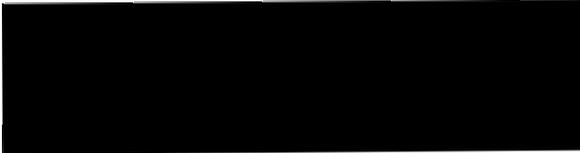


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FILE: LIN 03 004 53172 Office: NEBRASKA SERVICE CENTER Date: **AUG 30 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of marketingQ module leader (software engineer) 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 engaged in the business of developing software for telecommunications billing. The petitioner claims to be the parent company of the foreign subsidiary, MAQ India Private Limited, the beneficiary's current employer, located in India. The petitioner seeks to employ the beneficiary for a period of two years.

On February 27, 2003, the director denied the petition concluding that the petitioner failed to establish that the beneficiary's prior year of employment abroad was in a position that involved specialized knowledge.

The petitioner subsequently filed an appeal on March 26, 2003. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-1290B Notice of Appeal, counsel for the petitioner asserts: "1) Motion to reconsider under 8 CRF 103.5; Service has failed to properly apply the law under 8 CFR 214.2(l)(1) and INA § 101(a)(15)(L); 2) Petitioner has submitted proper and sufficient documentation to support the nonimmigrant worker petition."

Counsel indicated on Form I-1290B that he would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on July 14, 2006 to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. To date, counsel has not responded to the AAO's request. Accordingly, the record will be considered complete.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 1 (BIA 1983); *Matter of Laureano*, 19 I & N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I & N Dec. 503, 506 (BIA 1980).

As noted by the director, the in-house training completed by the beneficiary appears to have consisted of general computer courses in technologies and methodologies that are common to the industry. The courses do not appear to be training for a proprietary or specific application of the company that other peers in the

industry could not learn. The beneficiary has been employed with the company abroad for one year and three months and completed 89 days of training during her employment, thus it is not unreasonable to conclude that an individual can be trained in a reasonable amount of time the duties performed by the beneficiary. Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired any specialized knowledge.

The AAO does not dispute the likelihood that the beneficiary is a skilled software engineer who understands XML technology and the petitioner's *marketingQ* application across multiple domains, and is able to apply it within the context of the petitioner's specific project-oriented environment. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618(R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. at 52. Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' 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. at 15. 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"

¹ 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 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 remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

denotes a position within the petitioning company that is “of crucial importance.” *Webster’s II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered “important” to a petitioner’s enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of “crucial importance” or “key personnel” must rise above the level of the petitioner’s average employee. Accordingly, based on the definition of “specialized knowledge” and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification “will not be large” and that “[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service.” *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner, 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)).

The record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other software engineers. The petitioner notes that the beneficiary has been trained in and has participated in developing “software solutions for our clients, in addition to our proprietary application, *marketingQ*.” The beneficiary is claimed to have “advanced” knowledge of the company’s business processes, procedures and methodologies, as well as “specialized knowledge” in the analysis of and design, coordination, liaison, management, administration and delivery of custom software development projects. However, as the petitioner has failed to document any specific training or otherwise describe or document the purported knowledge, these claims are not persuasive. There is no indication that the beneficiary has any knowledge that exceeds that of any experienced software engineer, or that she has received special training in the company’s methodologies or processes which would separate her from any other software engineer employed with the foreign company. The petitioner’s *marketingQ* software, while proprietary to the petitioner, is built on XML Web Services, a technology available outside of the petitioner’s group, and known by other software engineers in the field.

The AAO does not dispute that the petitioner’s organization, like any software consulting company, has its own internal processes and methodologies which it applies to project development and delivery. However, there is no evidence in the record to establish that the beneficiary’s knowledge of these processes and methodologies is particularly advanced in comparison to her peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with such “advanced knowledge.” The petitioner has simply submitted no

documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate her from any other similarly employed software engineer within the petitioner's group or within the industry. The beneficiary apparently obtained her specialized knowledge of the petitioner's products and processes in a little over a year. Thus, it can be assumed that professionals in the field of software engineering can possess the specialized knowledge after a few months of employment with the petitioner. 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 legislative history of the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra at 16*. Based on the evidence presented, it is concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.