

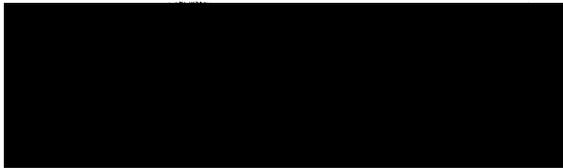
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



**NOV 20 2003**

FILE: LIN 02 164 53406 Office: NEBRASKA SERVICE CENTER Date:

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:



**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 exporter and distributor of cosmetic products. It seeks to employ the beneficiary in a capacity involving specialized knowledge as its president and general manager. The director determined that the petitioner had not established that the beneficiary possesses specialized knowledge and has been and will be employed in a capacity involving specialized knowledge.

On appeal, counsel contends that the beneficiary is eligible for L-1 classification in a capacity involving specialized knowledge, and provides a brief in support of the 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 regulation at 8 C.F.R. § 214.2(1)(3) states, 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 with the three years preceding the filing of the petition.

According to the evidence contained in the record, the petitioner is a subsidiary of Howa Company, LTD located in Japan, specifically NuSkin products. The petitioner was incorporated in 1999 and

claims to be an exporter and distributor of cosmetic products to Japan. The petitioner declared three employees and \$342,685.00 in gross revenues. The petitioner seeks the beneficiary's services in order to serve as a president and general manager and to render services in a specialized knowledge capacity for a three-year period, at a yearly salary of \$40,800.00.

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(l)(1)(ii)(D) defines "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.

In describing the beneficiary's duties for the foreign entity, the petitioner stated, in pertinent part:

[Beneficiary] was responsible for all aspects of the company's business related to the importation of NuSkin products from the United States to Japan. Direct all functions related to the importation of NuSkin products. Select products in light of demand and taste of Japanese market. Oversee the shipment of products and overall business administration. Provide liaison with processes and procedures of parent.

In describing the beneficiary's proposed duties in the United States, the petitioner stated, in pertinent part:

[Beneficiary] will be responsible for all functions of the company. Oversee the purchase and export of products to Japan; direct and manage the company's

financial affairs; coordinate business efforts with Howa headquarters in Japan; coordinate and direct efforts with outside professional resources; expand company's business opportunities in the United States market.

The petitioner also provided a description of the beneficiary's proposed job duties and the percentage of time to be spent performing each by stating, in pertinent part:

1. Oversee the purchase and export of products to Japan; supervise U.S. staff; daily instruction for staff; review order and invoice lists (30%)
2. Direct and manage the company's financial affairs; oversee accounting; budget/payroll (20%)
3. Coordinate business efforts with Howa headquarters in Japan; email and fax correspondence; prepare daily reports to Japan (30%)
4. Coordinate efforts with outside professional resources; check web news for customers, general information; resolve claims for Japanese customers and staff (10%)
5. Expand USA Howa's business opportunities in the U.S.; oversee marketing opportunities (10%)

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 graduated from the Aoyama Gakuin University, Japan with a bachelor's degree in management in 1988. She lists her employment with Howa Company from 1991 to the present as a representative director and general manager.

A letter of support, dated April 16, 2002, was written by Kazuyuki Toyohara of Howa Company, LTD noting the beneficiary's experience working for the organization in that the beneficiary is:

Vice President and Director, 1991-present, Howa Co., Ltd. Responsibilities include managing all aspects of the company's business related to the importation of NuSkin products from the U.S. to Japan. Manage all functions related to the importation of NuSkin products. Oversee the shipment of products and overall business administration.

In the request for additional evidence, the director noted that the beneficiary was previously in the United States as an L-1A manager to open a new office. The director requested the petitioner to submit additional evidence that the beneficiary qualified for a specialized knowledge position, and that the position abroad involved, and in the United States required, a person with specialized knowledge. The director continued by requesting that the petitioner submit evidence that the beneficiary possesses special knowledge of the company'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 director concluded by requesting documentation attesting to the beneficiary's vocational training and/or practical employment experience, showing how the beneficiary's training and/or experience differs from the training and/or experience an individual would receive who is similarly engaged within the same firm or industry.

