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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: EAC 02 045 52065

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



NOV 20 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

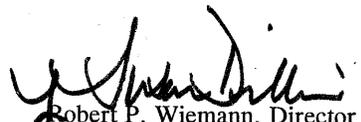
INSTRUCTIONS:

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

The petitioner claims to be a corporation specializing in patent and trademark registration and licensing procedures. It seeks to extend the beneficiary's stay in the United States as its deputy general manager (vice 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 a joint venture relationship with [REDACTED] Office located in Shanghai, China. The petitioner was incorporated in 1989 and claims to be a company that provides consultation services in Chinese intellectual property laws and assists United States clients in protecting their rights in China. The petitioner declares one employee and \$203,432 in gross annual income. The petitioner seeks the continuation of the beneficiary's services as a deputy general manager (vice president) for a period of six

months, at a yearly salary of \$29,750.

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(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.

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. He requested that the petitioner provide a complete position description for the beneficiary, as well as a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis. The director further requested that the petitioner submit documentary evidence that would establish that the beneficiary possesses specialized knowledge above that which is normally possessed by others similarly employed by the foreign and U.S. organizations. The director also requested that the petitioner submit additional evidence to demonstrate that the beneficiary would be employed in a specialized knowledge capacity in the U.S. firm. Finally, the director requested that the petitioner submit a statement from its client(s) commenting on the beneficiary's individual contribution to the project(s) to which he was assigned.

In response to the director's request for additional evidence, the petitioner stated that the beneficiary provides consultation, liaison coordination and marketing services on intellectual

property rights (patent, trademark, copyright, etc.) and registration enforcement in China (including Hong Kong). The petitioner asserted that the beneficiary majored in international law at the Foreign Affairs College, and that he gained 15 years of experience in Chinese patent and trademark law by working for the Shanghai Patent & Trademark Law Office. The petitioner continued by stating that the beneficiary worked for nine years as a patent procedure specialist, six years as a trademark attorney, and is a registered trademark attorney. It also stated that the beneficiary has held the title of Deputy Director of the Business Executive Office, and Deputy Director of the Trademark Department, which consists of 15 attorneys, at the foreign firm.

The petitioner also submitted a resume for the beneficiary, which reads:

Resume of the beneficiary [REDACTED]

1987 - Graduated from Foreign Affairs Collage [sic] in Beijing, China, issued a degree of Bachelor of Law, joined Shanghai Patent & Trademark Law Office (former name was Shanghai Patent Agency), and qualified as a Patent Procedure Specialist.

1987-1991 - Foreign Department, handling foreign clients related consultation work on Chinese patents and trademarks. Qualified to be a trademark manager.

Oct. 1991-Jan. 1993 - Sent to work at the petitioner, Shanghai Patent & License Corp., as a trademark manager.

June 1993 - Trained for European patent law and practice in Mewburn & Ellis law firm in London, UK.

1994-1996 - Deputy Director of the Business Executive Office, (formerly Foreign Dept.), in charge of the consultation group of Chinese patent, trademark, copyright, etc. to foreign clients, and obtained trademark attorney certificate.

1997 - Trained for Hong Kong intellectual property laws and practice [sic] in [REDACTED] law firm in Hong Kong.

May 1998 to now - Sent to work at the petitioner, Shanghai Patent & Licensing Corp. as the vice president, secretary, treasurer, as well as the residing Chinese patent and trademark special/attorney.

The petitioner also provided a list of 91 professional members of the Shanghai Patent & Trademark law office, inclusive of the beneficiary. The list contains a brief synopsis of each member's

professional history in the patent and trademark fields. The petitioner contends that the beneficiary supervised various employees of the foreign entity depending upon which office they happened to be in. The petitioner does not provide any further detail with regard to the member list.

The petitioner further provided translated versions of the beneficiary's bachelor of law degree certificate from Foreign Affairs College, the Chinese Trademark Attorney Qualification Certificate, and the China Intellectual Property Research Institute membership certificate. The petitioner submitted the certificates in response to the director's request for evidence that would establish that the beneficiary possessed specialized knowledge.

The petitioner continues by listing the beneficiary's job title as vice president, secretary, treasurer and residing Chinese intellectual property attorney; his total working hours per week were listed as 40; and the type of work performed by the beneficiary was listed as "all kind of work of the United States entity except for Accountant and Tax."

