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Interpretation of Specialized Knowledge
Under the L Classification

All ROCOMS
All RSC Directors

Examinations
(COEXM)

After 18 months of operating experience under the new L regulations, comments from businesses and results of monitoring implementation by Adjudications and the Administrative Appeals Unit indicate that our interpretation and application of the definition of specialized knowledge may, in some cases, be more restrictive than Congress or the Service intended. The problem stems from using a too literal definition of the term "proprietary knowledge" wherein the knowledge must relate exclusively to or be unique to the employer's business operation. Using this narrow interpretation of proprietary knowledge excludes numerous employees of international companies who were intended by Congress to be accommodated under the L classification.

It is an appropriate interpretation of specialized knowledge to also consider "proprietary knowledge" as "special knowledge possessed by an employee of the organization's product, service, research, equipment, techniques, management, or other interests that is different from or surpasses the ordinary or usual knowledge of an employee in the particular field". A "specialized knowledge" employee must have an advanced level of expertise in his or her field and special knowledge which is not readily available in the United States labor market.

Some characteristics of an employee who has specialized knowledge are that he or she:

- Possesses knowledge that is valuable to the employer's competitiveness in the market place;
- Is uniquely qualified to contribute to the United States employer's knowledge of foreign operating conditions;
- Has been utilized as a key employee abroad and has been given significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; and
- Possesses knowledge which can be gained only through extensive prior experience with that employer.

Adjudications shall use the above guidance in conjunction with the regulations at 8 CFR 214.2(1)(ii)(D) and Operations Instructions at 214.2(1)(5)(i)(B) in adjudicating L petitions for employees in a specialized knowledge capacity. This clarification should make this category more flexible and useful to international businesses.


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