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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: EAC 01 057 54049 Office: VERMONT SERVICE CENTER Date: 08 MAR 2002

IN RE: Petitioner:
Beneficiary: [redacted]

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

The petitioner is a restaurant specializing in Japanese food. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as a sushi chef. The director determined that the petitioner had not established that the beneficiary had been employed or would be employed in a capacity which involves specialized knowledge.

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel asserts that the director relied on a previously undisclosed Service policy memorandum and that the director is "writing his own rules and definition in opposition to the intent of Congress." Counsel further maintains that the beneficiary qualifies as an individual with 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.

Section 214(c)(2)(B) of the Act states:

> For purposes of section 101(a)(15)(L), 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 CFR 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.

According to the evidence submitted, the petitioner is a partnership which operates a Japanese-style restaurant in New York City, New York [redacted] The petitioner claims to be the parent of the overseas company, [redacted] which operates a Japanese-style restaurant in London, England [redacted]. The petitioner declared 80 employees and over $13 million in gross revenues.

In the initial petition, the petitioner described the beneficiary as follows:

> [The beneficiary] is an experienced sushi chef. She has been trained in the world famous [redacted] presentation style of sashimi, sushi and tempuras. [redacted] discovered that she has unusual talent in this area and now has been assigned the task of training chef in [redacted] London. [The beneficiary] is a graduate of [redacted] School of Cookery and has a [redacted] diploma as well. She started work for [redacted] London in August 1997 and worked until June 1998. She has returned to chef assignment at [redacted] London in January of 1999 and is presently employed there.

After the director requested additional evidence regarding the nature of the beneficiary's job duties, the petitioner provided a description of the beneficiary's daily functions. According to the job description, the beneficiary performs the following duties:

> A typical workweek for any of our sushi chefs as well as [the beneficiary] consists of:
>
> - A sixty hour/five day work week.
>
> - Clean and prepare all fish for sushi bar.
>
> - Prepare all other ingredients for lunch and dinner service i.e. Sushi rice, Japanese vegetables, Sauces, and Soups.

- Produce Sushi, Sashimi, and any other dishes that come from the sushi bar menu.

- Ordering Fish, Vegetables, and Dry Goods from Japanese Purveyors.

- While working the sushi bar the sushi chef has direct contact with the customers and he/she must have a basic knowledge of English to answer questions pertaining to the food or service.

- Training a limited amount of "Sushi Assistants" to help with basic prep and clean up.

- Maintaining a clean, healthy, sterile environment to prepare sushi.

- Developing Daily Japanese Specials as well as a Seasonal Tasting Menu.

- Involvement in the daily training of waitstaff and management.

- Controlling Food Costs through portion control and cost of raw ingredients.

According to the evidence submitted, the beneficiary is a graduate of a ten-month "cordon bleu course" at the [redacted] School of Cookery, in Woking, England. The beneficiary also possesses a basic food hygiene certificate. According to her resume, at the time of filing, the beneficiary had approximately thirty-three months of experience as a sushi chef, all of which was acquired at the claimed subsidiary restaurant in London.

The director denied the petition after determining that the petitioner did not establish that the beneficiary had been engaged in a position involving specialized knowledge while in the petitioner's employ. The director stated in part:

> The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process or function. You have not furnished sufficient evidence to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his [sic] field. The mere familiarity with an organization's product or service, such as knowledge of its operational procedures or features of its product, does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he [sic]

> has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

On appeal, counsel for the petitioner asserts that the director has followed an overly restrictive and anti-business interpretation of the term "specialized knowledge." Counsel alleges that the director improperly relied on an eight-year old, unpublished Service memorandum in his decision. The memorandum is not part of the present record of proceeding. The director did not specifically refer to the memorandum and counsel declined to submit a copy for the record. Instead, counsel focuses on a Service memorandum that pre-dates the current statutory definition of "specialized knowledge." See "Interpretation of Specialized Knowledge Under the L Classification," CO 214.2L-P (Assoc. Comm., Oct. 27, 1988). Without pointing to specific supporting evidence, counsel quotes the language of the 1988 memorandum and claims that the beneficiary: possesses knowledge that is valuable to the petitioner's competitiveness in the marketplace; is uniquely qualified to contribute to the petitioner's knowledge of foreign operating conditions; has been utilized as a key employee abroad and has been given significant assignments which enhanced the employer's productivity, competitiveness, image or financial position; and possesses knowledge which can be gained only through extensive prior experience with the employer.

In support of the appeal, the petitioner submitted copies of the restaurant's menus and two additional letters. In one letter, the manager of the Hard Rock Cafe in Las Vegas, Nevada, elaborated on the elite standing of the petitioning restaurant and the unique nature of its cuisine. Although the author concluded the restaurant is highly regarded, the letter does not elaborate on the nature of the beneficiary's duties or the specialized knowledge that she has gained while working for the petitioner. In the second letter, the petitioner's executive chef states that the beneficiary possesses proprietary knowledge that is valuable to the petitioner's competitiveness and that she has been given the significant assignment of training the petitioner's European staff. The letter states that she is needed in the United States in order to update the "food service flow system" in the United States operations. In conclusion, the executive chef states that she is a key person in the organization and that she possesses knowledge that "cannot be found on the street."

