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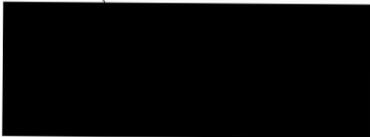
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File: LIN 03 172 54607 Office: NEBRASKA SERVICE CENTER Date: JAN 29 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

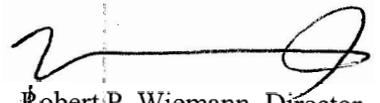
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of senior IT consultant 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, a Washington corporation, states that it is an information technology firm. The petitioner claims to be a wholly-owned subsidiary of the beneficiary's foreign employer, ICE Consulting Services, B.V., located in the Netherlands. The petitioner seeks to employ the beneficiary for a period of one year to open a new office in the United States.

The director denied the petition on June 4, 2003, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

The petitioner subsequently filed an appeal on July 7, 2003. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary is a specialized knowledge employee, and that CIS misapplied current standards set forth in agency memoranda. Counsel for the petitioner explains that the beneficiary is a "key team member" and "essential to the project" that the United States company will continue to execute within the United States. Counsel asserts that the beneficiary has obtained substantial experience with the foreign company's applications and modules, and the beneficiary is important to the company's productivity and competitiveness, and "it would be very difficult, if not impossible, to obtain another employee who would have the same depth of knowledge of these systems." Counsel submits a brief and a letter in support of the appeal.

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.

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:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The nonimmigrant petition was filed on May 5, 2003. In a letter dated April 29, 2003, submitted with the petition, the petitioner explains that the United States company has a major contract with [REDACTED] and the foreign company has been involved with the global information technology and integration program for this company since 1999. Since the petitioner now wishes to provide services to the [REDACTED] company within the United States, it wishes to transfer the beneficiary to provide his consulting services in the United States. In addition, the petitioner provided the following description for the beneficiary's proposed position as a senior IT consultant in the United States:

To ensure that the services provided by [the U.S. entity] are consistent with those provided by [the foreign company], the company would like to transfer a Senior IT Consultant to the United States. The Senior IT Consultant will be responsible for providing highly specialized IT consulting services, overseeing project implementation, and supervising/mentoring junior

team members. More specifically, the Senior IT Consultant's services will include the following:

- Business process modeling;
- IT system design and realization;
- Software development and testing;
- User training;
- Data conversion and migration;
- Interface development;
- Post-implementation services and customer support;
- Training and mentoring junior team members; and
- Business process change management.

To complete the above duties, the Senior IT Consultant must have specialized knowledge of the services offered by [the foreign company], as well as the company's techniques and management. [The petitioner's] services are typically aimed at the integration of the client's IT systems throughout all of its operations, including internationally for clients that do business on an international basis.

In addition, the petitioner explained in the support letter the beneficiary's qualifications for the position of Senior IT consultant in the United States as the following:

[The beneficiary] is very well qualified to serve as Senior IT Consultant. He has a bachelor's degree in Computer Science and master's degree in Technology and Society, as well as more than four years of experience in the area of IT consulting and software systems development and implementation.

[The beneficiary] has been employed by [the foreign company] since October 2000. In his current position as Senior IT Consultant, he performs the duties described in Section III above [the above-mentioned duties]. As a result of his employment with [the foreign company], [the beneficiary] has gained specialized knowledge of the customized and technical services [the foreign company] provides to its clients. He is very familiar with [the foreign company's] services in the area of ERP software and he understands the company's IT development and implementation techniques and its management systems. Specifically, [the beneficiary] has worked for 3 year(s) and 4 months on system development and implementation for [the foreign company's] client, Philips, and has an in-depth understanding of the services [the foreign company] is providing to Philips, with a specific focus on the area of the sales and distribution process.

On May 9, 2003, the director issued a notice requesting additional evidence in order to process the petition. Specifically, the director requested: (1) evidence that the beneficiary possesses specialized knowledge of the petitioner's service, research, equipment, techniques, management, or other interests and application in international markets, or an advanced level of knowledge or expertise in the petitioner's organization's processes and procedures; and (2) evidence that the beneficiary's knowledge is uncommon, noteworthy or

distinguished by some unusual quality and not generally known by practitioners in the field. The director also requested evidence to establish that the beneficiary's knowledge of the processes and procedures of the petitioner is apart from the elementary or basic knowledge possessed by others, and an explanation of why the beneficiary's knowledge is necessary for the project in the United States.

In response, the petitioner submitted a letter, dated May 20, 2003, responding to the director's request. In response to the director's request for evidence establishing that the beneficiary's knowledge is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field and that this knowledge is apart from the basic knowledge possessed by others, counsel for the petitioner asserted the following:

First, [the beneficiary] has lengthy and extensive experience in the development and implementation of integrated IT solutions, specifically for supply chain and sales logistics processes in complex manufacturing environments such as the capital goods industry. [The beneficiary] has acquired a great deal of this highly specialized experience while employed by [the petitioner]. Specifically, during his employment with [the foreign company], [the beneficiary] has worked in the following areas, which are relevant to his proposed work in the United States:

- Developed and implemented numerous supply chain management applications.
- Developed and implemented integrated applications and interfaces between factories and sales offices for demand planning and forecasting, demand management, sales order workflow, and change and cancellation processes.
- Developed and implemented modules for sales pricing, discount models, and sales contracts.
- Developed and implemented integrated applications for selling configurable products, i.e. products which consist of a large number (up to 10,000) of components, modules, options and sub-assemblies.

