



June 14, 2011

Executive Summary

USCIS Stakeholder Engagement: L-1B Interpretation of the term Specialized Knowledge

Overview

On May 12, 2011, the Office of Public Engagement, the Service Center Operations Directorate, and the Office of Policy and Strategy hosted a stakeholder engagement to discuss issues related to the L-1B nonimmigrant classification. More specifically, USCIS was seeking feedback on the interpretation of the term “specialized knowledge” within the regulatory framework and what standards and evidentiary requirements should be followed in determining eligibility for this classification.

Principal Themes

Interpreting Specialized Knowledge

An overwhelming majority of stakeholders asserted that the existing regulatory definition of “specialized knowledge” and USCIS policy memoranda which relate to this issue are fine as written, and there is no need to issue any new policy memorandum. Some stakeholders provided feedback indicating that the definition of “specialized knowledge” should be interpreted more broadly than is currently being practiced at the Service Centers. Stakeholders noted that USCIS is interpreting the definition too narrowly as evidenced by the Requests for Evidence (RFE) and denials which are being received by many petitioners for this category. One stakeholder stated that it appears that USCIS has made a change in its interpretation in recent years without any change in the law.

USCIS also sought feedback from stakeholders on whether the current interpretation being used by Service Centers meets the needs of employers. Some stakeholders stated that the current interpretation did not meet the needs of employers because it was being too strictly and narrowly interpreted. They suggested that it would better serve employers if there was an increased flexibility and a broader interpretation of the term specialized knowledge.

Requests for Evidence

One stakeholder commented that petitioners were unsure of what documentation to submit with L-1B petitions at this time because it appeared that USCIS officers were making determinations as to required

evidence on a case by case basis rather than having a general requirements list for all cases. They requested that USCIS provide stakeholders with a list of recommended initial evidence as well as additional evidence that should be included with a petition for an L-1B nonimmigrant so as to help petitioners avoid receiving so many Requests for Evidence.

Some stakeholders indicated that petitioners are overwhelmed by the information being requested in RFEs and that some RFEs requested evidence associated with O-1 requirements. They commented that these RFEs are too burdensome and costly and may lead petitioners to withdraw their petitions. Stakeholders also commented that this may lead to highly qualified individuals deciding to go to other countries rather than sharing their expertise to strengthen the U.S. economy.

Several stakeholders commented that USCIS should provide additional training on the proper adjudications standards for USCIS officers working on L-1B nonimmigrant petitions in order to avoid lengthy and repetitive RFEs in the future. Stakeholders suggested that this training should include input from various industries so as to provide USCIS officers with real life examples of how companies utilize L-1B nonimmigrants. It was further suggested by stakeholders that USCIS officers are not following the “preponderance of the evidence” standard, and that this evidentiary standard should be reinforced through training. It was also suggested that the Service Centers should implement a more rigorous supervisory review on all potential RFEs and denials on L-1B adjudications.

Factors in determining Specialized Knowledge

USCIS also asked stakeholders to provide feedback on what relevant factors should be considered in determining if a beneficiary possesses specialized knowledge. One stakeholder commented that the specialized knowledge held by the beneficiary may be of the petitioner’s already existing product rather than of a product the beneficiary is producing or developing for the petitioner.

Another stakeholder commented that in some cases, an individual is brought in to lead the implementation of a product and to guide the team rather than to create a new product. In other cases, the knowledge relates to the industry rather than a particular company. It is not unique to the company, but rather enhances a company’s competitiveness. Another stakeholder commented that in certain industries such as the software industry, the information is not unique to the company in that there are other individuals who have knowledge of the software as well. The goal, however, is to bring skilled individuals from the overseas market in order to be more competitive.

Stakeholders also indicated that specialized knowledge is different from proprietary knowledge and should not be confused. Some stakeholders reminded USCIS that the L-1B nonimmigrant classification did not require the individual to be extraordinary, and that specialized knowledge need not be proprietary. It was pointed out that specialized knowledge is a special knowledge of the product or processes of a company. Stakeholders also stated that specialized knowledge need not to be narrowly held by a select few individuals within a company. Furthermore, stakeholders stated that specialized knowledge should not be determined by country of origin or by the petitioner’s business model.

Next Steps

USCIS will provide additional guidance and training to USCIS officers adjudicating L-1B petitions.