



U.S. Citizenship
and Immigration
Services

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FILE: LIN 02 136 52772 Office: NEBRASKA SERVICE CENTER Date: **APR 26 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:

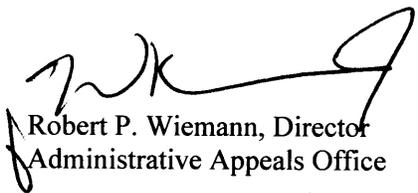
SELF-REPRESENTED

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.

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prevent clearly unwarranted
invasion of personal privacy**


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner, Dandy US Corporation, states that it is a subsidiary of Dandy A/S located in Denmark. The petitioner is engaged in the promotional and market support business. The U.S. entity was incorporated in the State of Delaware on March 24, 2000. In March 2002, the U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), as a specialized knowledge worker (L-1B). The petitioner seeks to employ the beneficiary's services as a new employee and as the U.S. entity's office manager at an annual salary of \$26,000.

On April 30, 2002, the director denied the petition because the beneficiary has not worked for the foreign entity as a full-time employee in a managerial, executive, or specialized knowledge capacity. The director also determined that the beneficiary will not be employed in a specialized knowledge capacity in the United States. Finally, the director determined that there was no qualifying relationship between the foreign and United States entities.

On appeal, the petitioner's counsel states that: (1) the beneficiary has worked as a full-time employee for the foreign entity since July 28, 1997; (2) the beneficiary has specialized knowledge required for the office manager position; and, (3) the petitioner and foreign entity have a qualifying relationship.

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 meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Further, the regulation at 8 C.F.R. § 214.2(l)(3) requires 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; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in this proceeding is whether the beneficiary will be employed in a specialized knowledge capacity. "Specialized knowledge" is defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B) as:

For purposes of section 101(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 an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D)&(E) interprets the statute as:

(D) 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.

(E) "Specialized knowledge professional" means an individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). On March 18, 2002, the petitioner filed Form I-129. Form I-129 described the beneficiary's duties as "support US sales development and coordinate with HQ in Denmark – A job that requires specialist knowledge of Dandy's systems and processes." Also, the Form I-129 identified the beneficiary as having completed a commercial college degree in Denmark, having attended Kearney State College in Nebraska, and having 11 years of work experience including four years at Dandy as a sales coordinating specialist. In addition, the petitioner attached a March 13, 2002 letter to the Form I-129. The letter broke down the beneficiary's U.S. job duties:

Administrative support to Dandy US (phone/mail, sales forecast, cost, general administration), Co-ordination / processing of clients such as Sweet N Low, Kroger, Walgreens, AWG, US logistical follow-up in cooperation with WILSON, General office management, organization, systems. Maintaining office supply and equipment needs. Assist in market visits of clients and visitors.

- 20 percent Customer contact (mail/phone).

- 30 percent Budget, forecast and adjustment (tonnage and costs) reporting to [foreign entity]
- 10 percent Orders
- 10 percent Introductions.
- 10 percent Nonconformities.
- 20 percent Ad Hoc.

Basic education: Correspondent, commercial school or similar.

Special Requirements: Specialist Knowledge about DANDY's systems and processes. Systematic, general knowledge, flexible, independent, able to make decisions, customer oriented, smiling phone voice, fluent in English, good humor, co-operative, good at numbers.

Experience: Minimum two years working with DANDY internal systems, Microsoft office.

On March 21, 2002, the director requested additional evidence. In particular, the director requested evidence to show that the beneficiary possesses specialized knowledge of the company'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, the petitioner resubmitted the position's job description.

On April 30, 2002, the director denied the petition because the beneficiary will not be employed in a specialized knowledge capacity. The director found that the petitioner submitted a very broad and generic job description and failed to describe what specialized knowledge the beneficiary has compared to any other office manager in the United States or elsewhere.

On appeal, the petitioner submitted a chart indicating the tasks the beneficiary will perform as the U.S. entity's office manager. The petitioner also submitted a description of the specialized knowledge the office manager position requires. The petitioner stated that the U.S. entity will be "hooked up to the [foreign entity's] main computer;" therefore, the beneficiary must be acquainted with the overseas entity's internal systems and processes. The beneficiary was described as having completed the following necessary courses on the foreign entity's internal systems and processes and subsequent courses on upgraded versions of these systems:

- BPCS Concept
- BPCS Customer/order processing/documents
- BPCS Requisition forms
- BPCS Price listing

- CS Budgeting – sales/costs
- CS Analyses
- Introduction to DPM
- Introduction to NCR
- Introduction to MPC
- Introduction to AXAPTA

In addition, the petitioner stated that the beneficiary has obtained a thorough understanding of how the foreign entity does business. Specifically, the petitioner claimed that over the years the beneficiary has gained specialized knowledge from her colleagues. Additionally, counsel stated, “The beneficiary has participated in various cross-functional projects, thus strengthening her knowledge of every department’s role in the whole process of producing chewing gum.” The following is a list of roles:

- Jul.-Oct. 2000: Project Agile
- Jun. 2000: Member of DANDY A/S Sensory Board
- Nov.-Dec. 2000: Service Level Agreement with external warehouse.
- Jan. 2001: Start up of EDI project with DANDY A/S’ biggest Medical customer
- Sep.-Oct. 1999, Sep.-Oct. 2000 and Sep.-Oct. 2001: Budget planning
- Jun.-Jul. 2001: Support to “Customer Service Registration Group”
- Apr.-May 2001: Set up of internal sales with subsidiary company
- Feb. 2002: Start up Electronic Interface Project with customer

The petitioner also stated that as a sales assistant, the beneficiary “has worked with some of the foreign entity’s Private Label customers in the US, thus acquiring knowledge of export and import rules in both countries.”

