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FILE: SRC 05 103 50260 Office: TEXAS SERVICE CENTER Date: OCT 04 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: 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 computer solutions and systems integration. It seeks to temporarily employ the beneficiary as a technical consultant in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had not established that the beneficiary possessed the requisite specialized knowledge nor that the intended employment required specialized knowledge, and consequently denied the petition.

The petitioner subsequently filed an appeal. On appeal, counsel submits a brief and additional evidence, and asserts that the director erroneously determined that the beneficiary did not possess specialized knowledge. Counsel asserts that the additional evidence provided in support of the appeal would support a finding that the beneficiary did indeed 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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires 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.

A letter of support dated February 22, 2005, from [REDACTED] Director of Human Resources, stated the following about the petitioner's entity:

The petitioner provides pioneering Employee Relationship Management (ERM) solutions for Global 2000 organizations whose operations are complicated by multiple sites, unionized workforces or language localization needs. ERM is a class of enterprise software and services that automate and transform workplace interactions between the enterprise and its employees. [The petitioner] works with large organizations with distributed and mobile workforces and partners with industry leaders who recognize that the quality of the employer/employee relationship is a competitive advantage.

With regard to the beneficiary, the petitioner stated that the beneficiary would "provide technical expertise and support for the implementation and delivery of technical solutions to business partners, customers and [other offices of the petitioner in the United States]." The petitioner further indicated that the beneficiary had been employed with the foreign entity for the requisite year out of the previous three and possesses specialized knowledge of skills, including software programming, system analysis and functional/performance testing that he will implement in the United States.

Finally, a more detailed support letter, also dated February 22, 2005, indicated that the beneficiary obtained a Baccalaureate Degree in Electronic Engineering from D.Y. Patil College of Engineering and Technology, India, in 1996. This letter provided additional details regarding the beneficiary's proposed position and qualifications. Specifically, the petitioner stated:

As a Technical Consultant, [the beneficiary's] responsibilities include: identify and investigate customer issues and questions providing reasoning and recommendations; determine technical specifications required to meet functional needs; develop custom jsps for Schedule and LOA Overrides; implement dual approval feature for timesheets; implement custom interfaces for Shifts, Schedules, Clocks, HR Refresh and Team Import Interface; create client specific reports; develop design documents based on functional requirements; and develop custom rules, conditions, and interface classes for Payroll Export, Entitlements, and Balances. As an IT Consultant, [the beneficiary] was previously involved in various engagements and tested the performance of the web portal using WILY Performance Monitoring; analyzed and suggested modifications in JAVA code; and performed as Onsite Coordinator liaising with business users and managing a team to carry out modifications.

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 request for evidence was issued on March 11, 2005, which requested more detailed 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 petitioner responded on March 24, 2005. In response to the director's request, the petitioner provided an additional overview of its products and services, and explained that the beneficiary's years of experience in systems implementation consulting, business process and computer systems process reengineering, when combined with his specific knowledge of the petitioner's application and tools, made him ideally suited for providing consulting services to the petitioner's customer base. With regard to his specific duties and experience, the petitioner stated:

Since being hired by [the petitioner], [the beneficiary] is seen as one of our most competent and skilled resources in whom we rely heavily to successfully serve our customers.

- He successfully worked as a Technical Consultant to implement our time and attendance solution to one of our large-scale retail clients, as well as one of our manufacturing clients, with a combined employee base of over 25,000 employees;
- He has been trained through [the petitioner's "university"] and has developed a skill set that has created a specific focus for him in the areas of time and attendance, attendance management, entitlements and employee balances, as well as experience in our product architectures, which include PL/SQL and Java. In addition, [the beneficiary] has honed his skills to our Reports Server, a reporting tool proprietary to [the petitioner] that is used to allow businesses to gather real-time data on their operations;
- His experience also lends himself to be knowledgeable in the area of customization, development of rules and reports using JAVA and Oracle, developing interfaces to exchange data between [the petitioner] and varying payroll systems like ADP, Ceridian and JCI (proprietary to our large-scale retail client). In addition, [the beneficiary] has strong technical knowledge in relation to the application servers used by [the petitioner] including WebLogic, and Oracle 9iAS.

The petitioner concluded by stating that the beneficiary's skills and detailed knowledge of systems implementation, combined with assisting clients in the management of employee relationship management systems and their functions, was critical to the petitioner's ability to meet the business needs of its clients.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge, and concluded that the beneficiary was not eligible for the classification sought. The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified engineers. The director concluded that the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct and distinguished from other practitioners in the field, and consequently denied the petition.

