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

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OFFICE OF ADMINISTRATIVE APPEALS
CIS, AAO, 20 Mass, 3/F
425 I Street NW
Washington, DC 20536

[REDACTED]

FILE: WAC 02 035 50785 Office: CALIFORNIA SERVICE CENTER

Date:

DEC 13 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)

ON BEHALF OF PETITIONER:

[REDACTED]

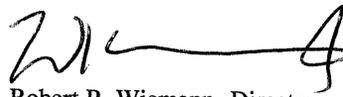
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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] states that it is the parent of [REDACTED] which is organized in Mexico. The petitioner describes itself as an engineering and construction management company. In February 1999, the U.S. entity petitioned to classify the beneficiary as a nonimmigrant specialized knowledge intracompany transferee (L-1B). The director approved the petition as valid from March 10, 1999, to March 1, 2002. The petitioner now endeavors to extend the petition's validity and the beneficiary's stay for two years. The petitioner seeks to employ to the beneficiary's services as a project secretary and translator at a salary of \$12.00 per hour. The director determined, however, that the beneficiary does not qualify as a specialized knowledge worker. Consequently, the director denied the petition.

On appeal, the petitioner's counsel asserts that the beneficiary works in a specialized knowledge capacity.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Under 8 C.F.R. § 214.2(1)(3), 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.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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(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.

Furthermore, the regulations at 8 C.F.R. § 214.2(1)(1)(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.

When examining the specialized knowledge capacity of the beneficiary, the AAO initially evaluates the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's Form I-129, Petition for a Nonimmigrant Worker, described the beneficiary's proposed duties as being the same as those she had performed for the Mexican entity:

[The beneficiary] has been a bilingual secretary for [the Mexican entity]. She translates technical manuals and personnel records from English to Spanish and from Spanish to English. She creates the procedures manuals[;] types drawing, equipment and specification lists; serves as translator to visiting clients[.] She is also responsible for updating files on equipment specifications and for converting specifications according to project needs.

The petitioner stated that the beneficiary worked for the Mexican subsidiary as a bilingual secretary and translator for approximately two years from June 1997 to March 1999.

A letter dated October 8, 2001 submitted in support of the petition described the beneficiary's qualifications as a specialized knowledge worker:

[The beneficiary] is a Bilingual Project Secretary and works for us on many projects where clients need to have the work done in Spanish or the client sends us information in Spanish that must be translated accurately for us to meet their needs. She also has the necessary experience with our company in the engineering business[,] and mining specifically[,] that can be difficult to understand and therefore translate.

Although we have other Spanish speaking employees, we do not have anyone else that can translate accurately the written documents to or from Spanish that we utilize daily in our line of work.

An October 23, 2001 letter submitted in support of the petition further described the beneficiary's duties as:

- Translates correspondence, minutes of meetings, and technical and marketing materials from Spanish to English and English to Spanish.
- Serves as translator in all meetings between U.S. Company and Mexican subsidiary.

- Works with the Human Resources Department of [the petitioner] in correlating procedures and formats.
- Is responsible for translating resumes and training reports.
- Is [r]esponsible for updating files on equipment specifications and for converting specifications according to project needs.

On December 26, 2001, the director issued a request for evidence. In particular, the director asked the petitioner to "explain how the [beneficiary], a translator, satisfies one or more of the following:"¹

- Possesses knowledge that is valuable to the employer's competitiveness in the market place [sic];
- Is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry;
- Has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image or financial position;
- Possesses knowledge which can be gained only through prior experience with that employer;
- Possesses knowledge which, normally, can be gained only through prior experience with that employer;
- Possesses knowledge of a product or process which cannot be easily transferred or taught to another individual;

¹ A 1994 CIS memorandum provided this list of potential ways to identify a specialized knowledge worker. Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994).

- [H]as knowledge of a process or a product which is of a sophisticated nature, although not unique to the foreign firm, which is not generally known in the United States.

On January 28, 2002, the petitioner submitted a letter in response to the request for the evidence. The January 28 letter noted that the beneficiary, prior to the joining the petitioner, had worked as a bilingual secretary for a Mexican metallurgical and mining company for four years. The letter added that, while working for the petitioner, the beneficiary had taken English, grammar, and software courses. The letter further stated in relevant part:

[The beneficiary] is used frequently when clients are in the office from Central or South America. She also places calls to these client offices to translate information and requests from the [petitioner's] office. She has sat in high-level client meetings regarding specifics of implementation on projects and simultaneously translated both from English to Spanish and Spanish to English for [the petitioner's] President and other Project Managers and Engineers. Due to the high technical language used, others cannot do this. Any time [the petitioner] has a project in Central or South America, [the beneficiary] is assigned to do the translating, written and verbal. With the mining industry declining in the [United States], more and more projects are in these areas of the world.

[The beneficiary] also translates written documents into English from Spanish and from Spanish to English. These are technical Engineering specifications, reports, procedure manuals, technical manuals, meeting minutes, letters and transmittals. She translated the "Conveyor Belt Design Manual," "Procedures Construction Documents," "Project Procedures Manual." She has also translated a number of Specifications like "Fabrication of Miscellaneous Mechanical Steel, Conveyor Steel, Platework, Chutes, Hoppers, and Bins," "Fabrication of Structural and Miscellaneous Steel including Grating and Checked Plate," "Structural Steel and Miscellaneous Mounting including Grating and

Checked Plate," "Painting of Equipment, Platework, Structural, Mechanical, and Miscellaneous Steel."

