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

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



FILE: EAC 00 179 51283

Office: VERMONT SERVICE CENTER

Date:

OCT 23 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:



PUBLIC COPY

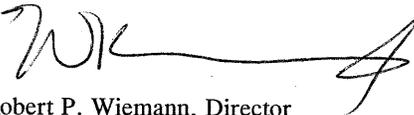
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 is described as a manufacture of apparatus for liquid level measurement. It seeks to employ the beneficiary temporarily in the United States as a marine sales engineer. The director determined that the record did not establish that the beneficiary had one continuous year of full-time employment overseas within the three-years prior to May 19, 2000, the filing date of the petition.

On appeal, counsel contends that the beneficiary has worked for one continuous year involving specialized knowledge capacity and is therefore eligible for L-1 classification in a capacity involving managerial or executive capacity in the United States, 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 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.

According to the evidence contained in the record, the petitioner is a subsidiary of Consilium Marine AB, located in Goteborg, Sweden. The petitioner was incorporated in 1965 and claims to manufacture apparatus for liquid level measurement. The petitioner declared 27 employees and \$4 million dollars in gross revenues. The petitioner seeks the beneficiary's services as a marine sales

engineer for a three-year period, at a yearly salary of \$60,000.00.

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

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 response to the Bureau's request for additional evidence, Counsel states that the beneficiary has been employed for Consilium Marine AB as purchaser from July 1998 through December 1999, and as an area sales manager from January 2000 to the present.

In describing the beneficiary's duties as a purchaser, counsel states that as purchaser the beneficiary gained specialized knowledge of Consilium's worldwide products, service, operations and procedures. She goes on to say that as a purchaser, the beneficiary has performed duties that have required him to serve in a specialized knowledge capacity.

The director denied the petition after determining that the record did not establish that the beneficiary had one continuous year of full-time employment with a qualifying entity within the three-year period preceding the filing of the petition.

On appeal, counsel asserts that the basis of the director's denial was an "erroneous statement of the law." She further contends that the beneficiary worked for the foreign entity for over one year in a specialized knowledge capacity; that he has been employed for the same foreign entity in a managerial capacity for five months; and therefore is eligible for transfer to the United States to continue

to serve in a managerial capacity.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a managerial or executive capacity, or a capacity involving specialized knowledge for one continuous year abroad. The record shows that the beneficiary has only been employed by the foreign entity for five plus months as an area sales manager; thus falling short of the one-year requirement. Although it is counsel's contention that the beneficiary has been employed by the foreign entity in a specialized knowledge capacity as a purchaser, neither she nor the petitioner have articulated or elaborated on any duty of the beneficiary that might be considered to require specialized knowledge. Counsel's assertions that the beneficiary holds some type of unique knowledge of the petitioner's products, service, operations and procedures is not supported by the record. 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). 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 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 entity. Therefore, the beneficiary is ineligible for classification under section 101(a)(15)(L) of the Act.

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary has been or would be employed in a managerial or executive capacity as defined in section 101(a)(44) of the Act. In addition, there is no evidence to establish that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad on completion of the temporary assignment in the United States pursuant to 8 C.F.R. § 214.2(1)(3)(vii). As the appeal will be dismissed on other grounds, 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.D.C. 1995) (holding burden is on the petitioner to provide documentation); *Ikea v. INS*, 48 F.Supp.2d 22, 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.