On appeal, counsel for the petitioner submits a brief and additional evidence in support of its assertion that the beneficiary possesses specialized knowledge. Counsel submits three additional documents, entitled "Profile," "Experience Summary," and "Business Experience Summary," and claims that the additional information contained therein clearly establishes that the beneficiary possesses specialized knowledge and that the proposed position requires specialized knowledge. No additional arguments were presented.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with 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(l)(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 intended employment in the U.S. entity, and his responsibilities as a technical consultant. Despite specific requests by the director, namely, what specifically set apart the beneficiary's knowledge from other similarly trained consultants in the field, 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. The petitioner repeatedly relies on the same evidence prior to adjudication in support of the petition. Despite the director's finding that the initial evidence submitted was insufficient, the petitioner failed to supplement the record as requested and merely resubmitted similar statements regarding the petitioner's business and the beneficiary's position therein. Although specifically requested by the director, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field.

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 failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work in the industry. 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 relies on the AAO to accept its uncorroborated assertions that the beneficiary possesses specialized knowledge, both prior to adjudication and again on appeal, based merely on the contention that the petitioning entity has employed the beneficiary for one year and he is thus familiar with the petitioner's processes and procedures. These assertions, however, do not constitute evidence. 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)).

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)).¹ As stated by the Commissioner in

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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

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. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. Although the petitioner indicates that the beneficiary received training from the petitioner's own "university," the nature of the training received, and the manner in which such training distinguishes the skills of the beneficiary from other technical consultants in the industry, is unclear.

In this matter, the petitioner continually repeats the claim that the beneficiary's services are essential in order to satisfy the business needs of its clients. However, there is no significant evidence contained in the record that establishes that the beneficiary's services are fundamental to the petitioner's business. For example, the beneficiary's resume, submitted on appeal, indicates that part of his duties consisted of "mentor[ing] new Technical Consultants to ease their transition into [the petitioner]." The petitioner claims that the beneficiary's knowledge is highly specialized and unique, yet despite the director's requests, the petitioner failed to submit any documentation that would distinguish the services provided by the beneficiary from those provided by any of his fellow technical consultants working for the petitioner. Again, the petitioner asserts that the beneficiary has specialized knowledge, yet omits any detail with regard to how this knowledge was obtained, and why his knowledge is different from other similarly trained consultants employed by the petitioner or the industry in general. As previously stated, 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.

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

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.

"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 makes no claim that the beneficiary's knowledge is more advanced than other consultants in the industry, despite the director's specific request for evidence affirming this proposition. There is no evidence to refute the proposition that a technical consultant with comparable experience gained by working with a competitor of the petitioner is not sufficient for this position. No discussion whatsoever has been submitted of the nature of the training and experience that its employees receive that is so different and unique from the training its competitors provide to their technical consultants. Additionally, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other technical consultants. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from that of its other employees. Other than the petitioner's continued assertions that the beneficiary possesses specialized knowledge, there is no independent evidence corroborating these claims. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of technical fabrics as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. 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 specialized knowledge, without submitting any documentation of the training he received or the manner in which the beneficiary gained such knowledge, is insufficient. Although the petitioner generally discusses the petitioner's products or services, the lack of specific information with regard to the beneficiary and his role in these products and services precludes the AAO from clearly understanding the actual role of the beneficiary in the petitioner's organization. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

On appeal, the petitioner submits additional lists of qualifications and duties of the petitioner, but provides no clear argument or objection in opposition of the director's findings. Once again, absent the identification of a specific error on the part of the director and accompanying evidence to establish such a finding, the petitioner has failed to provide any independent or objective evidence which shows that the beneficiary's knowledge of the petitioner's products or processes is so unique or advanced that it differs significantly from other similarly trained engineers in the industry. The petitioner overlooks the fact that the beneficiary is undoubtedly one of many technical consultants in the workforce today. It is fair to conclude that most people employed in this line of work must also have an understanding of the specific industry in which the petitioner is engaged. The petitioner seems to focus on this aspect of the beneficiary's background as the key element of the beneficiary's qualifications. The petitioner does not, however, offer any evidence that the beneficiary has uncommon,

advanced, or proprietary knowledge of the petitioner's unique processes or procedures.² Instead, the argument is that the beneficiary's knowledge of the petitioner's products and processes through his one year of employment with the foreign entity gives him specialized knowledge.

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. 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." *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.").

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 presented, 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.

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.

² Although the fact that a beneficiary has experience with a proprietary product or procedure does not serve as prima facie evidence that the beneficiary possesses specialized knowledge, when such a claim is made, Citizenship and Immigration Services (CIS) must carefully evaluate the claimed knowledge and the depth of the beneficiary's experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D). Thus, while a beneficiary is no longer required to have specialized knowledge, such knowledge can still be a basis for this determination.

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ORDER: The appeal is dismissed.