* * *

Her knowledge and understanding of the specific engineering design and construction on [the petitioner's] projects helps her in translating when it is necessary.

Additionally, counsel submitted a February 18, 2002 letter. The letter asserted that the beneficiary's translations prevent errors which "would result[] in a tremendous loss of revenues for the company, and would result in overwhelming detrimental effects." Similarly, the letter stated, "If documents are not translated properly, the engineers who use them cannot properly complete projects. This potentially leads to a loss of revenue for the company." The letter asserted that the beneficiary's skills enhanced the employer's "productivity" and "competitiveness." Furthermore, the letter claimed, "[The beneficiary] was completely knowledgeable of the methods and operations of the foreign company. Training another [person] would clearly disrupt the company business."

On appeal, counsel asserts that the beneficiary meets the definition of a specialized knowledge worker:

[The beneficiary] is not simply a translator. Her job is more similar to one who translates technical writings. In the course of her work abroad, she has developed an understanding of specific proprietary company information that relates to contracts and project plans. Her certification as a Bilingual Secretary permitted her to enter the [subsidiary] in Mexico where she trained to become a Bilingual Project Secretary.

* * *

The [director] has taken the *specialized knowledge* criteria in this case, and has placed a higher standard to the job by now requiring that the beneficiary hold a Bachelor's Degree. The AAO has found in several cases that the job of a technical translator is a job in transition, and that it does

not always require a Bachelor's Degree. Nevertheless, it is more than just a "translator."

The petitioner has not submitted evidence sufficient to support its claims. Initially, the petitioner identified the beneficiary as a "bilingual secretary" who translates a variety of written records of which engineering documents appear to constitute the greatest number. She also provides translation services during meetings and telephone calls. However, on appeal, counsel asserts that the beneficiary "is not simply a translator"; instead, counsel characterizes the beneficiary as a more specialized and skilled worker "who translates technical writings." The petitioner must provide independent objective evidence to resolve any inconsistencies in the record. Failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-2 (BIA 1988). Given the inconsistent job titles and claimed skill levels, CIS cannot determine whether the beneficiary is a specialized knowledge worker.

Furthermore, counsel makes broad, unsupported assertions regarding the beneficiary's translating abilities. Although the petitioner listed specific technical documents that the beneficiary is claimed to have translated, counsel failed to submit certified copies of any of these documents in their original and translated languages. Additionally, counsel asserts that the petitioner and the Mexican subsidiary trained the beneficiary to translate technical engineering documents. Counsel did not, however, identify the specific engineering topics in which the beneficiary received training, specify the amount of time the beneficiary spent in training, or submit any certificates the beneficiary might have received in recognition of the training. Moreover, counsel did not explain whether the training included standard engineering concepts or whether the training included any proprietary engineering techniques that the petitioner uses. Similarly, counsel has submitted no evidence identifying the proprietary information to which the beneficiary may have access.

The failure to submit adequate supporting documentary evidence does not meet 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, the assertions of counsel do not, however, 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 record contains insufficient evidence to demonstrate that the beneficiary is a specialized knowledge worker.

Counsel maintains that without the beneficiary's translating services the U.S. entity would experience a "tremendous loss of revenues" and "overwhelming detrimental effects." In a related assertion, counsel maintains that the beneficiary's presence has enhanced the petitioner's overall productivity and competitiveness. Counsel is, therefore, apparently asserting that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the marketplace. The petitioner has, however, provided no evidence to support these claims. As noted before, the failure to submit adequate supporting documentary evidence does not meet the burden of proof in these proceedings. *Ikea US, Inc. v. INS, supra*; *Republic of Transkei v. INS, supra*; *Matter of Treasure Craft of California, supra*. Also, as noted before, the assertions of counsel do not constitute evidence. *Matter of Obaigbena, supra*; *Matter of Ramirez-Sanchez, supra*.

On appeal, counsel asserts that the director inappropriately held the beneficiary to a higher standard by requiring her to have a bachelor's degree. The AAO acknowledges that the director should have focused primarily on the beneficiary's proposed job duties rather than on her educational credentials. Nevertheless, as previously set forth, the petitioner has submitted insufficient evidence to demonstrate that the beneficiary's duties qualify her as a specialized knowledge worker.

Finally, on appeal, counsel argues that the beneficiary qualifies as a specialized knowledge worker as defined in a 1994 CIS memorandum. See Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). Although the memorandum to which counsel refers is instructive, it is important to examine the underlying purpose of the specialized knowledge classification. In *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to

qualify for the 'L-1' visa" rather than the "key" personnel that Congress specifically intended.

Furthermore, 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, "[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.

Additionally, Congress' 1990 amendments to the Immigration and Nationality Act did not overrule *1756, Inc.*, or affect the 1994 CIS memorandum. The House Report, which accompanied the 1990 amendments, stated:

One area within the L visa that requires more specificity relates to the term "specialized knowledge." Varying interpretations by INS have exacerbated the problem. The bill therefore defines specialized knowledge as special knowledge of the company product and its application in international markets, or an advanced level of knowledge of processes and procedures of the company.

H.R. REP. No. 101-723(I), 1990 WL 200418, at *6749. As previously noted, the Act states, "[A]n 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 U.S.C. § 1184(c)(2)(B). In the present case, the petitioner has not submitted sufficient evidence to establish that the beneficiary meets this definition.

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; see generally *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991) (holding burden is on the petitioner to provide documentation); *Ikea US*,

Inc. v. INS, 48 F.Supp. 2d 22, 24-5 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). The petitioner has not sustained its burden.

ORDER: The appeal is dismissed.