In response to the director's request for additional evidence, counsel asserted that the beneficiary developed her specialized knowledge of the NuSkin product line through working for Howa Co. for over ten years. Counsel asserted that she has been responsible for managing all aspects of the import and sales of NuSkin products, including marketing decisions, sales goals, promotion of products, developing new markets, distribution of NuSkin products, and training other employees regarding the NuSkin products. Counsel provided a class schedule of training courses taught by the beneficiary, as well as four other instructors. The courses provide training to company employees in NuSkin products and its business plan. Counsel went on to note that the beneficiary is instrumental in training and recruiting new distributors, referencing the "48 Hour Training Guide," and in developing the structure of the company. Counsel averred that the beneficiary understands the Japanese market demand for NuSkin products and possesses knowledge of the multi-level sales/distributor programs. Counsel continued by asserting that the beneficiary's understanding of the composition of the products sold and ability to speak Japanese constitute a unique knowledge that is not shared by others. Finally, counsel concluded that the beneficiary possesses specialized knowledge that is distinguished and exceeds the knowledge possessed by others in the company.

The director denied the petition after determining that the petitioner did not establish that the beneficiary had been engaged in a position involving specialized knowledge while in the foreign entity's employ or while in the employ of the U.S. entity, or as proposed for the U.S. entity. In his decision, the director noted that the beneficiary had held L-1A status for one year for the purpose of opening a new office. The director pointed out that electronic records of the Immigration and Naturalization Service (Service), now Citizenship and Immigration Services (CIS), indicated that the petitioner had subsequently filed two petitions to extend the L-1A status, and that both of the petitions were denied. The director also noted that the petitioner failed to acknowledge in Part 4 of its L-1B status petition that it had previously been denied the classification requested.

The director also stated, in pertinent part:

The [Beneficiary's] job description lists general

administrative and management duties related to operating a small business. Knowledge of multi-level sales/marketing or distributor programs are not specialized, as these types of programs exist in similar fashion in many industries. The products purchased by the petitioner for export to the foreign parent are not unique or limited to only the petitioner. These are products that can be purchased and resold by any number of companies or individuals. The petitioner has not submitted any evidence that allows a reasonable conclusion that the U.S. entity is involved in any business activity that would require an individual with specialized knowledge.

The director continued by noting that the record did not support the petitioner's assertions that the beneficiary possessed specialized knowledge or that she would be employed by the U.S. entity in a specialized knowledge capacity, in accordance with the statutory and regulatory definition and meaning of the term. The director concluded by stating that the record was not persuasive in establishing that the beneficiary's skills and knowledge could only be achieved by someone possessing an advanced level of knowledge of the products, processes, and procedures of the petitioner; and that the petitioner had not demonstrated that the beneficiary's skills and abilities were substantially different from other individuals working in the same firm or industry.

On appeal, counsel asserts that:

1. The beneficiary has special knowledge of the company product and its application in international markets.
2. The beneficiary is not simply a skilled worker but rather has an advanced level of expertise and proprietary knowledge of the company's product, techniques, and management not readily available in the United States labor market.
3. The beneficiary possesses many characteristics of "specialized knowledge."
4. The beneficiary has an advanced level of knowledge of processes and procedures of the company.

Upon review, the record does not establish that the beneficiary possesses special knowledge of the petitioner'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, as claimed. The beneficiary's longstanding knowledge of the U.S. entity or foreign organization's operations does not automatically constitute special or advanced knowledge. Counsel

contends, "[t]he company's core business is the sale and distribution of advanced skin and personal care products manufactured and sold by NuSkin, Inc. . . . The company purchases the NuSkin products, ships them to Japan, where the products are distributed to customers." She continues by stating, "[The beneficiary] has been responsible for managing all aspects of the import and sales of NuSkin products including marketing decisions, sales goals, promotion of products, developing new markets, distribution of NuSkin products, and training other employees regarding the NuSkin products." Counsel's general descriptions of the beneficiary's duties are not sufficient to establish that the beneficiary possesses special knowledge of the company's product or processes and its application in the international market. The record reflects that the beneficiary spends most of her time performing sales and marketing tasks for the foreign entity. Evidence in the record also establishes that the beneficiary is primarily responsible for ordering and receiving NuSkin products in Japan and for carrying out the day-to-day functions of the business. These mundane duties, by their very nature, do not require the use of specialized knowledge.

