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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



FILE: LIN 99 014 51497 Office: NEBRASKA SERVICE CENTER Date:

NOV 06 2003

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

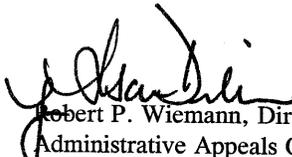
INSTRUCTIONS:

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 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 an international tour operator. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely chalet representative. The director determined that the petitioner had not established that the beneficiary possessed specialized knowledge, or that she had been or would be employed primarily in a specialized knowledge capacity.

On appeal, the petitioner submits a brief in opposition to the director's decision denying the visa petition.

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 regulations at 8 C.F.R. § 214.2(1)(3) state, in part, 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.

(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.

According to the evidence contained in the record, the petitioner is an affiliate of [REDACTED] located in Wales, England. The petitioner was incorporated in Colorado in 1994 and claims to specialize in assembling tours and vacation packages for

its British and other European clientele. The petitioner declared five and one hundred projected employees during the 1998/1999 season and \$2,500,000 in projected gross revenues. The petitioner seeks the beneficiary's services in order to serve as a chalet representative and to render services in a specialized knowledge capacity for a three-year period, at a weekly salary of \$250.00.

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

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(D) defines "specialized knowledge" as:

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, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. In the initial petition, the petitioner described the beneficiary's duties with the foreign entity as involving catering for needs of guests of international tour operator including providing three meals per day and maintaining the property throughout. The petitioner further describes the beneficiary's proposed duties in the United States as being responsible for caring for needs of guests of international tour operator, knowledge of European customs and habits, and knowledge of Crystal policies and procedures.

A letter of support, dated September 17, 1998, written by Clive Brigham of Crystal Holidays LTD contains a description of the beneficiary's employment history with the firm, and proposed duties in the United States. It goes on to say that the beneficiary has been in its employ since 1997, and that, during that time, she has gained an extremely high, level of knowledge and experience in the

application of the firm's policies and procedures and the very particular manner in which the firm expects all its guests to be treated. He goes on to say that those who are on the front line dealing with guests have an intimate knowledge of European practices and customs. He concludes by noting that the beneficiary possesses this level of knowledge and experience, that her natural people skills have been enhanced by her experience she has accumulated with the company, and that the beneficiary is needed in the United States to provide valuable on-site training.

A copy of the job description for a chalet representative was contained in the petition support letter, dated September 27, 1998. It included a listing of responsibilities such as: "catering, upkeep of chalet, personal appearance, problem solving, budget control, host(ess)ing, paperwork, shopping, kitchen, team work, flexibility, and organizational ability." A copy of the beneficiary's resume was also submitted in support of the petitioner's specialized knowledge claim. According to the resume, the beneficiary received 4 'O' levels from Annie Holgate Comprehensive in 1984, and a two year diploma in hotel catering and institutional operations from Clarendon College of F.E. in 1986. She goes on to list additional certificates received in 1986, 1995 and 1996, but with no detailed descriptions. The beneficiary continues by listing her employment with the Crystal Holidays Limited. She lists her employment as an inclusive properties representative from May 1998 to October 1998, and chalet representative from November 1997 to April 1998. The beneficiary described her duties as follows:

[R]esponsible for every aspect of catering to every need of the guests under my care. These responsibilities included transport to and from the airport and internally, lodging, food, ski and après ski equipment, ski passes, guiding on ski tours.

The director issued a request for evidence, dated November 16, 1998, to the petitioner requesting that the petitioner submit evidence to establish that the beneficiary has at least one continuous year of full-time employment abroad, within the three years immediately preceding the filing of the petition. The director also requested that the petitioner submit evidence that the beneficiary possesses special knowledge of the firm'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.

The petitioner responded to the director's request in a letter dated November 23, 1998. The petitioner supplied a copy of the beneficiary's P-60 earnings report for 1998. In that response letter the petitioner also addressed the specialized knowledge issue by stating that the duties of the prospective position do

require specialized knowledge. The petitioner continued by providing a detailed description of the beneficiary's proposed duties as follows:

The key duties of the position are catering, chalet upkeep, shopping, hostessing and problem solving. [Beneficiary] spends approximately 40 hours per week on the job with 9 hours per week spent on each of catering, chalet upkeep, shopping and hostessing with the remaining 4 hours dedicated to problem solving as necessary.

