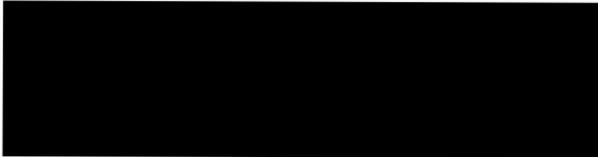


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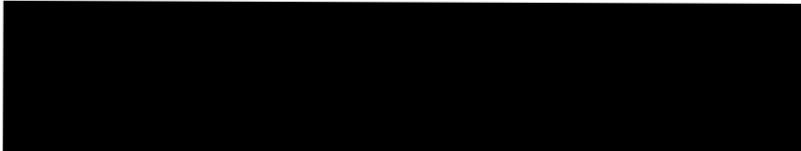
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IN RE: Petitioner:  
Beneficiary:



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 petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on September 8, 2006, the AAO rejected the appeal as untimely. On October 5, 2006, the petitioner filed a motion to reconsider the AAO's decision. The motion will be granted and the AAO will reconsider its decision. Upon a full review of the record, the AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of software engineer as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is an Ohio corporation, which claims to be in the business of "information systems, development [and] consulting." 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 the beneficiary will be employed in the United States in a capacity involving specialized knowledge or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in the United States in a specialized knowledge capacity.

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.

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 primary issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity involving specialized knowledge. 8 C.F.R. § 214.2(l)(3)(ii).

The petitioner claims in a letter dated December 3, 2004 that the beneficiary has been employed by the foreign entity for approximately 22 months as a software engineer. The petitioner describes the beneficiary's duties abroad and prospective duties in the United States as follows:

[The beneficiary] has successfully managed key aspects of the education software component activities of [the foreign employer]. This division, which is essential to the success of [the] enterprise, consists of the Gateway and Center Point applications. Both [of] these products are intended to enhance the ability of school systems to monitor and improve the academic performance of students. Gateway is an educational tool currently being introduced in Indian schools to develop preparedness for university entrance examinations. Center Point is a much more ambitious and comprehensive product designed for the U.S. educational environment. The purpose of this application is to collect and manage, in a single user-friendly platform, all data relevant to academic performance, ranging from attendance, to test scores, to curriculum content.

[The beneficiary's] responsibilities in her current position include requirement analysis, design, test planning, customization, development and Quality Assurance for various modules of the Center Point application being developed by our organization. She is specifically working on Microsoft web development environment Microsoft .Net Framework, XML,ASP,SQL SERVER 2000, CRYSTAL REPORTS in Windows XP/2000 platform. [The beneficiary] also involves [sic] in the database store procedures design and development and extensively involved in optimizing the database programs for improving the efficiency of the Center Point system. [The beneficiary] also involves [sic] in the team quality review

meetings as a key process owner to ensure that the product development is as per the ISO 9001:2000 standards followed by the company. [The beneficiary] will also participate in training our clients in [sic] on various modules as well as processes required for smooth operations of various systems. The proprietary knowledge of [the beneficiary] has gained at [the foreign employer] will [be] of great help since our customers will also be migrating to processes used at [the petitioning organization] to achieve higher productivity and operations ease, which will enable them to keep costs low.

\* \* \*

[The petitioning organization] has devoted more than \$3 million USD to the development of the Center Point product. We are anticipating that approximately 50% of our business revenue will flow from this product. Our plan is that Center Point will capture a \$50 million USD market in the United States. Center Point is now a finished product, which we are ready to market and deploy in the United States. In the course of deploying this complex application in school systems throughout the United States, extensive further development, enhancement, customization, modification, and servicing of this product will be necessary, in close coordination with our base of school system clients.

Drawing on her extensive knowledge of the Center Point product, [the beneficiary] will be responsible for executing the continued development and deployment of this application in the United States. Working from our Columbus headquarters, she will continue to exercise complete development and customization activities of the product. She will also work in the installation, modification, and servicing of the product as it is installed in school systems throughout the United States.

[The beneficiary] will exercise a high degree of discretion in the performance of her duties; she will manage the activities described and she will function in a software engineer capacity; and she will report directly to [the] Vice President of IT Services.

On December 13, 2004, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's duties abroad and in the United States, evidence establishing that the knowledge in question would be difficult to impart to another individual without significant economic inconvenience to the petitioning organization, and evidence distinguishing the beneficiary's knowledge from that possessed by similarly employed workers.

In response, the petitioner submitted a letter dated March 4, 2005 in which it indicates that the beneficiary will perform the same duties in the United States as she did in India. The petitioner also attempts to distinguish the beneficiary's knowledge from that of other similarly employer persons as follows:

The Center Point product is proprietary, being copyrighted in the U.S. and India. *It consists of almost 1 million (999,886) lines of computer code.* It is written in and uses Visual Basic, Active Server Pages, XML, Java Script, SQL Server 2000, Windows 2000 server, and IAS.

There is no direct competition for our product. The project deals with Integrated District Management framework for the grades K-12 sector and is highly customizable and scalable up to a state wide system. Due to the complexity of the framework and the type of modules that are designed in the application, it is not possible for any one to replace the business matter expertise and technical knowledge of [the beneficiary] for this position.

[The petitioning organization] does have about 25 employees who are involved in the complete Software development life cycle of Center Point product, but among the entire staff [the petitioning organization] has ONLY TWO employees who are expertise [sic] with the necessary components of Database Concepts from Data Flow Diagram, E-R Diagrams, Database modeling, Database design and Database tuning including modifying stored procedures etc. [The beneficiary] is the person who maintains the DB for the project and customizes them to the client's requirement and she is the person who works with the Center Point from the beginning of the project, understands the need, and makes the project develop and go forward.

