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U.S. Citizenship
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Services

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File: LIN 05 248 51899 Office: NEBRASKA SERVICE CENTER Date: **MAY 01 2007**

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

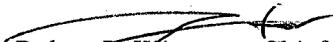
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF BENEFICIARY:



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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of flight information analyst 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 a provider of global flight information and claims a qualifying relationship as an affiliate with [REDACTED]. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that (1) the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge; or (2) the beneficiary has been employed for one year abroad in a position which involved specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of the petitioner's "Airport Mapping Database (AMDB) which serves as the foundation for the proprietary [REDACTED] application found in [REDACTED]". Counsel further asserts that the petitioner is excused from establishing that the beneficiary actually possessed specialized knowledge during her one-year period of overseas employment because the statute and regulations only require that beneficiaries have worked in positions which "involved" specialized knowledge. As the record establishes that the beneficiary was employed by the foreign entity for approximately 14 months prior to the filing of the petition, counsel asserts that this is sufficient to establish that the beneficiary was employed in a position which "involved" specialized knowledge even if the beneficiary spent part of her first 14 months of employment acquiring the "specialized knowledge" she now seeks to apply in the United States.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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 first issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity in the United States.

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 petitioner described the beneficiary's proposed job in the United States as "flight information analyst – geospatial data management" as follows:

[The beneficiary] will be responsible for analyzing new aeronautical navigation (source) documents and determining the effect on print and electronic publications and/or automated airborne navigation systems; resolving questions concerning source data; reconciling data, notating changes and corrections; and validating the accuracy of changes to source documents, as directed.

Essential functions include:

- Maintains an accurate and complete record of all amendments and final changes to the Aeronautical Information Publications (AIPs), as directed.
- Records clarifications and decisions made about errors discovered within source documents issued by the Civil Aviation Authority (CAA) and in compliance with the

DO200A standard.

- Compiles NavData Notices to Airmen (NOTAM) in compliance with process criteria, NOTAM style guides, use of the NOTAM templates, and printing cut-off schedules.
- Performs mathematical calculations in compliance with [REDACTED] specifications, to eliminate or correct variances in source data for internal products and services, or to support Flight Management Systems (FMS) operations, as directed.
- Modifies data within the [REDACTED] in compliance with Jeppesen's Data Capture specifications, ISO, and DO200A documentation requirements.
- Compiles internal Information Control Bulletins (ICB).
- Maintains records of specific source documents.
- Resolves problems and questions concerning source documents through contact with foreign and domestic aviation authorities, as directed.

On September 1, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. The director requested, *inter alia*, evidence regarding when, exactly, the beneficiary first obtained her "specialized knowledge" given that she commenced employment with the foreign entity on July 1, 2004. The director also indicated that the petitioner must provide evidence establishing that the beneficiary's knowledge was uncommon, noteworthy, or distinguished by some unusual quality and not generally known by other practitioners in her field, or that the beneficiary's knowledge of the processes or procedures was advanced.

In response, the petitioner provided an affidavit dated October 3, 2005. In that affidavit, the petitioner provided further detail regarding the beneficiary's purported specialized knowledge as follows:

[The beneficiary] has acquired specialized knowledge in [REDACTED] [REDACTED] which serves as the foundation for the proprietary Airport Moving Map (AMM) application found in [REDACTED]. There are over 300 airports globally in the [AMDB] which serves as a ground-based application that provides its users the most accurate, industry compliant and up to date information commercially available. This data is currently being used by pilots planning take-offs and landings, and for airport reference as a situational awareness feature on the most start-of-the[-]art commercial aircraft in today's industry.

The petitioner also explained in the affidavit that the beneficiary's knowledge is both proprietary and confidential and gave details regarding the timing of the beneficiary's acquisition of specialized knowledge:

[The beneficiary] had previous professional experiences with these documentation process tactics, but learned [the foreign entity's] process on-the-job and achieved subject matter expertise in her first 6 months of employment in Germany, in large part due to her own impressive initiative.