In response to the director's request, the petitioner also provided a copy of the job description for a chalet representative, with a listing of responsibilities which include: catering, upkeep of chalet, personal appearance, problem solving, budget control, host(ess)ing, paperwork, shopping, kitchen, teamwork, flexibility, and organizational ability. The petitioner concludes by noting that the beneficiary's ability to speak French enhances her qualifications for the position.

The director denied the petition after determining that the petitioner did not establish that the beneficiary had been engaged in a managerial position involving specialized knowledge while in the foreign entity's employ or as proposed for the U.S. entity. The director went on to say:

While the Service recognizes that the ski resorts operated by [REDACTED] is a competitive business requiring skilled employees, it is unconvinced that the particular skill levels required by the beneficiary merit eligibility for the requested L1B classification.

It is also noted that although the beneficiary was employed abroad for one year or more, it does not appear that the overseas position was managerial or executive in nature, nor did it involve the application of specialized knowledge, as mentioned herein, by the beneficiary.

On appeal, the petitioner asserts that its L1B employees have a higher level of commitment than do its H2b employees, in that they are required to have knowledge of the skills and intricacies of the position at a level that will enable them to impart that knowledge to American employees. The petitioner further states that, at the present time, there are an insufficient number of potential American employees with the required skills to serve the resort populous. The petitioner concludes by stating that the beneficiary is needed in the United States to redress this issue, thus eventually eliminating the need to import alien nonimmigrant workers.

Upon review, the record does not establish that the beneficiary has any uniquely advanced or special knowledge of the petitioning organization's products or services or their application in the United States market as claimed. The beneficiary's knowledge of the foreign entity's operations does not automatically constitute special or advanced knowledge. The beneficiary's generally described employment fails to establish that the beneficiary possesses or has used in the performance of her employment, skills that qualify as requisite specialized knowledge. The petitioner argues that the beneficiary's training as a chalet representative has given her knowledge that is special because it is specific to the petitioning entity. However, logic dictates that on-the-job training at any company teaches procedures that are predominately germane to that organization. The record is void of any special in-house training received by the beneficiary either from the organization or any institute of higher learning. Furthermore, in-house training, as such, does not automatically qualify as specialized knowledge as the petitioner would suggest.

Although the beneficiary's title has been described as chalet representative, there has been no evidence presented to show how her day-to-day functions require specialized knowledge. The petitioner's general descriptions of the beneficiary's duties such as catering, upkeep of chalet, personal appearance, problem solving, budget control, host(ess)ing, paperwork, shopping, kitchen, teamwork, flexibility, and organizational ability are not sufficient to establish that the beneficiary possesses special knowledge of the company's product or process and its application in the international market. While the petitioner insists that the beneficiary's claimed position as chalet representative involves specialized knowledge, the petitioner did not submit evidence to distinguish her position from that of any other managerial staff. 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 conclusion, the record does not establish that the beneficiary has been or would be employed in a specialized knowledge capacity or that she possesses specialized knowledge of the entity's product, processes, or procedures. The knowledge possessed by the beneficiary appears to be the routine and ordinary knowledge associated with the job of a chalet representative. Neither the job descriptions given by the beneficiary in her resume nor the job duties of the proffered position have been shown to be substantially different from that of a chalet representative in the United States or any other country. The record shows that the beneficiary's previous training and employment experience with the foreign entity has given her the knowledge required to perform her duties competently, but cannot be considered to constitute an advanced level of knowledge sufficient to qualify her as an intra-

company transferee. Contrary to the petitioner's allegations, the beneficiary's knowledge of the company's processes and procedures has not been shown to be unique to the American market, nor has the evidence established that her knowledge is substantially different from, or advanced in relation to, that of any chalet representative of any international tour operator business.

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. For this reason, the petition will be denied.

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.