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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, NW  
20 Massachusetts Avenue, N.W. 3rd Floor  
Washington, D.C. 20536

[REDACTED]

File: LIN 01 111 52765 Office: Nebraska Service Center Date:

AUG 25 2003

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]

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

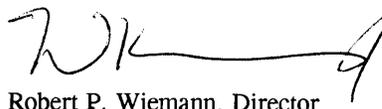
**INSTRUCTIONS:**

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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a residential housing development and construction company. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as its Field Site Construction Foreman. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a capacity involving specialized knowledge.

The petitioner originally filed seeking an L-1A visa for the beneficiary to work as a vice-president and field site manager for the company. Following receipt of the director's request for evidence (RFE), counsel responded that that the beneficiary was more appropriately an L-1B and submitted a revised Form I-129 along with the responses to the RFE.

On appeal, counsel argues that the beneficiary qualifies as an individual possessing specialized knowledge under the definition contained in 8 C.F.R. § 214.2(1) and under Bureau precedent decisions.

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.

The regulation at 8 C.F.R. § 214.2(1)(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 (1)(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.

The United States petitioner was incorporated in March 2000 and states that it is a branch of Sinada International Transport and Trading Company located in Alexandria, Egypt. The petitioner declares 1 employee and 10 independent contractors. The petition was filed in February 2001. The petitioner is considered to be a new office as defined by 8 C.F.R. § 214.2(l)(1)(ii)(F) that states in pertinent part that:

'New office' means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Furthermore, 8 C.F.R. § 214.2(l)(3) states that a visa petition under section 101(a)(15)(L) that involves employment in a new office must show:

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

((1)) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

((2)) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

((3)) The organizational structure of the foreign entity.

(vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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.

The regulation at 8 C.F.R. § 214.2(1)(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.

In the initial petition, the petitioner indicated that the beneficiary was to be hired as "Vice President and Field Site Manager," in a managerial or executive position. Following the director's request for evidence, counsel conceded that the beneficiary is not a manager or executive and submitted a revised petition for the beneficiary to be employed as its Field Site Construction Manager in a specialized knowledge capacity. In conceding that the petitioner is not an executive or manager, the proper action would have been to withdraw the application and file a new application based on the new claim of specialized knowledge.

The regulation at 8 C.F.R. § 214.2(1)(7)(i)(C) states:

The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original petition on appeal as a petition for L-1B classification is rejected.

Even assuming that the petitioner's claim is properly before the AAO, the petitioner did not meet his burden of proof in showing that the beneficiary possesses specialized knowledge. On appeal, counsel argues, in pertinent part, that:

[W]e produced 25 exhibits . . . to prove the viability of the U.S. business, the acceleration of its business operations, and the need for the temporary assistance of the owner's principal assistant, a "key" person in the owner's foreign business operations, and one who has "special knowledge" of the owner's mode of operations, as further explained, to ensure the commercial viability of the new company.

The petitioner asserts that the beneficiary possesses specialized knowledge of: 1) the owner's mode of operation; and 2) the skills required of a construction foreman.

In the response to the request for evidence, the petitioner submitted an affidavit describing the beneficiary's specialized knowledge as follows:

Mr. [REDACTED] has worked very closely with me for the last decade in real estate development and at STTC. He knows my style of operations and the total details of my businesses in Egypt. He has been a trusted employee in my main business of transportation and a partner in our residential apartment finishing and sale business. He has special knowledge of sub-contracting the construction of residences, of my business operations and practices, my decision making process, my strict requirements for quality materials and workmanship, and the language, Arabic, in which I am most comfortable communicating . . . .

The director determined that the type of knowledge and skills that the beneficiary possesses as a result of his side business in apartment finishing in Egypt is not "significantly beyond the

average" in the field and that none of his described duties either abroad or in the proposed position in the United States have been shown to constitute special or advanced knowledge. The director also stated that the petitioner "has not demonstrated that the beneficiary's skill and abilities are substantially different from other individuals working as construction site foreman, working in the same firm or industry."

The petitioner submitted no evidence beyond the affidavit to show how the beneficiary gained his knowledge of the construction industry, the details of his experience in the field, or any documentation of his knowledge and skills. The regulation at 8 C.F.R. § 214.2(3)(iv) states that a petition will be accompanied by "[e]vidence . . . that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States . . . ."

Petitioner's affidavit states that:

[D]uring the last 10 years [beneficiary] has partnered with [petitioner] on the side to do construction finishing of residential apartments, by purchasing the basic apartment space—as sold in Egypt, four walls of concrete—and subcontracting the installation of utilities, design and construction of the interior spaces, finishing, and sale of the apartment. [Beneficiary] was responsible for overseeing and subcontracting the construction aspects of these operations . . . Under this arrangement, [beneficiary] supervised the construction of 80 to 90 individual apartments since 1990.

There is no further documentation provided to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

We find that the issue of whether the applicant is a skilled worker or a worker with specialized knowledge in the context of the position of construction foreman is moot given that no documentary evidence was submitted to support the claim. It is not possible to make a decision on the beneficiary's skill level given the evidence in the record. However, the alternative argument, that the beneficiary has specialized knowledge based on his knowledge of the petitioner's management style can be addressed.

On appeal, counsel for the petitioner asserts that the beneficiary met the requirement of possessing specialized knowledge of the petitioning organization, by virtue of the beneficiary's long affiliation with the petitioner and having worked with him before

in a construction business. Counsel is basing the argument that the beneficiary possesses specialized knowledge on the relationship that exists between beneficiary and petitioner.

Counsel relied on a series of case law to support his claim that applicant's:

[K]nowledge of the specific mode of business operation and all the intangibles of working more closely than anyone else with the principal of the company—in both general business management, but more importantly, in precisely the same type of business activity for which his services are sought for the U.S. company: supervising the contracting of residential real estate construction; this is what makes him a key person with specialized knowledge.

*Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982); *Matter of Vaillancourt*, 13 I&N Dec. 654 (Reg. Comm. 1970); *Matter of Raulin*, 13 I&N Dec. 618 (Reg. Comm. 1970); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm. 1971); *Matter of Colley*, 18 I&N Dec. 117 (Comm. 1981).

These cases relied on specific knowledge that the beneficiaries possessed of the business operations, rather than the "intangibles" of working closely with a petitioner. The petitioner has not established that this working relationship can be considered "specialized knowledge." The simple fact that someone gets along well with his or her employer, knows how he or she works, speaks the same language, and is trusted cannot be considered to be specialized knowledge of an organization's "management" or "processes and procedures" for the purposes of regulations and the Act.

The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's argument, having a close working relationship does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. For this 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.