The record does not support counsel's contention that the beneficiary is not simply a "skilled worker" but rather has an advanced level of expertise and proprietary knowledge of the company's product, techniques, and management not readily available in the United States labor market. It has been established that the NuSkin company is a distributorship whose distributorship training can be accomplished within 48 hours ("48 Hour Training Guide.") Based upon the evidence presented, knowledge of the company's products, programs, processes, policies and procedures is readily available, on a global basis, via the Internet. The record is void of any special in-house training received by the beneficiary either from the organization or any institute of higher learning that would distinguish her skills as specialized. There has been no evidence submitted that distinctly describes the level of training the beneficiary received from the NuSkin company to substantiate specialized knowledge in the distribution of its products. There is no evidence to show that the Howa Company provides any unique or specialized training for its employees in the sale and distribution of NuSkin products.

Counsel contends that the beneficiary is an expert in the NuSkin product line as well as its business model, in that she is instrumental in recruiting and training new Japanese distributors in the NuSkin product line. 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). There has been no evidence submitted to establish that the beneficiary received any form of certification, degree or diploma that would reflect her training capabilities in the field. The record does not show how much of the beneficiary's time is actually

spent training and recruiting new distributors nor does it specify how often the training sessions are given, the specific course outline used, or the level of her success rate. The record, however, does reflect that the beneficiary is one among five individuals who provide such training to the new recruits; thus, raising the question of the nature and extent of her unique and specialized knowledge.

While counsel insists that the beneficiary's position as president and general manager involves specialized knowledge of the company's product and its application, there has been no evidence submitted to distinguish her position from that of any other administrative or managerial staff or distributor. Counsel asserts that the beneficiary is instrumental in selecting NuSkin products for the Japanese market. This description is not sufficient to distinguish the beneficiary from any other international distributor in the industry. NuSkin, not Howa Company, offers a complete forty-eight hour training program for \$25.00 to anyone who is interested in selling its product. This suggests that there are hundreds of individuals, with the same qualifications as the beneficiary, who sell this same product-line in the United States and abroad.

Furthermore, the beneficiary's generally described proposed job duties for the U.S. entity fail to establish that she possesses, has used, or will use in the performance of her employment, skills that qualify as requisite specialized knowledge. The beneficiary's job duties for the U.S. entity will primarily consist of ordering and shipping NuSkin products to Japan and carrying out the day-to-day functions of a small business. Performing these duties as an efficient, competent skilled worker does not connote, as counsel claims, an advanced level of expertise or special knowledge of the company's product, techniques, and management not readily available in the U.S. market.

Counsel also asserts that the beneficiary possesses an advanced level of knowledge of processes and procedures of the U.S. entity in that she was instrumental in setting up the business plan of a multi-level sales/distributor program. The assertions of counsel do not 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). There has been no evidence presented to show that there wasn't a multi-level sales/distributor program already put into place by the NuSkin company, and used by the hundreds of new distributors in starting up their distributorships. There is nothing in the record that suggests the beneficiary has done anything more than implement a multi-level sales/distributor program, developed by the NuSkin company, to benefit the foreign entity.

Counsel continues by asserting that the beneficiary's ten plus years of experience with the foreign entity has given her knowledge that is advanced because it is specific to the petitioning entity.

She goes on to aver that the beneficiary has been responsible for managing all aspects of the import and sales of NuSkin products including marketing decisions, sales goals, promotion of products, developing new markets, distribution of NuSkin products, and training other employees regarding the NuSkin products. The descriptions provided by counsel are vague and general and do not specify how the beneficiary's training and/or experiences differ from the training and experience an individual would receive who is similarly engaged within the same organization or industry. Logic dictates that on-the-job training and experience 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 that would distinguish her skills as specialized. There is no evidence in the record that establishes specific vocational, technical, and/or professional development courses taken by the beneficiary. There has been no evidence submitted to describe and distinguish the beneficiary's knowledge from the knowledge possessed by others within the organization, and the industry at large. There is evidence in the record of a "48 Hour Training Guide" used to train potential distributors, which in and of itself does not qualify as specialized or advanced training. Counsel points out that the beneficiary possesses advanced knowledge and unique capabilities in that she is able to train individuals in Japanese to operate within the NuSkin business plan, and to sell NuSkin products in the Japanese market. The evidence submitted does not support counsel's contention that this type of in-house training by the beneficiary, as such, is unique knowledge that is not shared by others within the organization or the industry at large.

