

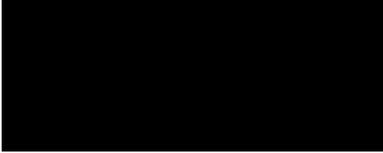


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U.S. Department of Justice
Immigration and Naturalization Service

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

File: LIN-01-102-53346 Office: Nebraska Service Center Date:

JAN 15 2003

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 PETITIONER:



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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
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 appeal will be dismissed.

The petitioner, a developer and marketer of wireless technology, seeks authorization to employ the beneficiary temporarily in the United States as its lead development engineer. The director determined that the petitioner had not established that the beneficiary has been employed abroad or would be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel submits a brief in rebuttal of the director's findings.

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, managerial, or specialized knowledge capacity, including a detailed description of the services performed.

The United States petitioner states that it was established in 1984 and is the parent organization of [REDACTED] located in Bristol, United Kingdom. The petitioner seeks to employ the beneficiary temporarily for a period of two years at an annual salary of \$78,000.00.

The 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.

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

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.

8 C.F.R. 214.2(l)(1)(ii)(D) states:

Specialized Knowledge means special 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 describing the beneficiary's duties abroad, the petitioner stated, in pertinent part, that:

FOREIGN POSITION HELD BY THE TRANSFEREE

The beneficiary's most recent foreign position within the U.K. Company is that of Senior Development Engineer, a position to which he was appointed two years ago and continues to hold. As a technology "guru," he has significantly advanced the "scalability" and reliability of software products of the company in the U.K. by taking [sic] strategic decisions and conducting extensive research. In this position, he trains Junior Engineers and other Software Professionals, and manages a team of software engineers to implement new software technologies. Most significantly, the software product he is required to train others to work on in the United States was designed by the U.K. company. It is imperative, therefore that his services are utilized in the U.S. company to train software engineers to use and improve "scalability" of products.

QUALIFICATIONS OF THE TRANSFEREE

[The beneficiary's] extensive experience and detailed knowledge of the information management systems coupled with his scientific background make him the most qualified candidate for the Lead Development Engineer position. [The beneficiary's] past and present professional experiences as well as thorough knowledge of the Parent Company ensure his ability to execute this assignment in conformity with the company standards, a principal reason for seeking this transfer.

In describing the beneficiary's proposed duties in the United States, the petitioner stated, in pertinent part, that:

THE PURPOSE OF THE TRANSFER

[The beneficiary] is currently being transferred to the U.S. company as Lead development Engineer, a position requiring specialized knowledge of the company products and their application. He will lead a team of Software Engineers in the Data and Electronic Communications Division. [The beneficiary] has expert knowledge and understanding of personal digital assistants (CE and palm) and personal information managers, as he has been instrumental in their development in the U.K. His services are required to develop these products in the United States as he is one of the very few people in possession of this knowledge. Additionally, he has spent a considerable amount of time learning product design feedback and customer use. His outstanding ability, skills, and experience make him the best candidate to lead a team of engineers in the U. S. company.

THE U.S. POSITION TO BE HELD BY THE TRANSFEREE

[The beneficiary] will hold the position of a Lead Development Engineer at the U.S. company based in Boise, Idaho. In this position he will:

1. Apply expert knowledge and understanding of the personal digital assistants (CE and palm) and personal information managers to design and implement a higher performance, higher "scalability" and more modular next generation XTND Connect synchronization engine for effective wireless communication.
2. Research and implement new and state-of-the-art software and software engineering technologies to further develop products.
3. Be responsible for project assignments, research and design of software products.
4. Mentor Junior Software Engineers and other Software Professionals.
5. Create new strategic directions with other companies to develop product concepts.

In response to a Service request for additional evidence, dated February 14, 2001, the petitioner's counsel responded to questions regarding the beneficiary's employment qualifications indicating that the petitioner was providing a "white paper" written by the beneficiary describing an XTND Connect Server, a "highly sophisticated wireless product. Counsel further stated, in addressing a question as to where the beneficiary acquired his specialized knowledge, in part, that:

It may be noted that wireless or "blue tooth" technology is not offered as a course of study in most school curricula, nor is there formal specialized training available for it. it is completely pioneering technology and as mentioned before, the product in question has been 100% developed by the company with no external technology. Products are not even developed using regular software applications like MS Exchange, and have to be developed from scratch. No one else manufactures this product in the market and the incumbent (presumably the beneficiary) has been instrumental in developing this product on the job.