Counsel also provided a letter dated October 7, 2005 in which she asserts the following:

[The beneficiary's] knowledge, described in the employing petitioner's exhibits, satisfies the statutory and regulatory definitions of "specialized." Neither the statute nor regulations mandate any particular time period during which an individual may acquire specialized knowledge; the wording of the statute and regulations indicates that specialized knowledge may be acquired in one year or less of work abroad. [The beneficiary] meets the one year statutory period of work abroad.

On October 18, 2005, the director denied the petition concluding that the petitioner failed to establish that beneficiary has been or would be employed in a specialized knowledge capacity or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the beneficiary has specialized knowledge of the petitioner's "Airport Mapping Database (AMDB) which serves as the foundation for the proprietary Airport Moving Map (AMM) application found in [REDACTED]." Counsel further asserts that the petitioner is excused from establishing that the beneficiary actually possessed specialized knowledge during her one-year period of overseas employment because the statute and regulations only require that beneficiaries have worked in positions which "involved" specialized knowledge. As the record establishes that the beneficiary was employed by the foreign entity for approximately 14 months prior to the filing of the petition, counsel asserts that this is sufficient to establish that the beneficiary was employed in a position which "involved" specialized knowledge even if the beneficiary spent part of her first 14 months of employment acquiring the "specialized knowledge" she now seeks to apply in the United States. Counsel also submits additional evidence as follows: (1) a supplemental affidavit providing further details regarding the beneficiary's purported specialized knowledge; and (2) a training record for the beneficiary's first two months of employment.¹

¹It must be noted that the director requested additional evidence on September 1, 2005. As explained above, the director specifically indicated that the petitioner must establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by other practitioners in her field, or that the beneficiary's knowledge of the processes or procedures is advanced. The director also requested information regarding the beneficiary's training while employed by the foreign entity. Therefore, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence, i.e., the supplemental affidavit and the training schedule, for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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. In this case, while the beneficiary's job description adequately describes her duties as an aviation analyst, the petitioner fails to establish that this position requires an employee with specialized knowledge.

Although the petitioner repeatedly asserts that both the beneficiary's proposed position in the United States and the position in Germany require "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other aviation analysts employed by the petitioner, by the foreign entity, or in the 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

Counsel asserts that the beneficiary possesses specialized knowledge of the petitioner's "Airport Mapping Database (AMDB) which serves as the foundation for the proprietary Airport Moving Map (AMM) application found in [REDACTED]." In support of this argument, the petitioner relies heavily on its position that this knowledge is proprietary and that it can only be gained through prior experience with the foreign entity or the petitioner. However, despite this assertion, the record does not reveal the material difference between the skills and knowledge needed to work with the petitioner's systems and similar systems in the industry. While the petitioner asserts repeatedly that the beneficiary gained her knowledge through training and experience, the record does not establish that the beneficiary's knowledge is different from the knowledge of aviation analysts generally throughout the industry or possessed by other employees of the petitioner. The proprietary qualities of the petitioner's systems do not by themselves establish that any knowledge of these systems is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary systems require employees to have knowledge beyond what is common in the industry. The record does not contain this crucial evidence.

The petitioner argues that its systems are proprietary and that certain knowledge could only be gained by working for the petitioner or the foreign entity. However, the petitioner provides no evidence to support this assertion and admits in its October 3, 2005 affidavit that the beneficiary acquired the purported specialized knowledge "in her first 6 months of employment." Like any well-kept secret, it is likely that there are certain aspects to this, and all, proprietary systems which are known only by certain employees. However, this does

the record of proceeding before the director.

not establish that this knowledge is "specialized" for purposes of this visa classification. The petitioner cannot manufacture specialized knowledge by not sharing information with others. Rather, the petitioner must establish that the beneficiary's knowledge is specialized because she gained the knowledge through extensive training or experience which could not easily be transferred to another employee. In this matter, the petitioner has not proven that the beneficiary's knowledge of the systems is materially different from that possessed by similar employees with experience with similar systems. The fact that other aviation analysts may not have very specific, proprietary knowledge regarding the petitioner's systems is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired employee. As the record indicates that the purported specialized knowledge could be imparted to a similarly educated, experienced, and motivated aviation analyst in less than six months, the petitioner has not established that the knowledge is indeed specialized for purposes of this visa classification.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioner. 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)). 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 firm's operation.