Furthermore, general descriptions given by the petitioner of the beneficiary's proposed job duties such as, oversee the purchase and export of products to Japan; direct and manage the company's financial affairs; coordinate business efforts with Howa headquarters in Japan; coordinate and direct efforts with outside professional resources; and expand company's business opportunities in the United States market are not sufficient to establish that the beneficiary possesses specialized knowledge of the company's product and its application. Nor are the descriptions sufficient to establish that the beneficiary will be employed by the U.S. entity in a specialized knowledge capacity.

In summary, the record does not establish that the beneficiary has been or will be employed in a specialized knowledge capacity or that she possesses specialized knowledge of 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 knowledge possessed by the beneficiary appears to be the routine and ordinary knowledge associated with the job of an

exporter and distributor of skin care products. 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 any exporter and distributor of skin care products in the United States or any other country. The record shows that the beneficiary's previous training and employment experience with the foreign entity have given her the knowledge required to perform her duties efficiently and competently, but cannot be considered to constitute an advanced level of knowledge sufficient to qualify her as an intracompany transferee with specialized knowledge. 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 or Japanese market, nor has the evidence established that her knowledge is substantially different from, or advanced in relation to that of any other distributor of cosmetics and skin care products on behalf of foreign and domestic firms.

On appeal, counsel refers to a 1988 memorandum that offers guidance on interpreting the statutory definition of specialized knowledge. Memorandum from Norton, Associate Commissioner, Examinations (Oct. 27, 1988), reprinted in 65 *Interpreter Releases* 1194 (Nov. 7, 1988). Counsel contends that the beneficiary "possesses many of the characteristics of an employee with 'specialized knowledge' enumerated in the Memo." Counsel also speaks to the legislative intent of congress in liberalizing the concept of the L-1B classification. She continues by explaining that the beneficiary qualifies under the new standard, in that she possesses advanced knowledge of processes and procedures.

Although the Service 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 just the "key" personnel that Congress specifically intended.

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." *1756, Inc.*, 745 F.Supp. at 16.

If CIS were to follow counsel's reasoning, then any employee would qualify for a specialized knowledge visa if that employee had experience working for a company with access to distributorship information within the cosmetic and skin care industry. The evidence presented indicates that the NuSkin business model employed by distributors; multi-level sales distribution program information; and an abundance of distributorship training materials is available, via the Internet and upon request, to anyone who shows an interest in the network marketing industry for skin care. To assert that any employee of these firms should qualify for an L-1B visa would fundamentally alter the nature of the visa classification. Such an expansion of the term "specialized knowledge" would transform the visa classification from one for aliens with specialized knowledge to one for any employee working as a representative of an international, multi-level/sales and network marketing enterprise. In short, counsel's interpretation of the regulations improperly emphasizes that the beneficiary possesses specialized knowledge or that she has or will be operating in a specialized knowledge capacity.

Furthermore, Congress' 1990 amendments to the Immigration & Nationality Act did not affect the Service's 1988 memorandum interpreting "specialized knowledge." 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). Despite providing some specificity, the House Report and amendments to the statute still require CIS to make comparisons in order to determine what constitutes specialized knowledge. "Simply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." *1756, Inc.*, 745 F.Supp. at 15. As previously noted, CIS used reasonable comparisons to determine whether the beneficiary qualified for L-1B status. CIS rightfully concluded, based upon the record, that knowledge of multi-level

sales/marketing or distributor programs is not specialized, as these types of programs exist in similar fashion in many industries; that the products purchased by the beneficiary for shipment to the parent company in Japan are not unique or limited to only the petitioner; and that the skin care products can be purchased and resold by any number of companies or individuals. Thus, as the petitioner has not established that the beneficiary possesses a special knowledge of the petitioner's product or an advanced level of knowledge of the company's processes or procedures, the director rationally determined that the beneficiary does not qualify as a specialized knowledge worker. Accordingly, this 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.