounds of gross error, L-1B visa petitions that the Service had approved for [REDACTED] Lines flight attendants. *Id.* at 10. It is important to note, however, that the Court expressly refrained from deciding that the flight attendants in that case actually qualified as L-1B nonimmigrants. *Id.* at 9. The case now before the AAO does present for decision the issue the Court did not address: whether the flight attendants qualify as L-1B nonimmigrants.

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 or procedures.

On the Form I-129 petition filed on April 27, 2000, the petitioner stated that the beneficiary is a flight attendant and that her duties are to:

Ensure passenger safety and provide on board transatlantic and domestic flight services, apply specialized knowledge of [REDACTED] European inflight services product to serve as flight attendant, crew trainer and on-board mentor.

The petitioner explained that the beneficiary serves as a subject matter expert who participates in training and mentoring United States-based flight attendants, and further described the beneficiary's duties as follows:

The flight attendants relocated by [REDACTED] from Warsaw to JFK are the only employees in its work force who possess specialized knowledge of that unique service product. These flight attendants have been [REDACTED] front line customer service providers for leisure and business travelers for Eastern and Southern Europe since [REDACTED] acquired the European routes. . . . This flight base was [REDACTED] only flight attendant base in Europe, and the Warsaw-based flight attendants located there applied the particular procedures, regulations, norms, service techniques and customs that are the components of [REDACTED] proprietary, European in-flight service product. Indeed, it is their provision of that product that is a significant factor leading customers in Europe to select Delta over other foreign flag (or U.S. flag) carriers.

* * *

As a group, these flight attendants have achieved exceptional performance levels, and specialized knowledge and skills, including the following:

1. Our Warsaw flight attendants have successfully serviced our international customers throughout Europe and are highly skilled in managing the service challenges of working with diverse cultural and language groups.
2. Our Warsaw flight attendants are exceptionally adept at recognizing the potential impact our on-board product can have on the international customer who has limited or no understanding of the English language and U.S. culture.

3. Many have earned up to eleven years of flying experience (including flying time with Pan Am), with a majority of their flying time serving our German and Russian passengers, including flying to and from Moscow and St. Petersburg, as well as to other Southern and Eastern European cities.

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In view of their specialized experience and proven skills in providing the distinctive Eastern European in-flight service product, [REDACTED] is relying on the formerly Warsaw-based flight attendants to assist the company in three critical ways:

- they are a resource for the ongoing development and refinement of that unique product and the Eastern European cross-cultural training and mentoring program that corresponds to it;
- they are implementing the multifaceted cross-cultural training program for its JFK-based flight attendants that ultimately will be rolled out to all [REDACTED] flight attendants who service international routes; and
- they are continuing to provide the Eastern European in-flight service product on transatlantic and domestic feed flights, during which they advise and guide U.S.-based flight attendants in the nuances and requirements of that product.

The petitioner explained that the beneficiary will be part of a team of flight attendants who will serve as facilitators in a Eastern European Cross-Cultural Training Program.

On June 15, 2000, the director requested additional evidence. Specifically, the director instructed the petitioner as follows:

Submit a detailed description of "Delta's proprietary, European in-flight service product" referred to in your letter. Submit a detailed description of the beneficiary's specialized knowledge of [REDACTED] proprietary, European in-flight service product."

Submit [REDACTED] corporate job description, including education, training, and experience requirements, for flight attendants.

What percentage of the beneficiary's time is spent as a Module 5 facilitator? A subject matter expert? An on-board mentor? A flight attendants [sic]? Submit documentary evidence, such as personnel and payroll records, to corroborate your answers. Submit copies of all on board mentor program monthly reports written by the beneficiary in the last year.

What percentage of the beneficiary's time is spent on international flights to Eastern Europe? Other international flights? Domestic flights? Submit documentary evidence, such as personnel and payroll records, to corroborate your answers.

In a letter dated September 6, 2000, [REDACTED] Director of Flight Attendants asserted that the beneficiary and the other Warsaw-based flight attendants "are the only flight attendants who in fact know how to apply the Delta in-flight service product to the special needs of our Eastern European passengers." The petitioner also submitted attestations from two professors, three consultants, the director of [REDACTED] In-Flight Services Learning Center, a [REDACTED] pilot, and a [REDACTED] flight attendant, who argue that employees such as the beneficiary can provide credibility to the petitioner's training program and help Delta meet its goal of providing individualized customer service appropriate for customers from other cultures. While the opinions provided by these sources might help to clarify why the petitioner wishes to continue to employ the beneficiary, they do not establish that the beneficiary will be employed in a specialized knowledge capacity within the meaning of 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner submitted a subject matter expert program guide for Eastern Europe showing that the beneficiary will assist an instructor during a four-hour training session for other flight attendants. According to the program guide, the beneficiary's primary duties as a subject matter expert will be as a flight attendant. The beneficiary will serve as an onboard mentor "when time and situation permit." (*Eastern Europe Subject Matter Expert Program Guide*, p. 11). The beneficiary's qualifications as a subject matter expert are said to include:

- Knowledge of historical and current cultural, political, economic, and social norms
- First hand experience and knowledge of the region
- Experience working [REDACTED] Eastern European routes
- Knowledge of the distinctive cultural norms as applied to business and leisure travel

There is no discussion as to how the petitioner tested or measured the beneficiary's qualifications based on her knowledge of historical and current cultural, political, economic and social norms.

