

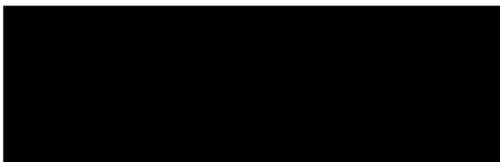
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

D7

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

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AUG 18 2003

FILE: WAC 01 151 53339 Office: CALIFORNIA SERVICE CENTER

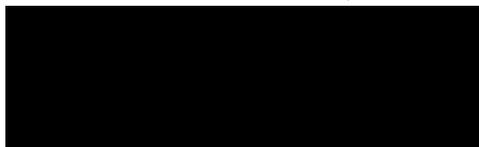
Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

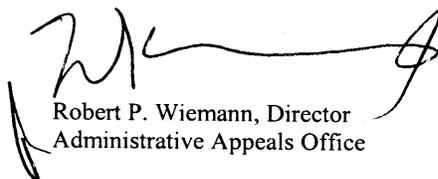
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, [REDACTED] operates a chain of fast food restaurants in the United States and is incorporated in the State of California. The parent company, [REDACTED] is incorporated and headquartered in the [REDACTED] owns several fast food chains which operate internationally. The petitioner seeks to obtain an specialized knowledge nonimmigrant visa for the beneficiary and use the beneficiary's services when opening Jollibee restaurants in the United States.

The director concluded that the beneficiary did not qualify as a specialized knowledge worker. The petitioner submitted a brief to the director captioned "Motion to Reopen/Reconsideration and/or Appeal Brief." In accordance with 8 C.F.R. § 103.3(a)(2)(iii), the director deemed the motion an appeal and, in turn, forwarded the motion to the AAO for review.

On appeal, the petitioner asserts that the director erroneously described the beneficiary's proposed duties. In turn, the petitioner claims that this error requires the Service to grant the beneficiary a nonimmigrant visa. The AAO acknowledges that the director incorrectly described the beneficiary's duties; nevertheless, the petitioner provides no factual or legal support why the AAO should reverse the denial. Furthermore, the AAO notes that, although the petitioner seeks to employ the beneficiary as an "operations manager," the petitioner in fact wishes to employ the beneficiary as a specialized knowledge worker, not as an executive or manager. As will be discussed, the proposed duties listed on Form I-129 and the petitioner's various letters cannot demonstrate that the beneficiary is a specialized knowledge worker. Thus, even if the director had correctly recited the proposed duties, the Service would have still issued a denial.

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.

Moreover, 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.

In regard to specialized knowledge capacity, Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L) [of the Act, 8 U.S.C. § 1101(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.

Furthermore, the regulations at 8 C.F.R. § 214.2(l)(ii)(D) define "specialized knowledge":

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 examining the specialized knowledge capacity of the beneficiary, the Service will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii).

The petitioner averred on Form I-129 that the beneficiary began working in July 2000 as a shift manager at a [REDACTED] outlet in the Philippines. The foreign duties listed on Form I-129 are essentially the same as those the petitioner described in letters dated February 21, 2001, March 21, 2001, and August 8, 2001. As stated in the February 21 letter, those duties were:

1. Leads kitchen crew to achieve highest standards of product quality and ensures that product is always available during shift;
2. Leads counter and dining crew to achieve the highest standards of customer service and speed of service levels;
3. Ensures that "clean as you go" is practiced by all crew; that cleanliness, orderliness and sanitation levels are maintained by all crew on shift. Makes sure that cleaning and preventive maintenance schedules are implemented as scheduled;
4. Implements travel path regularly and directs store crew to attend to identified food, service, and cleanliness needs;
5. Implements management activity checklists consistently to ensure that shift requirements are attended to;
6. Ensures that store is opened on time and that closing activities are not implemented prior [to] official store close; ensures that proper shift endorsement is accomplished at all times for each incoming or outgoing Shift Manager.
7. Ensures that scheduled crew training are [sic] accomplished during shift. Provides coaching whenever necessary;
8. Ensures that discipline is maintained during shift;
9. Ensures that proper manning and positioning are implemented and that adjustments are done to achieve high food service cleanliness levels.

While serving as a shift manager in the [REDACTED] the beneficiary spent the bulk of his time supervising kitchen, counter, dining, and cleaning staff. He made certain that food was served quickly, the restaurant was kept clean, and the employees adhered to schedules. Also, he trained the kitchen, counter, dining, and cleaning staff. In other words, beneficiary's work was entirely directed towards performing tasks necessary to produce a common product, namely, fast food. In short, the beneficiary was not, within three years preceding the application for admission into the United States, employed abroad in a specialized knowledge capacity.

The beneficiary's proposed duties for the U.S. entity are similarly nonqualifying. The proposed duties listed on Form I-129 are essentially the same as those the petitioner described in letters dated February 21, 2001, March 21, 2001, August 2, 2001. As stated in the February 21 letter, the proposed duties are:

[The beneficiary] will fill the position of Operation Manager I. This position requires [the beneficiary] to:

- (1) Direct, coordinate, the manner food service is presented in accordance with the processes, procedures established worldwide by the Jollibee Foods Corporation to enable the Jollibee food chain to compete in the market[;]
- (2) [E]ducate the store crew team regarding the characteristic[s] of the company's unique product lines and processes[;]
- (3) [C]oordinate[], train[], and manage[] the activities of crew members as well as prospective managers in [] Jollibee products, service techniques;
- (4) [D]irect, train[] U.S. employees of the corporation with established company policies, procedures and standards;
- (5) [I]mpart Jollibee's operational procedures to the new crew and prospective managers in the various

food chain activities unique to the company's standards and policies.

To support its view that the beneficiary is a specialized knowledge worker, the petitioner stated in a March 21, 2001, letter:

The product and services of which the beneficiary of this petition has specialized knowledge may not be obtained from other U.S. employees considering the fact that this fast food chain is just starting its operations in the U.S. and that there are no available U.S. employees that are familiar with the unique product and trademark services of the Jollibee food chain.

The beneficiary's training is exclusive and significantly unique in comparison to any other person in the field as operations manager. The beneficiary has been trained with the [REDACTED] and has obtained the manner and trademark for selling the type of products and services that are exclusive only to [REDACTED]

* * *

The knowledge obtained by the beneficiary can be gained only through prior extensive experience with the [REDACTED]

Additionally, on February 21, 2001, the petitioner wrote:

To perform [his proposed] duties . . . [the beneficiary] must have knowledge of the products' presentation and services techniques that constitutes trade secrets of [REDACTED]. The production methods, the quality services, the superior-tasting food, presentation and taste which result in superior quality products and high level of customer satisfaction are all aspects of the company that are unique to the [REDACTED] food chain which constitutes the [REDACTED]

(Emphasis in original.) These letters merely paraphrase the specialized worker requirements. Furthermore, the letters do

not explain or document how the beneficiary's job as a Jollibee supervisor is different from a first-line supervisor's job at any other international chain of fast food restaurants. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Ikea US, Inc. v. INS*, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999); see generally *Republic of Transkei v. INS*, 923 F.2d 175 (D.C. Cir. 1991) (discussing burden the petitioner must meet to demonstrate that the beneficiary qualifies as primarily managerial or executive); *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, a petitioner's assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In sum, the beneficiary lacked the requisite specialized knowledge to qualify for a nonimmigrant L-1B visa.

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; *Transkei*, 923 F.2d at 178 (holding burden is on the petitioner to provide documentation); *Ikea*, 48 F.Supp at 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.