

PUBLIC COPY

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

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

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



FILE: LIN 01 169 51804 Office: NEBRASKA SERVICE CENTER Date: **NOV 13 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.

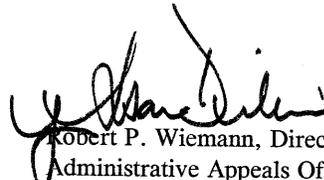
INSTRUCTIONS:

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 a seller of [REDACTED] (interconnection) products. It seeks to employ the beneficiary temporarily in the United States as an area sales manager. The director denied the petition because the foreign entity did not employ the beneficiary in a specialized knowledge capacity for one continuous year prior to filing the petition.

On appeal, the petitioner contends that the beneficiary has served for one continuous year in a specialized knowledge capacity for the foreign entity and is, therefore, eligible for L-1 classification.

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 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 with 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.

According to the evidence contained in the record, the petitioner is a subsidiary of [REDACTED] located in the Netherlands. The petitioner was incorporated in 2000 and claims to be a seller of [REDACTED] (interconnection) products and provides consultancy services regarding technological appliances. The petitioner declares one employee. The petitioner seeks the beneficiary's services as an area sales manager for a three-year period, at a yearly salary of \$48,600.

At issue in this proceeding is whether the petitioner has established that the foreign entity employed the beneficiary in a specialized knowledge capacity for one continuous year, within the three years preceding the filing of the petition.

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 a letter supporting the I-129 petition, the petitioner stated that the beneficiary is employed by the foreign entity as a sales manager, and that he is responsible for the sales activities related to the United States and Canada and for managing several key accounts for the [REDACTED] group in Europe and Asia.

The petitioner submitted a copy of the beneficiary's resume, which lists his employment experience with the foreign entity as follows:

September 1999 - Current Sales Manager for North America

with the [REDACTED] Group. The [REDACTED] group is specialized in offering interconnection solutions, by supplying both products and services to OEM and resellers. Among the responsibilities were; managing the sales accounts for all customers in North America, managing several key-accounts for the group in Europe and Asia. Doing acquisition on all continents and development of key-accounts. During the absence of the manager's absence [sic] in Hong Kong in the first quarter of 2000 I have been in charge of the facilities operations for a month. I have covered most key positions within the company for some time. Sales, Purchasing, Expedition, Engineering etc. I was also in charge of the study to investigate if it was a desirable step to expand the business in North and South America and to set up an office locally. This was followed by writing a business plan to determine how the [REDACTED] was to realize the goals to set up an office in the Americas[sic].

In response to the director's request for additional evidence, the petitioner stated that the beneficiary has been employed for [REDACTED] since 1999 and is a specialist in [REDACTED] processes and procedures and possesses the special knowledge necessary to provide United States customers with [REDACTED] interconnection products and related expert consultancy. The petitioner further states:

During parts of 1999 and 2000 [the beneficiary] followed an intensive in-house training course. During this training course he gained specific and valuable knowledge on all relevant business & product units of the [REDACTED] group of companies. He was trained in sales, logistic processes, production methods (in the Netherlands and Hong Kong), financials, accounting, pricing and quotation.

The entire training program took 15 months and required a substantial investment in time and effort, both of [the beneficiary] and the companies and staff involved.

The knowledge [the beneficiary] gained during the training is unique, significant and essential to our North American operations. Only with this specific knowledge, [the beneficiary] will be able to fill the position of Area Sales Manager with [REDACTED] North America Inc.

In a letter addressed to the beneficiary, the petitioner stated that during the period of September 20, 1999 until August 17, 2000 the beneficiary has "followed an exclusive and intense training program." The petitioner continued in the letter by noting that the "training program was set-up to prepare you for the job of Area

Sales Manager [REDACTED] North America Inc." A Certificate Evaluation Specialist Training, acknowledging the beneficiary's training, states that the beneficiary was trained during the period of September 20, 1999 until December 31, 2000. The certificate also lists all of the days for which the beneficiary participated in the various courses; there only being a fifteen day holiday period (December 27, 1999 to January 10, 2000) for which the beneficiary was not being trained.

In a letter dated July 28, 2001 the petitioner continued by elaborating on the beneficiary's training as follows:

[The beneficiary] received an intensive training in [REDACTED] sales, [REDACTED] products, [REDACTED] marketing techniques, [REDACTED] logistics, [REDACTED] companies worldwide, [REDACTED] customers base, [REDACTED] contracting, [REDACTED] quality principles, [REDACTED] production methods, [REDACTED] accounting and [REDACTED] financial reporting.

[The beneficiary's] training was more extensive than the training of other employees at [REDACTED]. The reason for this was that [the beneficiary], next to filling the position as Area Sales Manager, is expected to develop new business opportunities in different US regions as well as to investigate opportunities for Vanga's products and services in US new markets. In order to do this an extensive knowledge of [REDACTED] products, procedures, services and strategy is required.

The director denied the petition after determining that the record did not establish that the beneficiary had served in a capacity requiring specialized knowledge for one continuous year prior to filing of the petition.

On appeal, the petitioner asserts that the beneficiary did serve in a specialized knowledge capacity for one full year prior to filing the petition, and submits a brief in support thereof. The petitioner states in its brief that the beneficiary started as Area Sales Manager in September 1999 and that he served in a capacity requiring specialized knowledge from the start of his employment. The petitioner further maintains that the training was supplemental to the beneficiary's activities as Area Sales Manager with the foreign entity. The petitioner also asserts that the beneficiary's training was not full-time and was received during parts of 1999 and 2000. The petitioner contends that the beneficiary's training was "accessory" to his normal job duties as an Area Sales Manager. The petitioner further asserts that the beneficiary's combined knowledge gained during his former employment coupled with his degree in Mechanical Engineering, and his language skills, makes the beneficiary a specialist with exceptional credentials.

On review, the record as presently constituted is not persuasive in

demonstrating that the beneficiary had been employed in a capacity involving specialized knowledge for one continuous year abroad, prior to the filing of the petition. The record shows that the beneficiary has been employed by the foreign entity since September 1999. The instant petition was filed on May 4, 2001. The petitioner initially stated that the beneficiary had been involved in intensive in-house training from September 1999 through September 2000, and that the training was more extensive than the training of other employees at Vanga. The petitioner also notes that the entire training program took 15 months and required a substantial investment in time and effort. However, on appeal, the petitioner asserts that the training was not extensive, and that it was not given on a full-time basis. The record reflects that the training was given from September 1999 through December 2000, that it was intensive, and that the beneficiary was in training during this entire period except for a brief holiday period. There is no mention in the beneficiary's resume of specialized knowledge acquired prior to his employment with the foreign entity. 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).

Furthermore, although it is the petitioner's contention that the beneficiary has been employed by the foreign entity in a specialized knowledge capacity for over one year, it has not articulated or elaborated on any duty of the beneficiary that might be considered to require specialized knowledge. Assertions made by the petitioner that the beneficiary holds some type of unique knowledge of the petitioner's products, service, operations and procedures, is not supported by the record. 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 summary, the record does not establish that the beneficiary has been employed in a specialized knowledge capacity or that he possesses specialized knowledge of or an advanced level of knowledge or expertise in the entity's product, processes, or procedures. There has been no evidence presented to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by the petitioner in the beneficiary's firm and field of endeavor. The petitioner has failed to demonstrate that the beneficiary, within three years preceding the application for admission into the United States, has been employed abroad in a qualifying capacity involving specialized knowledge, for one continuous year by a qualifying organization. Therefore, the beneficiary is ineligible for classification under section 101(a)(15)(L) of the Act.

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.