U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: LIN-02-068-53398 Office: Nebraska Service Center Date: FEB 27 2003

IN RE: Petitioner: [redacted]
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 PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner processes, sells and services highly-engineered metal products. It seeks authorization to employ the beneficiary temporarily in the United States as its sales representative. The director determined that the petitioner had not established that the beneficiary had been employed abroad or would be employed in the United States in a position requiring specialized knowledge.

On appeal counsel argues, in pertinent part, that:

> The Service Center decision gives no indication that the adjudicating officer adequately reviewed and considered the extensive evidence the Company submitted to satisfy the specialized knowledge requirements that apply to its L-1B petition. One critical error in the decision is that the officer wrongly concluded that the Company markets business-related computer software. As discussed above, the Company repeatedly stated that it processes, sells and services highly engineered metal products and submitted extensive documentation regarding its products, processing techniques and services. Accurately understanding the nature of the Company's products, processing techniques and services is critical to understanding (1) why the Company's customers in North Dakota must be serviced from the Company's regional facility in Selkirk, Manitoba and (2) why the unique combination of [the beneficiary's] extensive and highly technical knowledge of the Selkirk Facility and of the literally hundreds of highly engineered products the Company produces and sells is critical to his position in Canada and prospective position in North Dakota. The adjudicating officer's error with respect to the product A.M. Castle sells is indicative of the inadequate considerations given the extensive evidence the Company submitted with its petition and in response to the Request for Evidence.

In thoroughly reviewing the director's decision, it appears that the director failed to consider significant documentary evidence submitted in response to the Service's request for additional evidence on December 26, 2001. That request asked that the petitioner:

> **Submit evidence that the beneficiary possesses special knowledge of your 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. Although the beneficiary may possess an advanced knowledge of the processes and procedures of the company, evidence must be submitted to describe and distinguish that knowledge from the elementary or basic knowledge possessed by others. In addition, The evidence must establish that the beneficiary's duties abroad for the qualifying employment abroad, <u>and</u> the duties in the United States, require a person with specialized knowledge.**

On March 7, 2002, the petitioner responded submitting significant additional evidence regarding the company's practices and procedures, its products, the in-house training received by the beneficiary and his current duties with the foreign entity.

On March 14, 2002, seven days after the petitioner's voluminous response, the director denied the petition, stating, in pertinent part, that:

> The petitioner is involved in the marketing of business related computer software. The evidence submitted with the petition was not sufficient to grant the benefit sought by the petitioner. A request for additional evidence was submitted by this office and the details of the request is part of the record and will not be repeated here.

The record as presently constituted does not corroborate the director's findings that the petitioner is "involved in the marketing of business related computer software." The record indicates that the petitioner did, in fact, submit significant additional evidence establishing that it processes, sells and services highly-engineered metal products. The record indicates that the director may have failed to thoroughly consider such evidence contained in the record prior to rendering his decision. While the director noted the training received by the beneficiary, discounting it as inadequate, the record provides no elaboration as to what criteria the director may have used in reaching his conclusions. The case will be remanded for the director to determine whether the petitioner has met the specialized knowledge and other eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee.

The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.