



United States Department of State

Washington, D.C. 20520

July 3, 1996

MEMORANDUM

To: Angelo Papparelli, Esquire
From: CA/VO/L/A - H. Edward Odom
Subject: Text of Cable

The following is the text of the pertinent sections of State Cable 75033 to Madras:

1. REF B REQUESTS GUIDANCE ON ADJUDICATION OF L-1 VISAS FOR PERSONS WHO ARE APPLYING AS BEING QUALIFIED FOR VISA ISSUANCE AS EITHER A MANAGER OR AS HAVING SPECIALIZED KNOWLEDGE AS SET FORTH IN 9 FAM 41.54 N8.2-2.
2. AS SET FORTH IN 9 FAM 41.54 PERSONS MAY QUALIFY FOR L-1 STATUS UNDER ANY OF THREE CATEGORIES: MANAGERIAL CAPACITY, EXECUTIVE CAPACITY OR SPECIALIZED KNOWLEDGE. IT IS POSSIBLE THAT AN INDIVIDUAL MIGHT QUALIFY FOR AN L-1 IN MORE THAN ONE OF THESE CATEGORIES. HOWEVER IN INSTANCES WHERE AN APPLICANT IS APPLYING AS AN INDIVIDUAL WITH SPECIALIZED KNOWLEDGE, CONOFFS SHOULD BE CAREFUL NOT REPEAT NOT TO REQUIRE THAT SUCH AN APPLICANT HAVE BEEN A MANAGER, TEAM LEADER, OR HAD AUTHORITY OVER PERSONNEL OR OTHER MANAGEMENT ELEMENTS, BUT RATHER, CONSULS SHOULD SATISFY THEMSELVES THAT THE APPLICANT POSSESSES KNOWLEDGE THAT IS NOT GENERAL KNOWLEDGE HELD COMMONLY THROUGHOUT THE INDUSTRY BUT IS TRULY SPECIALIZED. VO NOTES THIS SHOULD NOT BE CONSTRUED TO MEAN THAT AN INDIVIDUAL'S EXPERTISE MUST BE NARROWLY HELD WITHIN THE COMPANY. THE FACT THAT THE KNOWLEDGE IS HELD WIDELY WITHIN THE SENDING ENTITY DOES NOT PRECLUDE IT FROM BEING SPECIALIZED. SEE REF B.
3. IN ADDITION TO THE REQUIREMENTS PREVIOUSLY STATED, AN INDIVIDUAL APPLYING FOR AN L-1 ON THE BASIS OF SPECIALIZED KNOWLEDGE UNDER A "BLANKET L PETITION" MUST BE A "PROFESSIONAL" (SEE 9 FAM 41.54 N8.2-3), E.G., INS REQUIRES THAT AN APPLICANT MUST HAVE A DEGREE IN THE SPECIALITY (OR SIMILAR) FOR WHICH HE IS APPLYING.
4. POST ALSO RAISES THE ISSUE OF APPLICANTS WITH A MINIMAL EMPLOYMENT HISTORY WITH THE SENDING ENTITY, CITING 9 FAM 41.54 N8.-2 THAT THE MUST HAVE BEEN GAINED THROUGH SIGNIFICANT PRIOR EXPERIENCE WITH THE SENDING ENTITY. CONOFFS MUST, OF COURSE,

DETERMINE THAT THE REGULATORY REQUIREMENT THAT THE APPLICANT HAVE BEEN EMPLOYED BY THE SENDING ENTITY FOR ONE OF THE PRECEDING THREE YEARS HAS BEEN MET. HOWEVER, IN ADJUDICATING L-1 VISAS VO NOTES THAT "SIGNIFICANCE" OF EXPERIENCE DOES NOT NECESSARILY EQUATE TO LENGTH OF EXPERIENCE.

5. WITH RESPECT TO THE ISSUES OF REMUNERATION OF L-1 EMPLOYEES, THERE IS NO REQUIREMENT (AS FOR H-1BS) THAT AN INDIVIDUAL BE PAID THE PREVAILING WAGE. CONOFF MUST BE SATISFIED THAT THE APPLICANT WILL NOT BECOME A PUBLIC CHARGE. BEYOND THAT, IT DOES NOT APPEAR TO VO THAT THE APPLICANT'S COMPENSATION MAY BE ADDRESSED BY CONOFFS.

6. CONCERNING L-1 APPLICANTS WHO WILL BE "DEPUTED" TO THIRD ENTITIES THAT ARE NOT BRANCHES, SUBSIDIARIES, OR AFFILIATES OF THE SENDING COMPANY, VO OFFERS THE FOLLOWING GUIDANCE:

-- OFFSITE WORK AT A CONTRACING FIRM'S PREMISES IS A COMMON PRACTICE AND IS NOT IN AND OF ITSELF SUFFICIENT TO WARRANT VISA REFUSAL.

-- IN ORDER TO MAKE A FINDING OF INELIGIBIITY IN A CASE INVOLVING OFFSITE WORK, THE APPLICANT MUST BE DETERMINED NOT TO POSSESS SPECIALIZED KNOWLEDGE IN PROCEDURES, SERVICES, RESEARCH, EQUIPMENT OR TECHNIQUES PARTICULAR TO THE SENDING ORGANIZATION, OR IT MUST BE DETERMINED THE SUPERVISION OF THE APPLICANT, HIS/HER WORK PRODUCT, CONTROL OF THE TIME, PLACE AND CONTENT OF HIS/HER WORK AND OTHER ESSENTIAL ELEMENTS OF HIS/HER EMPLOYMENT IS UNDER THE DIRECTION OF A THIRD PARTY SO THE PETITIONING COMPANY APPEARS TO BE ENGAGING IN A SIMPLE CONTRACT LABOR ARRANGEMENT. CONSULAR OFFICRS SHOULD NOTE THAT IN MANY CASES INVOLVING THIRD PARTY CONTRACTORS, THE VISA APPLICANT MAY NOT BE FULLY AWARE OF THE ARRANGEMENTS MADE BY HIS/HER EMPLOYER AND THE CONTRACTING COMPANY. THEREFORE, WHEN QUESTIONS ARISE AS TO THE EXACT NATURE OF SUCH ARRANGEMENTS, CONSULAR OFFICERS SHOULD MAKE IT A POINT TO CONFER WITH THE EMPLOYER OR OF ALLOWING THE ALIEN TO BRING THE MATTER TO THE ATTENTION OF THE EMPLOYER BEFORE MAKING A FINDING OF FACT.