Finally, the petitioner provided copies of correspondence between the beneficiary and clients, and colleagues relative to intellectual property law practice in the United States and China. The petitioner produced letters of inquiry, letters of confirmation, and letters pertaining to application packages to be processed by the beneficiary. The petitioner also submitted letters of recommendation from organizations doing business with the beneficiary. Additionally, the petitioner submitted a complete brochure package depicting the Shanghai law office's history and services that are available though the firm in Shanghai, Beijing, and the United States.

The director denied the petition after determining that the petitioner had not established that the beneficiary possessed specialized knowledge. The director further maintained that a review of the evidence of record failed to establish the position being offered to the beneficiary required the services of an individual possessing specialized knowledge.

On appeal, the petitioner asserts that the petition is just a renewal and that the beneficiary's specialized knowledge skills had already been discussed and examined in 1998. The petitioner further maintains that the circumstances have remained the same. The petitioner emphasizes that, by granting the first L-1 petition and the extension thereof, the director has already determined this issue in the petitioner's favor.

The petitioner further maintains that it is in the business of providing Chinese intellectual property law services to United States clients. It goes on to state that since the history, concepts, social system and language of China are so very different

from those in the United States, and the laws and practices also differ, there was a need to employ qualified intellectual property attorneys who speak both Chinese and English to provide this special service. The petitioner concludes by deducing that the service it provides is special and, therefore, the job requires special knowledge.

The petitioner's statements are not persuasive. The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product and its application in U.S. and international markets. The beneficiary's origins in China and his employment experience with the foreign organization may have given him knowledge that is useful in performing his duties, but it cannot be the case that any useful skill is to be considered to constitute special or advanced knowledge. One's native knowledge of a language and culture is not, by itself, specialized knowledge. Nor is experience as an intellectual property attorney specialized knowledge. The petitioner appears to confuse the beneficiary's knowledge of China's intellectual property laws with the term "specialized knowledge." The fact that the beneficiary may possess extensive knowledge of a particular area of Chinese law does not mean that he possess special knowledge of the petitioner's service, product, research, equipment, techniques or management. Similarly, the beneficiary's experience with Chinese intellectual property law does not equate to an advanced level of knowledge or expertise in the petitioner's processes and procedures.

The AAO notes that the petitioner failed to provide 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, as requested by the director. Consultation and advisory services provided by the beneficiary, with respect to Chinese intellectual property law, do not require special knowledge. The beneficiary's knowledge of the foreign 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 law firm teaches the procedures of that organization. There is no evidence of record that distinguishes the beneficiary from the other 90 plus attorneys working for the foreign entity and at similar law firms that practice intellectual property law.

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 law firm'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 legal consultation and advisory services to clients is not a task that any intellectual property attorney without specialized knowledge of intellectual property law could perform as competently as the beneficiary. The beneficiary's knowledge of intellectual property law 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 skill required to work as an attorney and advisor dealing with various intellectual property law issues, not a 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.

The AAO now turns to the petitioner's assertion that this petition must be approved because it pertains to the extension of the beneficiary's L-1 status. The petitioner asserts that, because neither the facts nor the circumstances have changed since the approval of the initial visa petition, the director's denial is erroneous. The petitioner implies that the director's favorable review of the initial L-1 petition is sufficient, by itself, to approve the petition before Citizenship and Immigration Services (CIS) at the present time.

The AAO does not concur with the petitioner on this point. The record of proceeding before the AAO at the present time does not contain any of the supporting evidence that was submitted to the Vermont Service Center with the initial request for the L-1 petition approval. In the absence of all of the corroborating evidence contained in that record of proceeding, the Administrative Appeals Office cannot determine whether the L-1A nonimmigrant petition initially filed on the beneficiary's behalf for the same position as the proffered position was approved in error.

Nevertheless, it is important to emphasize that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although

the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If, however, the prior petition was approved based on evidence that was substantially similar to the evidence contained in the record of proceeding that is now before the AAO, the approval of the initial petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988).

The petitioner must establish that the beneficiary qualifies for an extension of his L-1 status regardless of any prior petition that CIS have approved on the beneficiary's behalf. For these reasons, the petitioner's statements do not warrant a reversal of the director's decision to deny the petition.

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.