The petitioner further explains that the beneficiary is part of the team "working on the development and global deployment of work-class business practices and processes supported by advance Information Technology for Philips." The team consists of 35 employees and the beneficiary is one of the "senior members of the team." The petitioner asserts that the beneficiary "has been the architect and developer of products and modules developed for [the foreign company] that are not being extended and implemented for Philips." The petitioner further asserts that the beneficiary has "in-depth knowledge of [the petitioner's] methods and tools, which are trade secrets and unique to [the petitioner]." Finally, the petitioner asserts that the beneficiary's knowledge is necessary to his work in the United States since he has played a leadership role "with regard to the services, products and technology we are offering to Philips in the area of sales and distribution applications and modules."

On June 4, 2003, the director denied the petition concluding that the petitioner did not establish that the position of senior IT consultant requires someone with specialized knowledge, or that the beneficiary has such knowledge. The director noted that the petitioner did not demonstrate that the petitioner's processes and

procedures are significantly different from the methods generally used by other information technology companies.

On appeal, counsel for the petitioner asserts that the position requires specialized knowledge in order to successfully perform the duties required of the position. Counsel for the petitioner states that the petitioner has satisfied the factors utilized to determine specialized knowledge as outlined in a legacy Immigration and Naturalization Service (INS) memoranda. See Memorandum from James A. Puleo, Acting Exec. Assoc. Comm., INS, *Interpretation of Special Knowledge* (March 9, 1991) (“Puleo Memo”). Specifically, counsel asserts that the beneficiary meets the requirements set forth in the Puleo memorandum in that he possesses (1) knowledge valuable for competitiveness; (2) unusual knowledge of foreign operating conditions; (3) experience with significant assignments abroad that were beneficial to the employer; and (4) knowledge that can only be gained with the employer or which can not be easily transferred.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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 job description of the services to be performed sufficient to establish specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary’s proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated any basis to support this claim. The petitioner has provided a description of the beneficiary’s proposed responsibilities as a senior IT consultant. However, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary’s role from that of other information technology consultants employed by the petitioner or the computer industry at large. Going on record without 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)). Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In addition, contrary to the assertions of counsel and the petitioner, there is no evidence on record to suggest that the computer programming processes and SAP technology utilized by the petitioner is different from those applied for any information technology position. In addition, the petitioner has not explained how the knowledge of the petitioner’s applications and modules amounts to specialized knowledge, particularly since the system is built upon the SAP technology, which is commonly used by computer programmers and system administrators in the industry. While individual companies might develop a computer system tailored to its own needs and internal quality processes or its clients needs, it has not been established that there would be substantial differences such that knowledge of the petitioning company’s processes and quality standards would amount to “specialized knowledge.”

In addition, there is no evidence in the record that the beneficiary has received specific in-house training that would have imparted him with the claimed “advanced” knowledge of the company’s processes,

procedures and methodologies. 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)).

Based on the above, the AAO concurs with the director's conclusion that the petitioner has failed to demonstrate that the beneficiary has acquired specialized knowledge as defined in the statute and regulations.

The AAO does not dispute the likelihood that the beneficiary is an information technology consultant who understands SAP technologies and is able to apply it within the context of the petitioner's specific 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*

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*.

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” 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)).

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. v. Attorney General*, 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.”)

Further, although the L-1B visa classification does not require a test of the U.S. labor market for available workers, the Puleo memo cited by counsel allows CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating

petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” *Memo, supra*. A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties.

The record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other information technology consultants. The petitioner has not established that the beneficiary has been trained in and has participated in developing proprietary methodologies for the petitioner. The beneficiary is claimed to have “advanced” knowledge of the company’s business processes, procedures and methodologies, as well as “specialized knowledge” in the intricate software created by and utilized by the company. However, as the petitioner has failed to document any specific training, or otherwise describe or document the purported knowledge, these claims are not persuasive.

The AAO does not dispute that the petitioner’s organization, like any information technology consulting company, has its own internal information systems processes and methodologies. However, there is no evidence in the record to establish that the beneficiary’s knowledge of these systems processes and methodologies is particularly advanced in comparison to his 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, or that the U.S. position offered actually requires someone with the claimed “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 him from any other similarly employed information technology consultant within the petitioner’s group or within the industry. 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.

Counsel’s reliance on the Puleo memorandum is misplaced. It is noted that the memoranda were intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. By itself, counsel’s assertion that the beneficiary’s qualifications are analogous to the examples outlined in the memoranda is insufficient to establish the beneficiary’s qualification for classification as a specialized knowledge professional. While the factors discussed in the memorandum may be considered, the regulations specifically require that the beneficiary possess an “advanced level of knowledge” of the organization’s processes 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 discussed above, the petitioner has not established that the beneficiary’s knowledge rises to the level of specialized knowledge contemplated by the regulations.

In sum, the beneficiary’s duties and technical skills, demonstrate knowledge that is common among professionals working in the beneficiary’s specialty in the information technology field. The petitioner has

failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company's processes is more advanced than the knowledge possessed by others employed by the petitioner, or that the processes and systems used by the petitioner are substantially different from those used by other large insurance companies. The AAO does not dispute the fact that the beneficiary's knowledge has allowed him to successfully perform his job duties for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as possessing special or advanced knowledge or as a "key personnel," nor does it establish employment in a specialized knowledge capacity. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the beneficiary's field of endeavor, or that his knowledge is advanced compared to the knowledge held by other similarly employed workers within the petitioner and the foreign entity.

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.

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.

ORDER: The appeal is dismissed.