

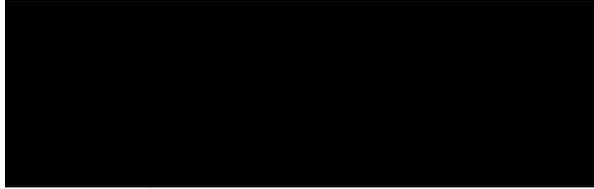
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File: LIN 02 157 52933

Office: NEBRASKA SERVICE CENTER Date:

NOV 20 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:



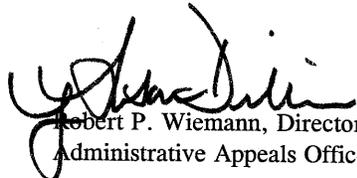
INSTRUCTIONS:

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 claims to be in the business of providing consulting, management, operations and logistical support to U.S. cruise companies operating in the Russian Far East. It seeks to extend the beneficiary's stay in the United States as its president. The director determined that the petitioner had not established that the beneficiary had been employed or would be employed in a capacity that involves specialized knowledge.

On appeal, the petitioner disagrees with the director's determination and submits 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.

According to the evidence submitted, the petitioner maintains an affiliate relationship with Pacific Network, Ltd. of Russia. The petitioner was established in 1993 and claims to be a company that provides consulting, management, and operations and logistical support to U.S. cruise companies operating in the Russian Far East. The petitioner declared two employees and \$1.28 million in gross annual income. The petitioner seeks the continuation of the beneficiary's services as its president for a period of two years,

at a yearly salary of \$75,000.

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.

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":

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 the petition, the petitioner stated that the beneficiary's past and proposed job duties entailed overseeing and directing all aspects of the U.S. entity's operations, including finance, administration, marketing and sales; and setting all of the entity's goals and policies.

In a letter of support dated April 8, 2002, the beneficiary's job duties are listed as follows:

- 65% of [the beneficiary's] time is spent expanding the business of Pacific Network USA. At this time, this is the major function that the President performs. This includes: (1) putting together new cruise itineraries, creating marketing and sales information for U.S. cruise companies; (2) establishing contracts with Federal, Regional, and Local administrations, and apply[ing] for licenses and permits for the U.S. cruise ship owners and operators; (3) establishing contracts with port authorities and supply providers; (4) establishing customs and immigration contacts for the cruise ships operations; (5) negotiating contracts with

all services mentioned in Exhibit 7 as well as various nature related organizations, Russian Fish and Game departments, Russian, Japanese, and U.S. tour operators and maritime agents, border guard districts; (6) scout[ing] areas for cruise companies and obtain photos, Videos, publications and brochures for marketing the cruise, including national wildlife restricted areas, wildlife preserves, and parks; (7) arrang[ing] for land excursions and other tour activities; and (8) arranging charter flights for passenger and crew changes;

- 10% of the President's time is spent negotiating cargo shipments from U.S. ports to the ports of the Russian Far East; overseeing seaport logistics; and establishing customs and immigration contacts for the cargo ships operations;
- 10% of the President's time is spent directing and supervising the activities of the Vice President and Secretary of Pacific Network USA; [and]
- 15% of the President's time is spent planning the company's long-term strategic development, including developing and updating Pacific Network USA's current business plan, marketing/networking plan to expand U.S. cruise company client base, and further expansion of Pacific Network USA's business with cargo ships originating in U.S. ports and ship to the Russian Far East.

Counsel also stated in the letter of support that the beneficiary is fluent in English and Russian, has a diploma in Marine Construction and Design from Far East Higher Engineering Marine Institute in Russia, and has taken numerous courses in Russian history and Native cultures from the University of Leningrad in Russia. However, there have been no documents presented to substantiate counsel's claim. Letters of recommendation from various cruise companies were also submitted, recognizing the beneficiary for his services. A portfolio dated 1991, explaining the services provided by the foreign entity and accompanied by letters, photographs, news paper articles, and website materials was submitted as evidence of the beneficiary's services as cruise consultant.

Upon review of the evidence initially submitted with the petition, the director determined that the record was not sufficient to establish that the beneficiary had been or would be employed in a specialized knowledge capacity. He continued by requesting additional information regarding the beneficiary's qualifications,

training history and expertise.