Id. at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor

market, but also between 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. 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 subcommittee 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.")

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs 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." Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). 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.

As explained above, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other people employed by the petitioner, by the foreign entity, or by aviation analysts employed elsewhere. As the petitioner has failed to document any materially unique qualities to the petitioner's proprietary systems, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other aviation analyst or that she has received special training in the company's methodologies or processes which would separate her from any other aviation analysts employed with the foreign entity, the petitioner, or elsewhere.

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 would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established that the beneficiary has been employed in a specialized knowledge capacity abroad for the requisite one-year period. *See 8 C.F.R. § 214.2(l)(3)(iv)*.

In a letter dated August 18, 2005 appended to the initial petition, the petitioner described the beneficiary's job duties abroad as an "assistant aviation information analyst – geographic information system" as follows:

[The beneficiary] has been responsible for generating maps for an aviation application that is ultimately used in aircraft cockpits. Her essential duties have included responsibility of validating and performing quality assurance checks on aviation map data. Other responsibilities include, but are not limited to:

- Validating the integrity of airport data that is leveraged in making aviation maps;
- Processing satellite imagery that is also used in making aviation maps;
- Ensuring airport data integrity;
- Analyzing and implementing source information supplied from international governments and airport authorities for updating airport map data; and
- Communicating production issues between Denver and Frankfurt offices.

The petitioner failed to establish that the beneficiary possesses the requisite overseas employment for two

reasons.

First, for the same reasons articulated above, the petitioner has not established that the beneficiary was employed in a specialized knowledge capacity or that she possessed specialized knowledge. As explained previously, the petitioner has failed to establish that the beneficiary's knowledge of the foreign entity's proprietary systems constitutes a specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other aviation analysts employed by the petitioner, the foreign entity, or in the industry at large.

Second, even if the knowledge described by the petitioner could be classified as "specialized," the record clearly establishes that the beneficiary has not been employed in a specialized knowledge capacity for the requisite one-year period. *See* 8 C.F.R. § 214.2(l)(3)(iv). The record indicates that the beneficiary commenced her employment on or about July 1, 2004. The current petition was filed on August 25, 2005. In response to the director's Request for Evidence in which he specifically asked when the beneficiary acquired her "specialized knowledge," the petitioner responded in the affidavit dated October 3, 2005 that the beneficiary "achieved subject matter expertise in her first 6 months of employment in Germany." Therefore, as the beneficiary did not acquire specialized knowledge until approximately January 1, 2005, the petitioner has not established that the beneficiary has been employed abroad for one year in a position involving specialized knowledge.

On appeal, counsel makes the argument that the statute and regulations only require the petitioner to establish that the beneficiary has been employed abroad for one year in a position which "involved" specialized knowledge and, consequently, that there is no requirement that the petitioner actually establish that the beneficiary possessed specialized knowledge during that one-year period. Counsel does not cite any authority for her argument and, upon review, counsel's argument is not persuasive. Section 214(c)(2)(B) of the Act clearly defines "specialized knowledge" as follows:

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.

Section 214(c)(2)(B), 8 U.S.C. § 1184(c)(2)(B). This statute does not distinguish between being employed in a specialized knowledge capacity and being employed in a capacity involving specialized knowledge. The two characterizations of "specialized knowledge" are the same. Title 8 C.F.R. § 214(l)(3)(iv), in requiring that beneficiaries have been employed abroad in positions involving specialized knowledge, in effect requires the petitioner to establish that the beneficiary actually possessed and applied this specialized knowledge for at least one year abroad.

Therefore, in this matter, the petitioner has not established that the beneficiary has been employed abroad in a position involving specialized knowledge for at least one year because the beneficiary did not first acquire the purported specialized knowledge until approximately 8 months prior to the filing of the petition. The fact that the beneficiary was employed by the foreign entity for 6 months prior to her acquisition of the purported

specialized knowledge, thus bringing her total months of employment up to 14 months, will not fulfill the requirement in 8 C.F.R. § 214.2(l)(3)(iv) even if those 6 months were spent acquiring the purported specialized knowledge. The requisite one-year period of employment in a position involving specialized knowledge does not commence until the beneficiary actually acquires and applies the purported specialized knowledge.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.