On review, the petitioner has provided no evidence to establish that the beneficiary’s duties are so exceptional and out of the ordinary that their implementation requires specialized knowledge. For example, the petitioner could have explained what specialized knowledge in particular is needed in the whole process of its business in producing chewing gum. Moreover, the petitioner should have demonstrated how the beneficiary’s knowledge compares to other office managers within the company as well as to office managers outside the company. For instance, the additional evidence might establish that the beneficiary has knowledge valuable to the petitioner’s competitiveness in the marketplace or the petitioner has been utilized abroad in a capacity involving significant assignments that have enhanced the petitioner’s productivity, competitiveness, image, or financial position. Additionally, the evidence may demonstrate that the beneficiary has knowledge of the foreign entity’s business systems and processes to the extent that the petitioning entity would experience a significant interruption of business in order to train a U.S. worker to assume those duties.

As the director correctly observed, the petitioner submitted very broad and generic job descriptions. The petitioner stated that the position of office manager requires specialist knowledge about DANDY’s systems and processes. Although a course was provided on appeal,

the petitioner failed to explain how the beneficiary has acquired specialized knowledge from this course or whether this course is generally taken by other employees in the business.

In addition, the job description chart indicates that one of the main functions is “general office management” and the special requirements for the position of office manager includes “general knowledge” and “specialist knowledge” of the business’s systems and processes. The chart indicated several tasks the beneficiary will perform. The majority of the tasks to be performed by the beneficiary appear to be administrative in nature such as customer contact through the mail and telephone. The petitioner listed several categories of tasks with generalized descriptions. In particular, one category of tasks, described as “ad hoc,” will entail 20 percent of the beneficiary’s time. However, no description was provided for this category. The petitioner also claimed that the beneficiary “has worked with some of the foreign entity’s Private Label customers in the US, thus acquiring knowledge of export and import rules in both countries.” This description is ambiguous. The petitioner failed to explain how the beneficiary acquired specialized knowledge of the import and export rules of the countries or how by working with these customers such knowledge applies in international markets.

Moreover, the petitioner claimed that the office manager position requires knowledge of the main computer’s internal systems and processes because the U.S. entity is “hooked up” to the foreign entity’s main computer. The petitioner claims that the beneficiary attended the necessary courses to operate these systems and processes. In addition, the petitioner asserted that the beneficiary “has worked with competent colleagues who have passed on to her knowledge gained through many years.” These assertions indicate that any employee within the company is capable of gaining the knowledge to operate the main computer. An employee who attends courses and works with colleagues could gain such knowledge. Thus, the beneficiary’s knowledge appears to be common within the petitioner’s operations and the knowledge to gain the status of office manager appears to be widely available. Therefore, the director correctly concluded that the beneficiary failed to qualify as a specialized knowledge worker.

Further, when examining whether a beneficiary is eligible for L-1B classification, one of the factors the AAO will examine is whether the beneficiary is “key” personnel. In *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” 18 I&N Dec. 49 (Comm. 1982). According to *Matter of Penner*, “[s]uch a conclusion would permit extremely large numbers of persons to qualify for the ‘L-1’ visa” rather than just the “key” personnel that Congress specifically intended. The skills and knowledge necessary to function as an office manager for the petitioning entity appear to be those that any worker could be trained to perform as adequately as the beneficiary, thereby; the beneficiary does not appear to be a “key” personnel. The record is not persuasive that the beneficiary’s asserted skills and knowledge can only be achieved by someone possessing an advanced level of skill and knowledge of the processes and procedures of the petitioning entity. After careful consideration of the evidence, the AAO concludes that the beneficiary will not be employed in a specialized knowledge capacity.

The second issue the AAO will consider is whether the beneficiary has been employed for one continuous year within the three years preceding the beneficiary’s application into the United States in a qualifying managerial, executive, or specialized knowledge capacity. As previously

stated, to establish L-1 eligibility under section 101(a)(15)(L) of the Act, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. On Form I-129, the petitioner described the beneficiary's duties for the past three years as "customer service, supply chain management, pre- and after sales activities." However, the director requested additional evidence to establish that the beneficiary's was employed, in a qualifying capacity, for one continuous year of full-time employment abroad, within the three years immediately prior to the filing of the petition. In response to the director's request, the petitioner submitted a document in Danish with "Post-It" notes attached indicating when the beneficiary had been employed abroad.

