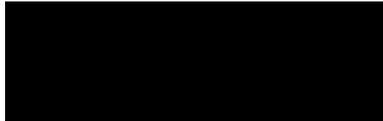




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FILE: WAC 04 119 53957 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2005

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:  
[Redacted]

INSTRUCTIONS:

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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 is engaged in the business of software development and consulting. It seeks to employ the beneficiary as an 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 director determined that the petitioner had not established that the beneficiary possesses the requisite specialized knowledge for the intended position.

Counsel for the petitioner filed an appeal, alleging that ambiguities in the evidence precluded the director from concluding that the beneficiary had specialized knowledge. Counsel submits new evidence on appeal in support of the contention that the beneficiary does in fact possess specialized knowledge.

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)(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 matter is whether the beneficiary possesses 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 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.

In a letter dated March 16, 2004, the petitioner stated that the beneficiary was a software engineer specialist and had been employed by the foreign entity since August 1, 2002. The petitioner stated that the beneficiary was a major developer of the Viper Project and described the beneficiary's background as follows:

[The beneficiary] has been very well trained in [the foreign entity's] intellectual properties, such as: Project Management Framework, Intelligent Agent and Work Flow. Viper was developed based on the above-mentioned technologies. The main purpose of Viper is to support the project management team in managing the workflow during the life cycle of s Software Project. [The beneficiary] is involved in the development of Viper from the prototype through Viper 1.0, Viper 2.0 and Viper2Web. He [is] involved in full life cycle development of Viper with thorough knowledge of the object oriented framework and controls used in Viper. Currently, Viper is being installed, used and supported at our client site – one of our prestigious clients Countrywide Financial Corporation, the 2<sup>nd</sup> largest Mortgage Company in USA. [The beneficiary's] presence at onsite is very critical and important for the successful development of Viper Project in US Market. He possesses knowledge that is valuable to the employer's competitiveness in the US market place and special knowledge of the Company's computer software production and its application in the international markets. Also, he has an advanced level of knowledge of processes and procedures of the company. He has been a great asset for [the foreign entity] and the development of its US branch.

The petitioner further stated that the beneficiary possessed a Master's degree in computer applications, a Bachelor's degree in computer science, and approximately two years of experience in the information technology industry.

With regard to the proposed position in the United States, the petitioner stated:

[The beneficiary] will fill the position of Software Engineer Specialist and specifically work on Viper Project. As a Software Engineer Specialist with [the petitioner], [the beneficiary] will be responsible for the promotion and further development of one of [the foreign entity's] intellectual properties – Viper in the US market. He will install Viper at US client sites, support and custom enhancement [sic] of Viper. He will also provide

functional and empirical analysis to the related technical design, development, and implementation, participate in the development of test strategies, devices and systems. This position requires an individual with a degree in Computer Science, Engineering, Mathematics, or related field and special knowledge of [the foreign entity's] technologies and product.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on March 25, 2005, which specifically requested evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. The director advised that the petitioner should also submit an explanation with regard to the equipment, system, product, technique or service of which the beneficiary has specialized knowledge and whether other employees, both in the United States and abroad, use or produce the same; an explanation as to how the beneficiary's training is exclusive and significantly unique in relation to the training of others employed by the petitioner or in the field; and evidence establishing the type and amount of training the beneficiary will provide to other employees in the United States, if applicable.

The petitioner submitted a detailed response to the director's request. In a letter dated May 11, 2004, the petitioner explained that it had been working, in conjunction with the foreign entity, on the Viper project for the past four years. In addition, it stated that the beneficiary had been working since his date of hire with its client, Countrywide Home Loans, Inc., to evolve the Viper project to fill their needs. Since Viper has gone through two versions to date (Viper 1.0 in January 2003 and Viper 2.0 in November 2003), the petitioner stated that it was now time to introduce the client to the most recent versions of Viper, Viper2Web. The petitioner explained that the beneficiary was the project leader for Viper2Web, which was built on a complex framework in the DOTNET environment.

With regard to the beneficiary's specialized knowledge, the petitioner stated:

[The beneficiary] has full knowledge of the Petitioning Company's processes and procedures in Software Development Life cycle. He possesses valuable knowledge of Viper which can be gained only by involving [sic] in the development of this product at the Petitioning Company. This specialized knowledge can not be easily transferred or taught to other individuals considering the complexity of Viper framework and a 50 man year effort in the Research and Development. Viper is the petitioning Company's flagship product. [The beneficiary's] specialized knowledge in Viper which is not generally found in the software industry will surely give the Petitioning Company in US a competitive edge in the market place in 'Change Management' area and enhance the productivity, competitiveness, image, and financial position of the Petitioning Company in US.