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job involving specialized knowledge in the proffered position.

First, the petitioner has not submitted sufficient evidence to

establish that the beneficiary has been employed by Nobu-London in a capacity involving specialized knowledge. Although the petitioner claims that the beneficiary has been employed as a training chef, no evidence was submitted in support of this claim. Instead, the petitioner submitted a general description of the beneficiary's job duties and stated that all of its sushi chefs, including the beneficiary, share similar duties. The position description indicates that all of the sushi chefs are involved in the training of sushi assistants, waitstaff, and management. While the petitioner insists that the beneficiary's claimed position as a training chef involves specialized knowledge, the petitioner did not submit evidence to distinguish her position from that of any other sushi chef. Simply 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).

In addition, the record contains a number of ambiguities regarding the beneficiary's job title and qualifications. The petitioner requested authorization to employ the beneficiary as a "sushi chef" or a "training chef," and referred to the beneficiary on appeal as the "European Operations Training Chef." The petitioner did not submit any evidence to establish that the beneficiary has actually held the title of "training chef" or "European Operations Training Chef." Indeed, the beneficiary's resume states that she has been employed as a sushi chef, and not as a training chef. Regarding the qualifications for the position, the petitioner's executive chef, Mr. [redacted], stated that "[t]he minimum amount of time to train a person for this position is approximately three to five years." As previously noted, the record reveals that the beneficiary had less than three years experience as a sushi chef at the time the petition was filed. Mr. [redacted] also stated that the beneficiary acquired her specialized knowledge, in part, "in Japanese Kitchens [sic] and preparing sushi while working in Japan." Contrary to this claim, the beneficiary's resume indicates that she worked as a receptionist and sales assistant in Japan, and not as a sushi chef. The record contains conflicting evidence regarding the nature of the beneficiary's qualifications and her previous job duties, both with the petitioning restaurant and during her employment in Japan. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, if the beneficiary is to be employed as a "training chef" by the petitioning restaurant, it must be noted that the petitioner has not established whether the beneficiary has been employed overseas in that capacity for the requisite one year in the three years prior to the filing of the petition. See 8 C.F.R.

214.2(l)(3)(iv). Although the petitioner claimed that the beneficiary has been employed as a "training chef" or the "European Operations Training Chef" [redacted] no evidence was submitted to establish when she was promoted to this position or how long she has been engaged in this assignment. The beneficiary's resume indicates that she worked as a sushi chef for [redacted] from August 1997 until June 1998, and from January 1999 until the date that the resume was completed. The beneficiary's resume lists no experience as a training chef or "European Operations Training Chef."

In conclusion, the record does not establish that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job involving specialized knowledge in the proffered position. The petitioner has not identified or established that any aspect of the beneficiary's position involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Instead, the petitioner has simply asserted that the beneficiary is a "training chef," without submitting supporting evidence of this claim, and generally insisted that the position requires specialized knowledge without articulating the nature of that knowledge. The petitioner has not submitted any evidence that would differentiate the beneficiary's position, or her knowledge and expertise, from the knowledge and expertise of the other sushi chefs in the petitioner's employ. In accordance with the statutory definition of specialized knowledge, a beneficiary must posses "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the petitioner has not established that the beneficiary possesses any knowledge that is special, or of an advanced level, or that would generally rise above that of any other sushi chef. Accordingly, the petitioner has not established that the beneficiary has been employed in a specialized knowledge position or that the beneficiary would be employed in a position involving specialized knowledge.[1]

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[1] The courts have previously held that the legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In 1756, Inc. v. Attorney General, 745 F.Supp. 9 (D.D.C. 1990), the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court stated that, "[i]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to 'key personnel' and executives." Id. at 16.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between the United States petitioner and the overseas entity, as required at 8 C.F.R. 214.2(l)(3)(i). According to the initial petition, the petitioner claimed to be the parent company of the overseas restaurant. However, according to the Memorandum of Association of Nobu London Ltd., the London restaurant is owned by Nobu Associates (UK), L.L.C., a United States company which holds seventy percent of the outstanding shares, and by Comojo (UK) Ltd., which owns thirty percent of the company's outstanding shares. The petitioning restaurant, however, is owned and operated by Nobu Associates, L.P., a separate limited partnership organized under the laws of the state of New York. According to the Limited Partnership Agreement of Nobu Associates, L.P., the partnership is owned by Nobu Corporation, as general partner, and two individual limited partners. Accordingly, the petitioner has not demonstrated that the New York and London restaurants have common ownership and control. In determining whether a qualifying relationship exists between United States and foreign entities, the Service must examine the elements of ownership and control. See generally, Matter of Church of Scientology International, 19 I&N Dec. 593, 595 (Comm. 1988)(in immigrant visa proceedings); Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (Comm. 1986); Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982). Although the two restaurants may be related in name and concept, the petitioner has not submitted sufficient evidence to establish that the two entities maintain a qualifying relationship, as defined at 8 C.F.R. 214.2(l)(1)(ii)(G). For this additional reason, the petition may not be approved.

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.