

PUBLIC COPY

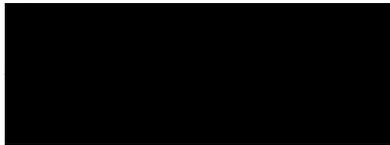
U.S. Department of Homeland Security

Citizenship and Immigration Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

D1

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



File: EAC 02 071 51711

Office: VERMONT SERVICE CENTER

Date:

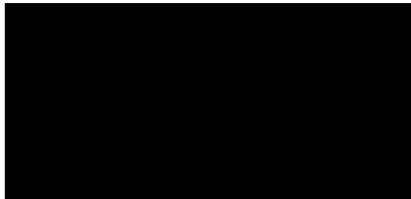
OCT 28 2003

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)

ON 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 and a subsequent motion to reconsider were 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 engaged in "niche designing of high quality, high fashion ladies luxury clothing, Import/export textiles" on a worldwide basis. It seeks to employ the beneficiary temporarily in the United States, in a capacity involving specialized knowledge, as an executive secretary. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a specialized knowledge capacity.

On appeal, counsel states that all the knowledge that forms the specialized basis for the employment of this beneficiary in the United States was solely acquired in Argentina, at the employer's principal business, in the environment where the business started on a shoe-string, growing to be a multimillion dollar business able to expand to the United States. Counsel indicates that this beneficiary was "in the swing of processes" in the growing business for three years and states that the United States subsidiary is totally reliant upon the business in Argentina to run the United States subsidiary profitability.

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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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.

8 C.F.R. § 214.2(1)(1)(ii)(D) states:

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.

The petitioner indicated that the duties and responsibilities of the beneficiary for the firm in Argentina are as follows:

Ms. [REDACTED] has been in our employment as an Executive Secretary, who is fluently tri-lingual (English, Spanish, German), since October 1999, continuously with no interruptions, full-time in our parent company, [REDACTED]. . . She has been through the first-hand experiences and knowledge of all our business operations pertinent to dealing with the protocol exclusively inherent in her relationships with Argentina's high government officials and our major customers in Chile, Argentina, Canada, Spain etc. and their high-power executives, who due to business and associated cultural comportment deal with Ms. [REDACTED] in our company, exclusively. Ms. [REDACTED] has an incisive insight and knowledge of business negotiations, product differentiation, high-fashion image maze, proprietary relationships with fashion models who display our clothing, manufacturing schedules and office procedure for our particular products, certainly lacking in any other member of our staff or in the open market in Argentina.

Ms. [REDACTED] familiarity with the clothing manufactured, pricing (our clothing are designed to be sold to affluent ladies at exclusive, elitist boutiques) and our company's dealers, suppliers, buyers and executives in the niche, high-fashion, high-quality clothing design industry.

Her services for our parent company have directly expanded our business in Argentina and other countries very profitably, and we are certain that if hired in

the US, our US business will remain very competitive in the overseas markets which we have penetrated so far and which we will tap in the near future through Ms. [REDACTED] knowledge of our business and people.

Her knowledge is valuable to our competitiveness in the global marketplace and she is uniquely qualified to contribute to our US company's knowledge of foreign operating conditions. She has completed significant assignments in our exclusive business in Argentina, enhancing our productivity, competitiveness, company image and financial growth. She is experienced in the unique nature of the fashion industry as it pertains to high fashion ladies' clothing.

The beneficiary outlines her duties abroad in her resume as follows:

- Recruiting & Training: Prospect, recruit and appoint Representatives to increase market coverage and grow the District's customer base.
- Develop a strong flexible staff to support the need of the market.
- Prepare and implement sales plans that reflect overall sales growth.
- Use administrative systems and sales reports to monitor performance levels relative to planned objectives.
- Handled all customers' service issues
- Fashion Shows organizer.

The duties of the offered position are described as follows:

In the US subsidiary, where she will work full-time for the duration captioned herein above, she will bring to bear directly upon our organization the spectrum of wide specialized knowledge that she has acquired through our operations from the very beginning. She will report to the President of the company directly, while independently performing her duties on a day-to-day basis in the capacity of an Executive Secretary for our US subsidiary.

The director concluded that the duties described by the petitioner did not constitute "specialized knowledge" as the term is defined in the regulation.

The petitioner's assertions concerning the specialized knowledge possessed by the beneficiary are not persuasive. The description of the beneficiary's job duties indicates that the beneficiary of this petition is fluent in three languages and that she deals with customers, executives and government officials from a number of countries including Chile, Argentina, Canada and Spain. The

petitioner has not articulated any duties of the beneficiary that might be considered specialized. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. The petitioner has not shown that the beneficiary has an advanced level of knowledge and expertise in the organization's processes and procedures. On review of the record, the petitioner has not established that the beneficiary has been employed and will be employed in a position requiring specialized knowledge. The petitioner has not articulated nor has counsel 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 business is not supported in 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 addition, counsel's assertions that CIS's stand is arbitrary and capricious are not persuasive. 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*, the court stated that, "[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." 745 *F.Supp.* 9, 16 (D.D.C. 1990). The record does not support a finding that the beneficiary in this case has specialized knowledge and also should be considered "key personnel." The beneficiary in this case appears to be an experienced secretary who is responsible for training, recruiting and monitoring sales staff. The weight of the record indicates that the beneficiary in this case is skilled, but not to the extent of meeting the definition of specialized knowledge.

The evidence as provided in this case remains insufficient to warrant the granting of a nonimmigrant visa based upon the beneficiary's specialized knowledge. The plain meaning of the term specialized knowledge implies that which is significantly beyond the average in a given field or occupation. The petitioner has not demonstrated that the beneficiary's knowledge is advanced knowledge specifically relative to the petitioner's business. The knowledge possessed by the beneficiary has not been adequately supported through evidence submitted that she possesses any specialized knowledge of the petitioner's product, processes, or procedures.

As held in Matter of Penner, 18 I&N Dec. 49, 54 (Comm. 1982), "...petition may be approved for persons with specialized knowledge, not for skilled workers." Here, the petitioner has not satisfactorily demonstrated the beneficiary's specialized skills. Based on the evidence submitted, the services of the beneficiary as an executive secretary do not satisfy the requirements that she possess specialized knowledge and has been or will be employed in a capacity involving specialized knowledge as required for classification as an intracompany transferee pursuant to section 101(a)(15)(L) of the Act. For this reason, the petition may not be approved.

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.