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FILE: EAC 03 136 52285 Office: VERMONT SERVICE CENTER Date: OCT 04 2007

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

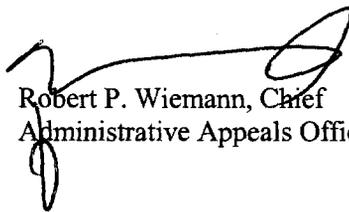
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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, a New York corporation, claims to be engaged in computer software development for the banking industry. 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 pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director determined that the petitioner had not established that (1) the beneficiary had possessed specialized knowledge; or (2) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. 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's software is proprietary and, as a result, the beneficiary's knowledge of the software is, by definition, specialized knowledge specific to the petitioning organization. Counsel submits a brief in support of these assertions.

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 gained specialized knowledge during his employment abroad and was thus employed in a specialized knowledge position; 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.

In a letter dated March 27, 2003, the petitioner advised that the beneficiary had been employed by the foreign entity as a technical consultant since July 5, 2000. With regard to his credentials, the petitioner stated that the beneficiary obtained a bachelor's degree in computer science from the University of Madras in 1999,¹ in addition to a higher diploma in software engineering from Aptech in Madras. The petitioner concluded by stating that the beneficiary had been employed in the area of computer software and financial/banking software systems for over four years.

Regarding the beneficiary's qualifications and proffered position, the petitioner stated:

[The beneficiary] began his employment with [the foreign entity] as a Technical Consultant on July 5, 2000. He was recruited for this position with the responsibilities of performing functional and technical specifications for additions and enhancements to the [the company's] software and to provide services associated with pre- and post-sales. In particular, he handles settlement procedures from various transactions, and supports and coordinates with QA, documenting the new functionality, integrated testing and analysis. He is also responsible for ensuring the quality of coding and testing of specific products and keeping contacts with [the company's] development groups worldwide to ensure a standard global product and answer technical and functional queries.

¹ The AAO notes that the copy of the beneficiary's diploma submitted in the record indicates that his degree is in physics, not in computer science as claimed by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Throughout his employment with [the foreign entity], as an employee with proprietary knowledge of our international operations, [the beneficiary] demonstrated considerable skill in improving [the company's] banking software product. His unique understanding of [the company's] technical objectives, organizational structure and product offerings will enable him to work effectively with both our U.S. based development organization and our international subsidiaries in the successful promotion of our products. In addition, [the beneficiary] has demonstrated considerable expertise in the area of decision making and problem solving in the area of banking software products.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and would be employed in the United States in a position that required specialized knowledge. Consequently, a detailed request for evidence was issued on May 8, 2003, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director requested documentary evidence of what exactly the beneficiary possessed specialized knowledge, including a statement as to whether other companies in the industry used similar methodologies. In addition, the director requested information pertaining to the training the beneficiary received while employed by the foreign entity, as well as a definitive estimate of how the beneficiary actually acquired this specialized knowledge.

The petitioner, through counsel, responded on July 10, 2003. First, counsel clarified that the beneficiary held advanced knowledge of the processes and procedures of the company's unique software system called GLOBUS, which was the result of a one-year training course in the petitioner's Development Center in India. Counsel further stated that generally, it took approximately one year to train employees in GLOBUS, and that the company had several workers that were similarly trained. In fact, counsel claimed that all technical consultants for the company received or will receive the same training as the beneficiary. Finally, counsel explained that as a result of the U.S. entity's offices being destroyed in the September 11, 2001 terrorist attacks, the petitioner did not have the time or resources to train consultants in GLOBUS, and its attempts to recruit qualified employees in the United States were fruitless. Counsel concluded by explaining that GLOBUS is a proprietary software product owned exclusively by the petitioner, and that only employees of the petitioner and its affiliates possess knowledge of the software.

Counsel also submitted a press release dated May 7, 2002, which provided the following overview of GLOBUS:

GLOBUS is an integrated, modular international banking system with full functionality, including retail and wholesale banking, trade finance, and treasury modules. It supports multi-company and multi-bank environments and is truly global in scope, incorporating both multi-currency and multi-lingual capabilities. In addition, GLOBUS contains robust risk management and security features that provide a flexible, user-friendly environment while allowing institutions to have complete control over their financial systems.

Upon review of the evidence submitted, the director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of technical consultant required an employee

with specialized knowledge as defined by the regulations. 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 persons in the industry. On appeal, counsel for the petitioner contends that the director erred in the denial, and that by definition, the beneficiary's knowledge is specialized because it pertains to a proprietary software system.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the proposed employment would be in a specialized knowledge capacity.

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

In the present matter, the petitioner provided a detailed description of the beneficiary's employment in the foreign office and his responsibilities as a technical consultant. However, despite this detailed overview, the petitioner failed to provide evidence regarding what exactly set the beneficiary's knowledge apart from other similarly trained technical consultants in the field and the exact nature of the training he had received to set him apart from other similarly qualified individuals in the petitioner's organization or in the industry at large. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. In fact, the overview of duties suggests that the beneficiary occupies a position similar to that of many other similarly-trained employees within the petitioning entity. The petitioner provides no additional information as to why no other similarly trained or qualified individual could perform the same duties.