In response to the Service's question regarding a patent for the XTND Connect Server, counsel states that a patent "is pending," but provides no additional information regarding any patent and refers to a publications award which can be found at the petitioner's website as proof of ownership.

On appeal, counsel rebuts the director's findings stating, in pertinent part, that:

The evidence on record, does establish that the beneficiary's knowledge is uncommon, noteworthy, and distinguished by some unusual quality.

The technical expertise to analyze, design, and implement advanced communications cannot be performed unless the incumbent has worked on a product **from its inception**. Technology relating to wireless products is the exclusive knowledge of the company that develops it.

The findings of the Service unfairly disadvantages the employer. The wireless product in question, which the candidate in this position will work on is a pioneering product in the market and the beneficiary is one of the key people responsible for its development. No one else would be able to perform the work that he would in the U.S. company and this could result in the loss of millions of dollars to the company.

The beneficiary's knowledge is not generally known by personnel engaged within the beneficiary's field of endeavor.

The evidence does establish that the position abroad requires a person with specialized knowledge.

The beneficiary is a lead engineer in the U.K. company, having developed and enhanced a higher performance, higher scalability and more modular next generation XTND Connect developer product by reverse engineering the protocol since the exchange interface is neither designed by, nor the application program interface documented by Microsoft or any third party, to integrate wireless connectivity. This requires a specialized knowledge which the alien evidently acquired when he developed the product from its inception. Additionally, he has worked for several years on the product and has a thorough grasp of all issues pertaining to it; something that another individual would not be capable of, by virtue of skill alone.

The evidence does show that the position in the United States requires a person of specialized knowledge.

Despite all the information an I-129 could provide the Service, it is well known that the Service does NOT have the sophistication and know-how to really make these determinations.

On appeal, counsel indicates that the beneficiary was primarily responsible for the development of one of the petitioner's products, an XTND Connect Server. An employment letter from the R & D Director of the foreign entity indicates that the beneficiary was a "senior engineer" and among other projects worked on the XTND Connect Server. However, on an organizational chart submitted in response to a Service request for additional evidence, the beneficiary's name is listed next to the bottom of the R & D department, some five levels (the last level shown) below the managing head of the organization. Further, while counsel argues that the petitioner is at the forefront in at least one area of developing technology, there is no substantive evidence demonstrating that the beneficiary has played a major role in the attainment of that position. The "white paper" proffered by the petitioner as having been authored by the beneficiary does not acknowledge any author. It is significant that none of the documentation recognizing the petitioner's endeavors mentions the beneficiary as either authoring or being an integral part of the developing technology. The paper does however, indicate that the technology is no longer restricted knowledge solely in the possession of the beneficiary or the petitioner. While, some

evidence indicates that this product may have been developed in the U.K at an entity purported to be a subsidiary of the United States entity, the record does not indicate that it was solely or substantially developed by the beneficiary.

Upon review, the record does not establish that the beneficiary has advanced or special knowledge of the petitioning organizations products or their application in the United States market as claimed. The beneficiary's knowledge of the foreign entities operations does not automatically constitute special or advanced knowledge. The beneficiary's generally described employment fails to establish that the beneficiary possesses or has used in the performance of his employment, skills that qualify as or requisite specialized knowledge. Counsel argues that the beneficiary's training and experience have given him knowledge which is special because it is specific to the petitioning entity. However, logic dictates that job training at any company teaches primarily procedures that are predominately germane to that organization. The beneficiary's general degree in science notwithstanding, the record contains no detailed description of any specialized in-house training that the beneficiary received either from the organization or any institute of higher learning. Furthermore, in-house training, as such, does not automatically qualify as specialized knowledge as counsel would suggest.

Counsel contends that the director's decision does not consider statutory and regulatory definitions of "specialized knowledge." However, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished sufficient evidence to demonstrate that the beneficiary's duties involve advanced knowledge of the petitioner's product, processes, or procedures, as opposed to the skills required merely to use such products. Contrary to counsel's argument, mere familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the documentation of the parent's and the petitioner's business operations raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. 214.2(1)(1)(ii)(G). In response to a Service request for additional evidence, the petitioner submitted a 2000 financial statement for the foreign entity [REDACTED]. The financial statement indicates that [REDACTED] is principally owned by [REDACTED]. The record contains no evidence that the petitioning U.S. entity, [REDACTED]

Inc. owns or otherwise has control over Advance Systems Limited. As the appeal will be dismissed for the reasons discussed, this issue need not be examined further.

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.