The director found that the beneficiary is "just an experienced flight attendant with a native knowledge of Eastern European languages, cultures, and customs" and is not employed in a specialized knowledge capacity.

In this certification proceeding, counsel asserts that the beneficiary performs an essential function by serving as a subject matter expert, that she devotes "100% of her time to training and mentoring [REDACTED] U.S. flight attendants in this proprietary Eastern European passenger service," and that the "training and mentoring program . . . focuses on allowing real-world situations to serve as learning experiences for [REDACTED] New York-based flight attendants, a group of some 3,600."

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).² As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52

² Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be

(Comm. 1982), 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." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 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 that employee and the remainder of the petitioner's workforce.

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully 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

"proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [i.e., not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, *id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). 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.*, 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.")

The beneficiary serves as one of several team facilitators in a module for training other flight attendants, and is not the primary instructor. As noted by the director, the beneficiary spent, at most, 44 hours out of the five-month period of February 2000 to June 2000 as a training co-facilitator. Accordingly, it is reasonable to infer from the evidence of record that the remainder of her duties -- actually, the majority of her time -- must have been consumed in functioning as a mentor and flight attendant. To the extent that her duties as a mentor include preparing the monthly mentoring report, it is noted that the report is a simple one-page format consisting of five questions asking the beneficiary to discuss situations encountered in the past month, and to make suggestions. The beneficiary's responses include discussions of her role as a Russian interpreter to make safety announcements. The beneficiary's reports also note that she explained cultural customs to flight attendants, such as the custom of some patrons viewing the flight attendants as servants. From these reports, it is clear that much of the "mentoring" simply involves the beneficiary's own linguistic abilities and cultural background in performing her primary duties as flight attendant. The petitioner's own subject matter expert training manual indicates that the beneficiary will serve as a mentor to the extent that her duties as a flight attendant permit. There is no evidence that the beneficiary possesses specialized knowledge or that her duties involve specialized knowledge as defined by 8 C.F.R. § 214.2(l)(1)(ii)(D).

The director found that the beneficiary's skills as a subject matter expert appear to consist of little more than the fact that she is a flight attendant who happens to be from Eastern Europe. Counsel asserts that the beneficiary and the other Warsaw Flight Attendants spend "100% of their time as subject matter experts." This is true only to the extent that the beneficiary and the other Warsaw Flight Attendants may be considered to be natives of Eastern Europe. The knowledge of foreign customs, cultures, and history possessed by the beneficiary as the result of her multicultural life experiences does not constitute an advanced level of knowledge of the processes and procedures of the petitioning organization, and has no bearing on the beneficiary's eligibility for classification as an intracompany transferee on the basis of specialized knowledge. Even if it were established that the beneficiary has an appreciable amount of international experience and cultural awareness as a result of her background and

her experience as an international flight attendant, such knowledge cannot be considered as specialized knowledge of the company product or an advanced level of knowledge of company processes and procedures.

The record does not establish that the beneficiary has advanced or special knowledge of the petitioner's product and its application in international markets. The beneficiary's origins in Eastern Europe and her employment experience with the foreign organization may have given her knowledge that is useful in performing her duties, but it cannot be the case that any useful skill is to be considered special or advanced knowledge. One's native knowledge of a language and culture is not, by itself, specialized knowledge. Nor is experience as a flight attendant specialized knowledge. Nor, however useful it may be, does the combination of these skills qualify as specialized knowledge. In fact, contrary to counsel's assertions, the beneficiary's knowledge of the company 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 airline attendant of any airline company. Counsel argues that the beneficiary's training and experience have given her knowledge which is special because it is specific to Delta Air Lines. However, it is to be expected that job training offered by Delta Air Lines would pertain to Delta Air Lines' procedures exclusively. Not all in-house training can be considered to qualify as specialized knowledge.

Nor does the evidence of record establish that the intended employment requires possession of specialized knowledge. In essence, the beneficiary's position is that of a flight attendant. She spends a relatively small amount of time (a maximum of 44 hours total in the five months from February to June 2000) "facilitating" training. Most of her "mentoring," as noted, involves her use of her language skills to perform flight attendant duties. Again, as useful as those skills may be, they are not specialized knowledge.

It is also important to note that Congress created the L-1 nonimmigrant classification to facilitate the transfer to the United States of aliens who did not fit within any pre-existing classifications. H. Rep. No. 91-851 at 3, (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2751-52. The actual duties that the beneficiary performs, however, are those of a flight attendant. So long as a flight attendant otherwise complies with the regulations that govern admission of nonimmigrant crewmembers, episodic or periodic participation in training sessions for flight attendants -- either as a trainer or as a trainee -- is consistent with crewmember status. As the director noted in his decision, the evidence of record supports the conclusion that the proper classification for this nonimmigrant flight attendant is the classification for alien crewmembers, under section 101(a)(15)(D) of the Act, 8 U.S.C. 1101(a)(15)(D).

The legislative history for 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 petitioner has not established that the beneficiary has specialized knowledge or that she would be employed in a capacity involving specialized knowledge. For this reason, the petition may not be approved.

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.

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ORDER: The decision of the director dated December 7, 2000 is affirmed. The petition is denied.