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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: WAC 02 063 57173

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



NOV 19 2003

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

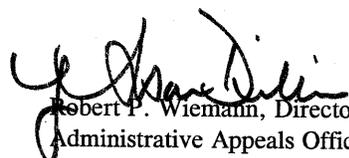
**INSTRUCTIONS:**

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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be an acupuncture and holistic health center. It seeks to extend the beneficiary's stay in the United States as its acupuncture practitioner. The director determined that the petitioner had not established that the beneficiary's employment with the U.S. entity involves specialized knowledge.

On appeal, the petitioner disagrees with the director's determination and submits a brief statement on appeal.

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.

The petitioner claims to be a branch office of U-HO AN (Japan). The petitioner was incorporated in 2001 and claims to be an acupuncture and holistic health center. The petitioner declared one employee and no gross annual income. The petitioner seeks the continuation of the beneficiary's services as an acupuncture practitioner for a period of three years, at a yearly salary of \$35,000.

The 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 with the U.S. entity.

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(l)(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 support letter dated December 3, 2001, the beneficiary's job duties are described as follows:

At this time, we wish to continue to retain the services of [the beneficiary], in the specialized knowledge capacity of Acupressure Practitioner. In this capacity, he will perform the following duties: applying principles of U-HO Seitai acupressure therapy with clients; examine clients to determine afflicted areas; interview clients to determine lifestyle and nutritional habits; determine acupressure therapy needed to achieve correct body alignment; make body adjustment according to Chinese principles of pressure points; and work with clients using concepts of aroma relaxation and reflexology.

In response to the director's request for additional evidence, the petitioner listed the beneficiary's duties as follows:

[The beneficiary] has been trained in the methods of U-HO AN using the Seitai acupressure methods of Chinese and Western treatment modalities as developed by U-HO AN. U-HO therapy is based on the principle that harmony must exist between the body and the mind before true physical and spiritual health is possible. The duties performed by acupressure therapists abroad at U-HO AN (Japan) and by [the beneficiary] in the U.S. are unique

and unlike any comparable therapists in the U.S. U-HO therapy uses Western knowledge of anatomy and physiology in conjunction with traditional Chinese therapy toward a goal of helping mind, spirit and body achieve natural harmony and optimum health. It is the combination of the two principles that distinguishes U-HO Seitai acupressure therapy from all others and makes it different from all other acupressure approaches in helping people to achieve health, both physically and mentally.

[The beneficiary] trained as a Seitai Acupressure Therapist at U-HO AN (Japan). He was trained in the unique approach of U-HO AN using Seitai therapy. This therapy uses acupressure according to Chinese principles of pressure points. The Seitai therapist is trained to determine the acupressure therapy needed to achieve correct body alignment.

[The beneficiary] will train other acupressure employees in the treatment methods of U-HO AN Seitai acupressure therapy, in the belief that the treatment method is unique among holistic practitioners.

The director denied the petition after determining that the petitioner had not established that the beneficiary possessed specialized knowledge. The director further maintained that the beneficiary was not shown to be serving in a specialized knowledge capacity with respect to the petitioner's product, nor had the beneficiary been shown to possess an advanced level of knowledge of the processes and procedures of the petitioner's company.

On appeal, the petitioner asserts that the petition is a renewal and that the beneficiary's specialized knowledge skills remain the same. The petitioner further maintains that the circumstances surrounding the initial petition have remained the same, and by granting the first L-1 petition and the extension thereof, the director already favorably decided the employment of the beneficiary in a specialized knowledge capacity. Although the petitioner asserts that the facts and circumstances have not changed since Citizenship and Immigration Services (CIS) approved the initial L-1 petition for the beneficiary's transfer to the United States in 2001, copies of such documentation are not a part of the present record for review by this office. It is further noted that previously accorded L-1B status does not automatically qualify the beneficiary for the extensions of such status. Determinations of eligibility are based on the totality of evidence available to the AAO at this time. The AAO is not enjoined to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988); *Sussex Engg. Ltd. v. Montgomery*, 825

F.2d 1084, 1090 (6<sup>th</sup> Cir. 1987), cert. Denied 485 U.S. 1008 (1988).

The petitioner further maintains that the basis of the petition for continuation of the beneficiary's services was knowledge of the petitioner's processes and procedures.

The petitioner's statement is not persuasive. The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product, procedures or its application in U.S. and international markets. The descriptions of the beneficiary's job duties are vague and general. The beneficiary's employment experience with the foreign organization may have given him knowledge that is useful in performing his duties as an acupressure therapist, but it cannot be the case that any useful skill is to be considered to constitute special or advanced knowledge. One's longstanding knowledge of Seitai acupressure methods is not, by itself, specialized knowledge. Nor is experience as a trained acupressure therapist, of the approach of U-HO AN using Seitai therapy unique. In fact, contrary to the petitioner's assertions, the beneficiary's knowledge of the company product, or of the processes and procedures of the foreign company, has not been shown to be substantially different from, or advanced in relation to, that of any acupressure therapist of any U-HO AN or holistic organization.

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the beneficiary possesses the skill required to work as an acupressure therapist dealing with various holistic alternatives to healing the body, not a special knowledge of the petitioner's processes and procedures. Furthermore, although the petitioner's approach to holistic therapy may be unique or specialized (combining Chinese and Western treatment modalities), the beneficiary's application (correct body alignment) is not such that would qualify as advanced. In addition, acupressure training appears to be readily available within the United States at the beginners, intermediate and advanced levels. Accordingly, the petitioner has not established that the beneficiary would be employed in a specialized knowledge position or that the position requires an individual with specialized knowledge.

Beyond the decision of the director, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(G). The petitioner has not demonstrated that a qualifying relationship still exists with a foreign entity and has not persuasively demonstrated that the U.S. entity or the foreign entity is and will continue doing business during the alien's stay in the United

States pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(H). The present record reflects that the U.S. entity did not realize any net or gross annual income immediately preceding the filing of this petition and the petitioner did not present any documentary evidence concerning the ownership of the Japanese and U.S. entities. As the appeal will be dismissed, these issues need not be examined further.

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; *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. U.S. Dept. of Justice*, 48 F.Supp.2nd 22, 24 (D.D.C. 1999) (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.