Despite counsel's contention on appeal that the beneficiary possesses specialized and advanced knowledge of the petitioner's proprietary GLOBUS software, there is insufficient evidence to conclude that this factor alone attributes him with specialized knowledge. 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.²

More importantly, however, is the fact that the record is devoid of evidence of any training that the beneficiary received during his employment with the petitioner. While the petitioner claims that the beneficiary received one year of training at the petitioner's Development Center in India, no documentary evidence of this training, such as classroom agendas, outlines, or certificates, has been submitted. Furthermore, the claim that the beneficiary allegedly received specialized and advanced knowledge of critical

² While a beneficiary is no longer required to have proprietary knowledge, such knowledge can still be a basis for this determination. Thus, contrary to counsel's contentions, 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, however, 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(1)(1)(ii)(D).

aspects of the petitioner's software systems during his employment, without specific documentation explaining the manner and nature of this training, is subject to scrutiny. Although the beneficiary has worked for the foreign entity since July 2000, there is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique to the petitioner which other similarly-trained persons could not have gained from working in the industry in general.

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 with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of his colleagues. No documentation was submitted that distinguishes the beneficiary from other technical consultants 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 possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions 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)).

The petitioner provides no evidence of any training received by the beneficiary, and implies, essentially, that his formal training was received at the beginning of his employment, and expanded through his employment abroad. Furthermore, the petitioner fails to specifically clarify how the beneficiary possesses specialized knowledge of a methodology, application or process of the petitioner merely by being familiar with the GLOBUS software. Although the petitioner claims that the beneficiary is familiar with GLOBUS, a claimed proprietary software of the petitioner, there is no evidence to support a finding that this software is in fact a proprietary product of the petitioner. As a result, absent evidence to the contrary, there is nothing to suggest that other similarly-qualified persons in the industry, particularly those who hold the position of technical consultant in a software company specializing in the banking sector, are not equally familiar with this software or one like it. There is no additional evidence, other than the May 7, 2002 press release, an advertisement, a document entitled "product overview," and an internet article, describing GLOBUS, the length of time it has been in use, or the manner in which employees receive training in this system. There is also no indication in the record that a similarly-trained person, with a degree in computer science (or physics, as the beneficiary's diploma states) four years of experience in the industry, is not equally familiar with this software application and could not perform the same duties. The petitioner provides no evidence of specific training or instruction received by the beneficiary in methodologies used by the petitioner in his employment abroad. Furthermore, supporting documentation indicates that the software is currently implemented in over 100 banks worldwide. Consequently, it would stand to reason that considering this widespread use of the software, persons other than employees of the petitioner would be familiar with it. Regardless, the fact remains that the record does not demonstrate that the beneficiary possesses specialized knowledge of any process or methodology used and implemented by the petitioner. While his extensive familiarity with the petitioner's software certainly makes him a valuable asset to the company, there is nothing to suggest, other

than a brief claim in the response to the request for evidence, that the beneficiary acquired specialized knowledge of any special or advanced methodology or procedure in the time he has worked for the petitioner. Furthermore, there is no evidence, aside from a claim of hardship, that the U.S. entity could not hire and train similarly-qualified persons to perform the beneficiary's duties. In conclusion, there is no evidence to show that the beneficiary's employment abroad, and alleged one year of training, has resulted in specialized knowledge of something special or advanced which other similarly-trained persons could not have gained from working for the petitioner or in the industry in general.

In this case, the petitioner and counsel rely on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions 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)). Furthermore, counsel and the petitioner ignore the fact that the chief basis for the director's denial was the petitioner's failure to discuss the nature and extent of training required to perform the duties of the beneficiary. Without definitive evidence as to the nature and more specifically the length of time required to train a person for the duties of the position, the petitioner has failed to satisfy the burden of proof in this proceeding. Merely claiming that an average of one year, depending on the person's qualifications, is what is needed to train a person is insufficient for purposes of this analysis. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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)).³ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

³ 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 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.

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 an educated and/or skilled worker. Moreover, the petitioner's failure to submit an overview of the beneficiary's training or the nature in which he acquired specialized skills that set him apart from others creates a presumption of ineligibility. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that he apparently receives the exact same training as all other technical consultants employed by the petitioner. Absent evidence to the contrary, it appears that all technical consultants in the banking industry in general would receive similar training as well, thereby weakening the claim that the beneficiary's knowledge is advanced and specialized in comparison to others. Again, since the petitioner has failed to demonstrate a specific methodology or process unique to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by simply working as a technical consultant for the petitioner.

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

On appeal, counsel for the petitioner requites many of the previously-submitted statements relating to the beneficiary's qualifications, and claims that based on the fact that the petitioner's GLOBUS software is proprietary, the beneficiary by definition possesses specialized knowledge. The AAO finds these contentions unpersuasive. As previously discussed, the petitioner has submitted no independent evidence of the training and/or the length of time it took for the beneficiary to gain this alleged special or advanced knowledge of the petitioner's software. Nor has the petitioner submitted independent evidence to demonstrate that the GLOBUS software is indeed proprietary. This lack of tangible evidence makes it impossible to classify the

beneficiary's knowledge of the petitioner's business products and procedures 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. Furthermore, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The claim that the beneficiary has specialized knowledge remains unsupported due to the failure of the petitioner to submit any documentation that the alleged training and/or on-the-job experience he received in his employment abroad made him an expert in the areas claimed. 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 petitioner 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). Mere skill and knowledge in the sector in general does not constitute specialized knowledge for purposes of this matter. As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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, was not employed abroad in a position involving specialized knowledge, and would not be employed in a capacity requiring specialized knowledge. For these reasons, 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.