



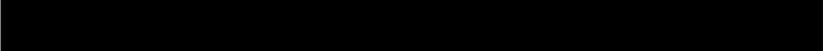
U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 205 50869 Office: TEXAS SERVICE CENTER Date: **APR 12 2004**

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 of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the sale of telecommunications services and equipment. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as its international trade manager. The director determined that the petitioner had not established that the beneficiary would be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the director applied an incorrect standard in drawing her conclusion and submits an additional statement in support of this assertion.

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.

8 C.F.R. 214.2(l)(3) states 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 (l)(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 within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States.

The United States petitioner was incorporated in 1996 in the state of Florida and states that it is an affiliate of Importada Cordi, C.A., located in Venezuela. The petitioner requests a change of the beneficiary's status from that of an L-1A manager or executive to that of an L-1B non-immigrant to be employed in a capacity involving specialized knowledge. The petitioner seeks to employ the beneficiary in the U.S. for an additional period of two years at an annual salary of \$36,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary 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.

The regulation at 8 C.F.R. § 214.2(l)(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.

In support of the petition, the petitioner submitted the following statement describing the beneficiary's proposed job duties in the United States:

[The beneficiary] was transferred to the U.S. Subsidiary, were [sic] he will continue to serve as International Trade Manager of purchases and exports of all kind[s of] commodities in communications, electronic devices and the products that our parent company will require. [The beneficiary] will also continue [to be] in charge of Managing, Organizing, Planning, Controlling, Supervising and Directing the International Trade Department of our U.S. subsidiary. Moreover, he will continue performing all his duties applying his advance [sic] level of specialized knowledge of the company's unique process, procedures and methods. Moreover, he possesses proprietary knowledge of the two way radio Motorola products and operations, and has a unique understanding of the products and necessities of the Venezuelan market which was gained through the six years of experience working for our parent company in Venezuela.

His duties include: conducting general affairs of the company, acting as liaison and representative for the petitioner's foreign company in the US, control of warehouse inventory, engaging in long-range planning and identifying business opportunities in U.S. and International markets, directing the marketing and exports activities, and supervising other employees. Besides that he will be in charge of negotiating prices and payment terms, approving purchases, supervising and control[ling] exports.

[The beneficiary] is the most capable for the position and is very knowledgeable about company products and procedures.

On November 20, 2002 CIS issued the second of a total of two requests for additional evidence. This particular request instructed the petitioner to explain how the beneficiary's proposed position falls under the definition of "specialized knowledge." In its response, the petitioner stated that the beneficiary is a key employee possessing "unique knowledge of [the petitioner's] products, internal procedures, sales and marketing methods, and knowledge of the international markets." The petitioner explained that the beneficiary's knowledge stems from years of experience with the petitioner's products and claimed further

that the beneficiary's knowledge of international trade policies is of a proprietary nature. The petitioner described the beneficiary as an "expert" in Latin America's import and export regulations and as a specialist in various communications equipment used in radio and television. The petitioner claimed that the beneficiary acquired this knowledge from eight years of first-hand experience with particular products and with the company's particular processes and procedures.

On December 2, 2002 the director denied the petition noting that the beneficiary's knowledge of the petitioner's equipment and his familiarity with import and export regulations can be gained by working with any number of companies that deal in the import and export of electronics. The director concluded that the petitioner has not submitted sufficient evidence to establish that the beneficiary's proposed position requires a person with specialized knowledge.

On appeal, counsel asserts that the immigration officer's use of the term "proprietary knowledge" is erroneous and contradicts provisions of the Immigration Act of 1990. However, nowhere in the denial did the director actually use the term "proprietary knowledge" or cite the case that used this terminology. Although the AAO acknowledges that the immigration officer who issued the request for additional evidence made this error, the director did not repeat the officer's mistake in her subsequent decision. Therefore, counsel's point in regard to prior use of the term "proprietary knowledge" is moot. As such, counsel's effort in convincing the AAO of the officer's error is misplaced and entirely unnecessary, particularly in light of the fact that the director made no mention of the term "proprietary knowledge" in her decision. Rather, the director properly based her decision on whether the beneficiary's proposed position is one that involves specialized knowledge. While counsel repeatedly asserts that it does, he provides no further explanation to advance his claim.

Upon review of the record as presently constituted, the AAO concludes that the position offered by the petitioner is not one that requires specialized knowledge. While the petitioner states that the beneficiary possesses advanced knowledge of international trade and the company product, such knowledge can only be deemed a natural product of the beneficiary's many years of employment with the same company. As previously stressed by the director, the plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's argument, mere familiarity with an organization's product or service, such as knowledge of its products or procedures, does not constitute special knowledge under section 214(c)(2)(B) of the Act. If that were the case, any employee who has worked for a company long enough would be able to attain specialized knowledge classification. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he will be employed primarily in a specialized knowledge capacity. 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.