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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 00 218 53710 OFFICE: NEBRASKA SERVICE CENTER DATE: JAN 31 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]

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.

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. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged in the design, manufacture and service of worldwide information storage subsystems. The petitioner seeks to employ the beneficiary in the United States in a capacity involving specialized knowledge as its "enterprise near line account manager." The director determined that the petitioner had not established that the position offered to the beneficiary required specialized knowledge or that petitioner had demonstrated that the beneficiary had obtained specialized knowledge of the petitioner's products or technology.

On appeal, counsel for the petitioner asserts that the evidence submitted clearly demonstrates that the beneficiary's position overseas required specialized knowledge and that the beneficiary's intended position in the United States, which is the same position as the overseas position requires specialized knowledge.

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 has been and 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.

In the initial petition, the petitioner indicated that the beneficiary had been working for its Mexican subsidiary as an enterprise near line account manager. The petitioner explained that the enterprise near line was one of the company's two major product lines and that the beneficiary was responsible for selling and marketing the products throughout Latin America. The petitioner further stated that the beneficiary was responsible for training and supervising the sales and marketing staff of its business partners. In addition, the petitioner stated that the beneficiary had specialized knowledge in adapting the petitioner's products to meet the special needs and address the specific issues of the petitioner's overseas customers.

The director requested additional evidence to demonstrate that the beneficiary was more than the lead salesperson of the petitioner's products. The director specifically requested evidence to demonstrate that the beneficiary's knowledge was distinguishable from the elementary or basic knowledge possessed by others. The director also requested that the petitioner submit evidence to establish that the beneficiary's position abroad and in the proposed position required a person with specialized knowledge.

In response, the petitioner identified the beneficiary's position as a pre-sales technical consultant rather than a salesperson. The petitioner stated that each company in the competitive data storage industry had products which contained unique functionalities and features and that the person in the beneficiary's position must be an expert in the petitioner's technology and products and their specific functionalitites and features. The petitioner also stated that the beneficiary must be capable of ensuring that the petitioner's technology could handle the technical storage needs and demands of potential clients. The petitioner noted the beneficiary's nine years of experience working with the petitioner's specific computer storage hardware and software. The petitioner concluded by stating that other individuals in the industry may be familiar with the storage data

industry in general, but that other individuals did not have the specialized knowledge of the petitioner's specific and proprietary technology and products.

The petitioner also included a job description for the position of enterprise near line account manager and affidavits from staffing specialists and recruiters attesting that a person filling such a position would require knowledge of the petitioner's products and technology.

The director determined that the petitioner had not provided evidence to show how much training and experience the position of "near line account manager" required and how this training and experience differed from that of other pre-sales technical consultants. The director concluded that the petitioner had not provided sufficient evidence to demonstrate that the knowledge required for the "near line account manager" position was at the level of "specialized knowledge" as defined by the pertinent regulation. The director also noted that the beneficiary went from a pre-sales technical consultant of different products to that of a supervisor of pre-sales technical consultants without any training or education involving specialized knowledge of the petitioner's products or technology. The director concluded that the lack of training involving specialized knowledge was evidence that any pre-sales technical consultant with minimal experience and education could manage or supervise the work of pre-sales technical consultants dealing with the petitioner's products.

On appeal, the petitioner asserts that the director did not consider the beneficiary's years of experience in the field and specific on-the-job training and erred in requiring formal training and education as a prerequisite to possess specialized knowledge.

On review, the petitioner's assertion is not persuasive. The petitioner has not adequately described the position of "near line account manager." The petitioner simply states that this position is very technical without providing detail of the technical aspect(s) of the position. The petitioner's job description of the position indicates that the beneficiary will train individuals on the "technical, proprietary specifications and features of "Enterprise Near Line Storage Products," and "provide support in making pre-sales technical presentations," and "review all technical proposals." This statement of general duties without explanation of the technical nature of the duties is insufficient to establish that the position itself requires an individual with specialized knowledge. The record is incomplete in this regard. In addition, the petitioner has not articulated how the position of "near line account manager" differs from the sales-pre-sales positions.

The petitioner also has not established that the position of "near line account manager" is a position that requires specialized

knowledge. This conclusion is supported by the petitioner's representations regarding the beneficiary's training and experience. As noted by the director, the petitioner has not provided evidence that the beneficiary has received training or education involving specialized knowledge of the petitioner's products. The petitioner's assertion that the beneficiary's years of experience in the field and specific on-the-job training demonstrate the beneficiary's specialized knowledge is not supported in the record. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The beneficiary's length of tenure in a particular position does not demonstrate that supervisory duties over that position automatically requires specialized knowledge. The petitioner must establish that the position of "near line account manager" requires specialized knowledge of the petitioner's product above that of a sales person.

The petitioner has not provided sufficient evidence to overcome the director's decision on these issues. The position of "near line account manager" has not been adequately described as a position requiring specialized knowledge. Likewise the petitioner has not provided sufficient evidence to establish that the beneficiary has specialized knowledge. At most the beneficiary is performing a sales and supervisory function for the petitioner no different from others in the same field performing sales or supervisory functions.

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 been met.

ORDER: The appeal is dismissed.