In response to the director's request for additional evidence, counsel stated that the beneficiary possessed specialized knowledge of the U.S. entity's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge of expertise in the organization's processes and procedures, in that he provides specialized services, including:

- Researching and scouting trips to each Russian Far East landing destination to establish local docking sites, weather conditions, natural attractions, permitting requirements, support availability, etc.
- Locating U.S. and Russian specialists such as naturalists, historians, lecturers and guides to participate in the cruises.
- Obtaining necessary permits from federal, regional and local government entities, native corporations, port authorities, customs and immigration officials, suppliers and service providers, natural wildlife areas and wildlife preserves (up to 50 per passenger).
- Obtaining letters of invitation.
- Developing itineraries.
- Arranging shore-side tours and cultural experiences, such as native dancing and crafts, and preparing local communities for upcoming cruise ship visits.
- Interfacing with local communities and native peoples.
- Ensuring the safety of the trips in remote locations without available support services.

Counsel also provided letters from Pacific Network USA's cruise company clients verifying their knowledge of the beneficiary's expertise. Some of the excerpts from these letters read:

We are completely dependent on [REDACTED] special expertise for these and all other logistical preparations. His company is the only one of its type in existence. Without it, the unusual and far-flung locations in the Russian Far East we are interested in

taking our clients to would remain inaccessible, our journeys there impossible. [REDACTED]

Likewise, the future success of our new program hinges on a continuing close relationship with [REDACTED] as we know of no other individual who possesses such extensive knowledge of Russian Far East as it pertains to the cruise industry. Captain Bryce Brockway, Director, Marine Operations, Cruise West.

Society Expeditions depends on [REDACTED] to provide a level of expertise and accessibility to Russian destinations not available from anyone else. John Tillotson, Vice President, Operations, Society Expeditions.

(Emphasis in original.) Counsel also states as evidence of the beneficiary's qualifications his life experiences, education, professional training, and work since 1991 with the foreign and U.S. entities. Counsel further asserts that the beneficiary is a native Russian and networks effectively in promoting the cruise business. Counsel also states that the beneficiary has an extensive background as a mariner, which gives him a complete grasp of the logistical needs of the cruise industry. Counsel goes on to say that the beneficiary has spent much of his life studying the history of his home region and establishing trusted relationships with the native peoples whom American travelers come to the Russian Far East to meet. Counsel contends that the beneficiary developed specialized expertise in the maritime procedures, permitting and regulatory systems, and maritime infrastructure of the Russian Far East during his employment with the foreign entity. Counsel concludes by stating that the beneficiary has a depth of knowledge of the Russian Far East and its geography, cultures and history.

Counsel further avers that the beneficiary's knowledge is not easily transferable to other competent individuals working in the field, and refers to the letters of recommendation and acknowledgement, which have been made a part of this record. He goes on to state that the beneficiary's knowledge and expertise have developed over the years and have allowed him to personally develop the specialized, niche market for the U.S. and foreign entities. Counsel continues by stating that the beneficiary's duties, as president, involve overall management, strategic planning, and marketing. He concludes by noting that the beneficiary is irreplaceable because his unique specialized knowledge is necessary to direct his subordinates in performing their duties and to provide the unique vision and expertise needed to make the cruise trips possible.

The director denied the petition after determining that the petitioner had not established that the beneficiary's job duties, as described, required specialized knowledge. The director maintained that the job duties in both the petition for extension of stay under the L-1A classification, which was denied by CIS, and the petition for extension of stay under the L-1B classification were identical and were considered to be administrative and marketing in nature, and involved sales and representation of the U.S. entity. The director goes on to state that the evidence revealed that employees of the Russian entity performed the scouting and organizing work, and the Vice-President and Secretary performed much of the day-to-day and organizational work for the U.S. entity. The director also noted that a check of the organization's website revealed that both the Vice-President and Secretary have experience as Assistant Cruise Director and Program Manager in the adventure travel industry. The director concludes by stating that job duties performed by the beneficiary, such as meeting with clients, representing the organization, reviewing finances, etc., are not considered to require specialized knowledge.

