



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: LIN 99 011 52415 Office: Nebraska Service Center Date:

JAN 8 2001

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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

IN BEHALF OF PETITIONER:

[REDACTED]

Public Copy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a company which manufactures monitoring systems, seeks authorization to employ the beneficiary temporarily in the United States as its service engineer. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a specialized knowledge capacity.

On appeal, counsel argues that the beneficiary is an important member of the petitioner's team.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) 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 (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, a 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.

The U.S. petitioner states that it was established in 1995, and that it is a branch office of [REDACTED] India. The petitioner seeks authorization to employ the beneficiary for one year.

At issue in this proceeding is whether the beneficiary has been and will be employed in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

(A)n 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.

In a letter dated December 2, 1998, the petitioner describes the beneficiary's duties with the foreign office of [REDACTED] India as follows:

The beneficiary possesses specialized knowledge, know how, and applications experience in [REDACTED] products and procedures essential for the U.S. position. [The beneficiary] has successfully performed similar duties with our overseas branch office, [REDACTED] India. Since February 1997, he has developed into a highly successful service engineer mastering all aspects of the position, including a thorough knowledge and understanding of [REDACTED] products and procedures. Indeed, his current work performance indicates that he has developed in-depth mastery of general technical skills, detailed knowledge and mastery of specific [REDACTED] technologies, the ability to manage projects and train customers in the use of the technology, as well as the ability to design unique technical solutions to specific customer and machine problems for [REDACTED] equipment. In difficult applications, [the beneficiary] has proven the ability to design and specify technical and software changes to improve the [REDACTED] product performance. He has further shown his expertise in [REDACTED] products and procedures as he is able to independently manage complex product installation projects through detailed management of technical and customer issues. The foregoing responsibilities mandate a thorough understanding of [REDACTED] products and procedures.

The petitioner describes the beneficiary's proposed duties as follows with the U.S. office:

[The beneficiary] is responsible for the servicing and installation of [REDACTED] for a

wide range of applications including CNC's, PLC's, and SPM's to name but a few. Specifically, he is responsible for all aspects of the [REDACTED] line as related to installation, CNC integration, commissioning, operations and customer training. In the United States [the beneficiary] will work with our engineering staff and assist in the development of new applications, especially for the overseas (Asia) market. He will further be working closely with other service engineers in the assessment of client needs and implementation of the latest [REDACTED] equipment. In addition, he will also be working with our service department in assisting clients with any problems with our equipment and will conduct application product development, provide manufacturing related product support and review and monitor tests of new applications with US service engineers.

The record does not establish that the beneficiary has unusual, advanced or special knowledge of the petitioning organization. The petitioner has not established that the beneficiary's duties are so unique and out of the ordinary that they require specialized knowledge. The beneficiary's employment experience with the foreign organization may have given him the knowledge required to perform his duties competently, but cannot be considered to constitute special or advanced knowledge. In fact, contrary to counsel's assertions, the beneficiary's knowledge of the company product, or of the processes and procedures of the foreign company, has not been shown to be substantially different from, or advanced in relation to, that of any service engineer.

Based on the evidence presented, it is concluded that the petitioner has not established that the beneficiary has specialized knowledge, or that he has been or would be employed in a capacity involving specialized knowledge. For this reason, the petition may not be approved.

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.