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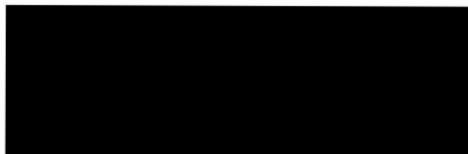
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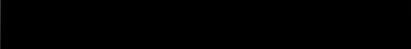
U.S. Citizenship
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File: WAC 07 211 50250 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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

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 has been or will be employed in a capacity involving specialized knowledge and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

The petitioner described the beneficiary's duties in the United States and abroad in a letter dated May 22, 2007 as follows:

The beneficiary will be employed at [the petitioner's] corporate headquarters in Naperville, Illinois. As the Senior Software Developer [the beneficiary] will be overseeing the implementation of the Contract Manager for the client FileNet Corp. and Environment Case Management application for the State of Rhode Island Department of Environmental Management, which he developed as part of his employment with the [foreign employer]. The beneficiary will also test and adjust the system as necessary to ensure an efficient implementation.

* * *

Since June 2005, [the beneficiary] has been a Senior Software Developer at [the foreign employer]. As part of this position, the beneficiary leads the team's development of P8 Workplace application for the State of Rhode Island Department of Environmental Management and development of the application administration interface for Contracts Manager. The beneficiary also directs creation of a LDAP authentication module for integrating Contract Manager with FileNet P8 and directs development of Contract Manager parameters which include the Search functionality to lookup indexed objects in FileNet P8, the export content module and the deployment package.

[The beneficiary] also oversees testing of each module in the Environment Case Management application and Contract Manager. He uses Content Engine and Process Engine Java API extensively throughout the application to allow the user to create content objects and upload content to the Content Engine. He also oversees the design and development of FileNet's Process maps to conform to business requirements and works directly with clients to obtain

business requirements and implement them into maps of both applications.

[The beneficiary] is uniquely qualified to perform the temporary assignment of Senior Software Developer in the United States, based upon his expertise acquired at [the foreign employer]. His services are required to deploy applications he principally developed as part of his employment at [the foreign employer] in India. These applications include the Contract Manager application for the American client FileNet Corporation (an IBM company) and the FileNet-based Environment Case Management application for the State of Rhode Island Department of Environmental Management.

The petitioner also claims that the beneficiary has been employed by the foreign employer since June 8, 2005. The instant petition was filed on July 5, 2007.

On July 11, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence addressing how the beneficiary's duties differ from those performed by similarly employer workers; a more detailed description of the equipment, system, product, technique, or service of which the beneficiary purportedly has specialized knowledge; and an explanation addressing how the beneficiary's training or experience imparted knowledge which is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the field of endeavor.

In response, counsel submitted a letter dated October 5, 2007 in which he further describes the beneficiary's purported specialized knowledge as follows:

[The beneficiary] played a principal role in the development of the Enterprise Contracts Manager solution for the IBM-FileNet ECM solution that was developed in the India office. The functional and technical requirements emerged since no solution existed, and the customers needed an integrated contracts management solution. The design and development of this product was entirely done in the India location. In addition to lacking the expertise to complete the tasks, the other employees in the US location were not involved and will not be able to configure, install, support this solution for IBM-FileNet clients like Duke Energy.

* * *

[The beneficiary] has expertise in the Enterprise Contracts Manager solution for the IBM-FileNet Enterprise Content Management products. These ECM solutions by IBM-FileNet are cutting edge technology products being used by 400 of the Fortune 500 companies in the United States. These products are used in all types of organizations – Federal and State Governments, finance, insurance, manufacturing, legal, and more. Some of the uses are regulatory compliance like Sarbanes Oxley, managing business processes, Records Management within organizations, electronic discovery, enterprise content management, etc. IBM-FileNet is a tier one player in this space. Other players in this space are EMC and OpenText. The Enterprise Contracts Management solution in which the beneficiary specializes has been developed as a highly integrated solution for IBM-FileNet. IBM

currently does not have a Contracts Management solution; [the petitioner] represents IBM-FileNet in the Enterprise Contracts Management space.

Finally, counsel asserts the following in response to the director's request for an explanation addressing how the beneficiary's training or experience imparted knowledge which is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the field of endeavor:

The beneficiary's unique expertise in Enterprise Contracts Manager for IBM-FileNet P8 products is not found in other practitioners in the same field. Although there are other practitioners who work on IBM-FileNet P8, since this Enterprise Contracts management solution itself is unique to IBM-FileNet, this expertise cannot be found in similar practitioners in the beneficiary's field. This is the same case with other employees of [the petitioner]. They do have IBM-FileNet P8 experience but the unique Enterprise Contracts Manager solution expertise cannot be found with the other US location employees.

On November 1, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary has been or 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 has been and will be employed 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 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 has specialized knowledge of the Enterprise Contracts Manager solution for IBM-FileNet Enterprise Content Management products. However, despite this assertion, the record does not establish how, exactly, the beneficiary's knowledge of the Enterprise Contracts Manager solution for IBM-FileNet products is so materially different from knowledge of other software products, including IBM-FileNet products, that a generally experienced and similarly educated software worker could not perform the duties of the position. The petitioner never establishes the difference between the petitioner's products or procedures and other software products or procedures, which requires noteworthy or uncommon knowledge not possessed generally by similarly educated software workers.

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 certain types software or software solutions does not alone establish that the beneficiary's knowledge is indeed uncommon or noteworthy. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be imparted to another similarly educated and generally experienced software 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 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 workers may not have very specific, proprietary knowledge regarding the petitioner's product, or its implementation or use, 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, generally experienced software employee.

Furthermore, while the petitioner implies that the beneficiary gained his purported specialized knowledge through the performance of his foreign job duties, 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 was imparted during the performance of these duties and why the purported specialized knowledge took this long to impart. Also, even though requested by the director, the petitioner failed to address whether the beneficiary received any training and, if so, whether this training imparted the purported specialized knowledge to him in whole or in part. 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).

Finally, even assuming the beneficiary has specialized knowledge, the petitioner failed to establish that the beneficiary was employed abroad in a specialized knowledge capacity for the requisite one-year period. The petitioner asserts that the beneficiary began working for the foreign entity on June 8, 2005. Approximately 25 months later, on July 5, 2007, the petitioner filed the instant petition. Therefore, at some point between June 8, 2005 and July 5, 2006, the beneficiary would have needed to have acquired the claimed specialized

knowledge in order for the beneficiary to have been employed in a specialized knowledge capacity for one year prior to the filing of the instant petition. However, the record is devoid of evidence addressing when, exactly, the beneficiary acquired the claimed specialized knowledge. As noted above, the petitioner failed to describe the beneficiary's training regimen, if any, or to describe the beneficiary's evolution from newly hired employee to the possessor of "specialized knowledge." 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). Absent a detailed description of the beneficiary's acquisition of his claimed specialized knowledge, it cannot be concluded that the beneficiary was employed in a specialized knowledge capacity abroad for the requisite one-year period.

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 petitioning organization. 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, 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 Executive 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 Executive 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 petitioning organization or by software workers 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 software workers or that he has received special training in the company's methodologies or processes which would separate him from other workers employed with the petitioning organization 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 was not employed abroad, and will not be employed in the United States, in a capacity involving specialized knowledge. For this reason, 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.