On appeal, counsel asserts his disagreement with the director's decision. Counsel contends that the beneficiary's duties, even as described, require specialized knowledge. Counsel further states that, due to the highly specialized nature of the company's product and services, specialized knowledge is necessary to understand and market the company's product and services. Counsel asserts that it is the beneficiary's knowledge that makes the company services possible. He goes on to state that the beneficiary works on a high level with clients on cruise planning and strategic planning, and that this type of work requires highly specialized knowledge. Counsel continues by reiterating descriptions of the beneficiary's qualifications and experience. In conclusion, counsel avers that the products and services offered by the U.S. entity are not otherwise available in the United States; that the beneficiary has the specialized knowledge necessary to allow the company to offer the unique services; and that he is uniquely positioned to contribute to the U.S. entity's knowledge of foreign operating conditions. Counsel also states that the beneficiary's knowledge is different from that generally found in the industry, and essential to the company's competitiveness in the industry, and not easily transferred.

Counsel's argument is not persuasive. The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product, services or its application in U.S. and international markets. The beneficiary's origins in Russia and his employment experience with the foreign organization may have given him knowledge that is useful in performing his duties, but it cannot be said that these skills constitute special or advanced knowledge. The beneficiary's native knowledge of a language, history and culture is not, by itself, specialized

knowledge. Nor does experience as a cruise consultant and advisor necessitate specialized knowledge. In fact, contrary to counsel'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 cruise or travel consultant or advisor of any firm that provides cruise consulting, management, operations, and logistical support to U.S. companies interested in travel to other countries, including Russia.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge capacity or that the beneficiary is to perform duties involving specialized knowledge in the proffered position. To the contrary, the record reflects that the beneficiary will perform duties related to overall management, strategic planning and marketing, which do not entail the use of specialized knowledge skills. As is stated in the petition, the beneficiary's job duties entail, overseeing and directing all aspects of the U.S. entity's operations, including finance, administration, marketing and sales; and setting all of the entity's goals and policies. The evidence demonstrates that the Vice-President and Secretary for the U.S. entity possess similar knowledge and skills to that of the beneficiary. Evidence of record shows that 65 percent of the beneficiary's time is spent expanding the business of the U.S. entity, and includes: putting together new cruise itineraries, creating marketing and sales information, establishing and negotiating contracts, establishing contacts with customs and immigration, scouting areas for cruise companies, and arranging for land and air travel. It has also been stated in the record that the beneficiary is responsible for locating U.S. and Russian specialists such as naturalists, historians, lecturers and guides to participate in the cruises. The letters of recommendation and acknowledgement reflect personal experiences with the beneficiary, and do not represent a global recognition of the number of consultants and advisors equally suited. The beneficiary's duties, as explained, do not qualify under the statutory or regulatory definitions of specialized knowledge.

Furthermore, the record does not demonstrate that the petitioner provided a complete position description for the beneficiary or a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis. Consultation and advisory services provided by the beneficiary, with respect to Russian language, geography, history and culture, do not require special knowledge. The beneficiary's knowledge of the U.S. entity's operations does not constitute special or advanced knowledge. Counsel argues that the beneficiary's education, training and experience have given him knowledge that is specialized because it is specific to the petitioning entity, and is not readily available in the United States. However, job

training at any consulting firm teaches the procedures of that organization. In addition, the record is void of any documentation verifying counsel's assertions regarding the beneficiary's formal education and training. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). There is no evidence of record that distinguishes the beneficiary from the other cruise consultants working for the foreign entity and other organizations that provide consulting, management, operations and logistical support to cruise companies.

In conclusion, it appears that the beneficiary's employment experience and education have given him the knowledge required to perform his duties competently. However, the petitioner has provided insufficient evidence to demonstrate that the beneficiary's duties involve or require special or advanced knowledge. The record contains no comprehensive description of the beneficiary's duties indicating that these duties are so unique and out of the ordinary that their implementation requires specialized knowledge. The record does not establish that the beneficiary's familiarity with the organization's operating standards, policies and procedures is so distinctive and uncommon that it can only be achieved by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning organization. The petitioner has not demonstrated that the beneficiary's method of providing consultation and advisory services to clients is not a task that any cruise consultant without specialized knowledge of Russian history or culture could perform as competently as the beneficiary. The beneficiary's knowledge of and experience with shipping and cruising in the Russian Far East does not constitute an advanced level of knowledge of the processes and procedures of the petitioning 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 skills required to perform services as an advisor and consultant, dealing with matters involving shipping and cruising in the Russian Far East, not an advanced level of expertise that demonstrates special knowledge of the petitioner's processes and procedures. Accordingly, the petitioner has not established that the beneficiary has been or would be employed in a specialized knowledge position or that the position requires an individual with specialized knowledge capacity.

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.