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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

[redacted]

File: LIN 01 055 55134 Office: NEBRASKA SERVICE CENTER Date: JAN 17 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

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 is a management consultancy firm employing three persons which seeks to employ the beneficiary temporarily in the United States as a business consultant. The director determined that the petitioner had not established that the beneficiary had been employed in a specialized knowledge capacity or would be coming to the United States to perform services involving specialized knowledge.

On appeal, counsel for the petitioner states that the director's decision adopts and applies an incorrect legal standard and ignores pertinent evidence. Counsel further states that the beneficiary designed and developed the petitioner's proprietary Operational Audit and Benchmark product and therefore has specialized and advanced knowledge of it. Counsel argues as the person principally responsible for its implementation for Microsoft in Europe, the beneficiary is the primary person within the organization familiar with the product's application in international markets. Counsel further argues that as a result, the beneficiary meets the regulatory and statutory test for L-1B specialized knowledge status and the petition should have been approved.

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(l)(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 (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.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity that involves 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.

The petitioner outlines the duties and responsibilities of the beneficiary's prior position while working for the parent company abroad as follows:

> [redacted] was hired by Burlington Consultants Ltd. As a strategy consultant in 1998. In his current position, [redacted] is responsible for the operational review of Microsoft fulfillment, ordering, customer management and fulfillment operations in the US, Europe and Japan; advising major European private equity house on investment strategy for $3Bn fund; managing business assessment of key subsidiaries of 160m pound turnover printing company for public-to-private transaction; designing and building financial model to track sales and costs for scenario modeling purposes; formulating recommendations for presentation to Board; and numerous business assessment and commercial due diligence assignments with particular focus on IT support services and technology sectors.

The petitioner provides the following information concerning the duties that the beneficiary will perform in the United States:

> We seek to transfer [redacted] to our office in Kirkland, Washington as a Business Consultant. He will be responsible for providing strategic business advice, including market research and analysis, customer satisfaction and loyalty studies, due diligence audits, merger and acquisition analysis, and market positioning and branding analysis.

In review, the beneficiary's training and employment experience with the foreign organization has given him the knowledge required to perform his duties competently, but cannot be considered to constitute special or advanced knowledge. The petitioner has not demonstrated that the beneficiary's duties are so unique and out of the ordinary that their implementation requires specialized knowledge. The petitioner has not demonstrated that the beneficiary's knowledge constitutes an advanced level of knowledge of the processes and procedures of the petitioning organization. The beneficiary's knowledge of the company product, or of the processes and procedures of the company, has not been shown to be substantially different from, or advanced in relations to, that of any business consultant employed by a management consultancy company. 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.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that there is common ownership and control between the United States company and a foreign entity to constitute a qualifying relationship pursuant to 8 C.F.R. 214.2(l)(1)(ii)(G). As the appeal will be dismissed on the grounds 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.