Subsequently, the director determined that the evidence did not establish the one of year work experience with the foreign entity abroad. Specifically, the director concluded that pursuant to 8 C.F.R. § 103.2 (b)(3) the untranslated document could not meet the one year foreign work requirement.

On appeal, the petitioner claims that the beneficiary has worked as a full-time employee for the foreign entity since July 28, 1997. The petitioner submitted another description of the beneficiary's duties describing the beneficiary's work experience abroad. The petitioner also submitted a contract of employment signed by the secretary of the foreign entity's department of human resources. The contract of employment indicates that as of February 1, 1999 the beneficiary became a sales assistant. However, the "Post-It" note indicates that the petitioner may have been employed from July 28, 1997 until February 1999 as a substitute worker. Therefore, because of the limited documentation submitted, the AAO is unable to determine when and for how long the beneficiary was actually employed with the foreign entity abroad. 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). As a result, the petitioner has not established that the beneficiary meets the continuous one-year requirement.

The third issue to be addressed is whether a qualifying relationship exists between the petitioner and foreign entity. The pertinent regulations at 8 C.F.R. § 214.2(l)(ii) define a "qualifying organization" and related terms as:

(G) Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operation division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In addition, the regulations and case law confirm that ownership and control are factors that must be examined in determining whether a qualifying relationship exists between the petitioner and foreign entity. *See Matter of Church Scientology International*, 19 I &N Dec. 593 (BIA 1988); *See also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986) (in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (in nonimmigrant visa proceedings). In the context of this visa proceeding, ownership refers to the direct or indirect legal right of possession of the assets of an organization with full power and authority to control. *Matter of Church Scientology International* at 595. Control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an organization. *Id.*

In order to establish the petitioner and foreign entity have a qualifying relationship, the petitioner initially submitted the U.S. entity's bylaws, statement of income for 12 months ending December 31, 2001, and a statement of financial position as of December 31, 2001.

On March 21, 2002, the director requested additional evidence. In particular, the director requested annual reports, statements from the organization's president, or corporate secretary, articles of incorporation, financial statements, and evidence of ownership of all outstanding stock for both entities.

In response, the petitioner submitted a duplicate copy of the petition and supporting documents, a certificate of incorporation, the stock ledger, and Internal Revenue Service (IRS) Form 1120 U.S. Corporation Income Tax Return for 2001.

On April 30, 2002, the director determined the petitioner did not submit any type of evidence to establish that the petitioner and foreign entity have a qualifying relationship.

On appeal, the petitioner submitted the foreign entity's August 1, 2000 annual report showing that the Danish operation had purchased 50 of 100 common class shares that the petitioner had issued at a par value of \$0.01. In addition, the petitioner submitted a subscription agreement and stock certificate showing that the foreign entity, Dandy A/S, is the owner of 50 shares of common stock.

On review, the evidence the petitioner submitted is not sufficient to establish that a qualifying relationship exists between the U.S. and foreign entities pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). The petitioner asserted that the U.S. entity is a subsidiary of the foreign entity. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(I) and (K). The petitioner submitted a stock certificate, articles of incorporation, stock ledger, a Foreign Annual Corporation Report, and income tax return. The Foreign Annual Corporation Report and stock certificate indicate that the foreign entity purchased 50 shares of the 100 authorized common class shares of the U.S. entity at a par value of \$0.01 for 50 cents. However, Schedule L, line 22, on the Corporate Tax Return for 2001 indicates that at the end of the tax year, the U.S. entity sold \$100 of common stock rather than 50 cents. Therefore, the tax return does not reflect the amounts indicated on the Foreign Corporation Annual Report or the stock certificate. The record does not establish who owns the remainder of the issued stock.

In addition, Schedule K of the petitioning entity's 2001 Form 1120 did not indicate any foreign ownership or control. Furthermore, the Form 1120 indicates that no foreign person owned, directly or indirectly, at least 25 percent of the total voting power of all classes of stock of the corporation, and did not identify the percentage owned by the claimed parent company in Denmark. This contradicts the claim that the petitioner is a subsidiary of a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(K). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, the AAO concludes the petitioner has not established that a qualifying relationship exists between the petitioner and foreign entity. For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO notes that there are discrepancies in the record. On Form I-129, the petitioner indicated that it has one employee. However, the U.S. Corporation Income Tax Return Form 1120 for 2001 indicates that no salaries and wages were paid. In addition, the petitioner submitted a February 5, 2002 letter from the Illinois Department of Employment Security stating that "information received indicates that you have not employed one or more workers in 20 weeks of the calendar year or, you have not had a payroll of \$1500 in any calendar quarter." In addition, the petitioner failed to submit an Employer's Quarterly Federal Tax Form 941 for the prior year. Since there were no salaries or wages paid for 2001, the AAO is not persuaded that the petitioning entity employs one worker. As previously stated, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent

objective evidence and failure to provide such proof may cast doubt on the reliability and sufficiency of the remaining evidence. *Matter of Ho, supra.*

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.