The petitioner further stated that the beneficiary has undergone extensive training in Viper "to further handle the new releases for Countrywide." Additionally, the petitioner claimed that the beneficiary will train employees in the US on the Viper project until they can independently perform the required duties.

On May 21, 2004, the director denied the petition. The director noted that a review of the evidence submitted with the initial petition and in response to the request for evidence did not differentiate the beneficiary's qualifications from other similar employees. In addition, the director noted that there was no evidence of Countrywide's need for a Viper enhancement and, furthermore, that the beneficiary's resume indicated his general training in a wide variety of software applications not unusual to the industry. On appeal, counsel provides a letter from the Countrywide stating the need for the enhancement of Viper, and further provides a clarification statement from the petitioner regarding the beneficiary's resume, explaining how his general experience contributes to his specialized knowledge and asserting that the director erred in the application of the definition of specialized knowledge.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his employment in the U.S. entity, and his intended responsibilities as a software engineer specialist with the U.S. entity. Despite specific requests by the director, namely, specific explanations regarding the manner in which the beneficiary's experience is unique or distinguishable from other similarly qualified individuals, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized from that of the twenty-seven employees of the foreign entity and of the thirty-eight software engineers employed by the U.S. entity. The petitioner repeatedly states throughout the record that the beneficiary's knowledge is specialized based on his work on the Viper project and further asserts that the beneficiary possesses specialized knowledge as a result of his more than two years of experience with the foreign entity.

The director's request for evidence was specific in requesting clarification that the beneficiary's claimed specialized knowledge was not merely general knowledge held commonly through the industry. The director afforded the petitioner all available measures to supplement the record with additional evidence. However, although specifically requested by the director, the record contains no evidence of the beneficiary's experience, daily duties, level of expertise, or training on the Viper project while employed by the foreign entity.

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)).<sup>1</sup> As stated by the Commissioner

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<sup>1</sup> 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 "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report

in *Matter of Penner*, 18 I&N Dec. 49, 52 (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 firm's operation.

*Id.* at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. 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

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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, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

craft workers." *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. 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.*, 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.").

Here, the petitioner's main contention is that the beneficiary's knowledge of the Viper project is specialized because he was involved with the project since the prototype.<sup>2</sup> Specifically, the petitioner alleges that the beneficiary's nearly two years of experience with the foreign entity and his work with Countrywide has solidified his specialized knowledge of the foreign entity's product. However, the petitioner has not provided any information pertaining to the duties and training of the beneficiary or of the other similarly qualified persons employed by the petitioner. While the petitioner alleges that the Viper project is the equivalent of "50 man years" in research and development, it fails to acknowledge or address the director's query as to why only the beneficiary, and not other similarly trained employees who worked on this project, has specialized knowledge. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the petitioner. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner seems to expect that the AAO will accept its uncorroborated assertions that the beneficiary possesses specialized knowledge. Going on record without supporting 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)).

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<sup>2</sup> The AAO notes that although the petitioner implies that the beneficiary has been involved with the Viper project since its inception, this does not appear to be true. Specifically, counsel's letter dated May 11, 2004 indicates that the Viper project has been in development since 2000, yet the record indicates that the beneficiary has only been employed by the petitioner since August 2002. Moreover, the petitioner's claim of the beneficiary simply being "involved" in the Viper project hardly establishes his knowledge of the subject as being advanced or special.

The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the Viper system as advanced or special and precludes a finding that the beneficiary's role is of crucial importance to the organization. The director specifically requested evidence establishing the beneficiary's training and the manner in which his knowledge of Viper was unique, but the petitioner failed to submit such evidence. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The claim that the beneficiary has been employed by the petitioner for almost two years and that most of this period was devoted primarily to work with the Viper system does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a similar period.

On appeal, counsel for the petitioner introduces new evidence specifically designed to overcome the director's reasons for denial. On appeal, a petitioner cannot make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Consequently, the assertions of counsel on appeal that rely on the newly submitted evidence as proof of the beneficiary's specialized knowledge will not be considered. The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. Counsel makes no attempt to overcome the reasons for the director's stated grounds for denial other than his attempt to furnish new evidence not previously submitted. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden. As previously stated, 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).

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.*, 745 F. Supp. at 16. Based on the evidence of record before the director, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the U.S. petitioner and a foreign entity. Although the petitioner claims that the U.S. petitioner is a branch of the foreign entity in this matter, insufficient evidence has been submitted to establish this relationship. The petitioner failed to submit evidence which clearly establishes the ownership structure of the U.S. and the foreign entity and which corroborates the petitioner's claims. Going on record without supporting 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. A petitioner must establish ownership and control in order to show a qualifying relationship exists. Stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986).

Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. For this additional reason, the petition may not be approved.

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).

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.