[The] requirements from the clients in the U.S. office require one expert to work with the U.S. clients directly on-site at our Columbus office.

[The petitioner] is planning to conduct Beta release during fall of 2005. Enclosed is a copy of [the petitioner's] confidential business plan for Center Point. As [the beneficiary] was working in the Center Point project since January 2003, she understands the clients' needs, and through her expertise she can provide feasibility testing immediately and explain to them whether it is possible to change the coding according to the specifications. As soon as she lands in [the] U.S. she will be handling the customer requirements and her presence is very critical for the Beta release of our product.

The knowledge of Center Point is different from the knowledge possessed by other IT professionals. Center Point is a district wide K12 Performance and Accountability management system. Center Point is designed on an Integrated District Management Framework (IDMF), and has been designed and developed to capture several federal, state and district requirements including No-Child Left Behind (NCLB) Act. Center Point is a unique technology solution. There is a tremendous difference between someone with the knowledge that is gained by engineering Center Point, compared with any other technical resource in the IT industry.

(Emphasis in original).

Finally, the petitioner asserts that "[t]raining another person on par with [the beneficiary's] caliber who can understand the intricacies of the product will take at least 1-2 years."

On March 9, 2005, the director denied the petition. The director concluded that the petitioner failed to

establish that the beneficiary will be employed in a capacity involving specialized knowledge or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in the United States in a specialized knowledge capacity.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in a position involving specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) or that the beneficiary possesses specialized knowledge. The record is also not persuasive in establishing that the beneficiary was employed abroad in a capacity involving specialized knowledge for the requisite one-year period.

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). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge. In this matter, the petitioner fails to establish that this position requires an employee with specialized knowledge or, even if it does, that the beneficiary has been employed in a specialized knowledge capacity for the requisite one-year period abroad.

Although the petitioner repeatedly asserts that the beneficiary's position requires "specialized knowledge" and that the beneficiary had been employed abroad in a "specialized knowledge" capacity, 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 similarly experienced workers employed 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).

The petitioner asserts that the beneficiary possesses specialized knowledge of aspects of the petitioner's proprietary software product, Center Point. The petitioner alleges that "the complexity of the framework and the type of modules that are designed in the application" will make it impossible to "replace the business matter expertise and technical knowledge of [the beneficiary] for this position." Furthermore, the petitioner asserts that "among the entire staff [the petitioning organization] has ONLY TWO employees who are expertise [sic] with the necessary components of Database Concepts from Data Flow Diagram, E-R Diagrams, Database modeling, Database design and Database tuning including modifying stored procedures etc." Finally, the petitioner concludes that "there is a tremendous difference between someone with the knowledge that is gained by engineering Center Point, compared with any other technical resource in the IT industry." However, despite these assertions, the record does not establish how, exactly, "the complexity of the framework and the type of modules" are so materially different from those of other software products that a similarly experienced and educated software professional could not perform the duties of the position. The record also fails to make a similar distinction with regards to the beneficiary's purported knowledge of "the

necessary components of Database Concepts from Data Flow Diagram, E-R Diagrams, Database modeling, Database design and Database tuning including modifying stored procedures." Crucially, the petitioner never establishes the "tremendous difference" between Center Point and other software products which requires noteworthy or uncommon knowledge not possessed generally by similarly educated software professionals.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by software professionals generally throughout the industry or by other employees of the petitioning organization. The fact that no other employee possesses very specific knowledge of certain aspects of proprietary software does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. All employees can be said to possess unique and unparalleled skill sets to some degree; however, a unique skill set that can be imparted to another similarly experienced and educated employee without significant economic inconvenience is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's product do not establish that any knowledge of this software is "specialized." Rather, the petitioner must establish that qualities of the unique or proprietary product require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other professionals may not have very specific, proprietary knowledge regarding the petitioner's product 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, similarly experienced employee after a few months of on-the-job instruction.

Furthermore, while the petitioner asserts that "[t]raining another person on par with [the beneficiary's] caliber who can understand the intricacies of the product will take at least 1-2 years," the petitioner failed to support this claim with any evidence. Once again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). The record is devoid of evidence establishing, exactly, what knowledge would be imparted during this training regimen and why the purported specialized knowledge would take this long to impart.

Regardless, even if accurate, the petitioner does not clarify how that beneficiary could have acquired her purported specialized knowledge in time to have been employed in a specialized knowledge capacity abroad for the requisite one-year period given that she has only been employed abroad by the petitioning organization for just over 22 months. Assuming a 1 to 2 year training period as alleged by the petitioner, there would not have been enough time for the beneficiary to have been trained in the specialized field and to have been employed in a specialized knowledge capacity for one full year abroad. 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). Conversely, if the beneficiary had already acquired some, or all, of her purported special knowledge at a prior job or during her formal education thus eliminating the need to train her for 1 to 2 years, this would undermine the petitioner's claim that the beneficiary's knowledge is uncommon or noteworthy. Either way, the petitioner's claim that the beneficiary was employed abroad for one year in a specialized knowledge capacity is not supported by the evidence.

The AAO does not dispute the possibility 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*, 18 I&N at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> 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 Executive 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 foreign entity or by software engineers employed elsewhere. As the petitioner has failed to document any materially unique qualities to the beneficiary’s knowledge, 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 similarly experienced professional or that she has received special training in the company’s methodologies or processes which would separate her from other professionals employed with the foreign entity or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

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 will not be employed in the United States, and was not employed abroad, in a capacity involving specialized knowledge. For these reasons, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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.