

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services



FILE: EAC 04 021 53965 Office: VERMONT SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, a Venezuelan company, is a software programming and development company. It seeks to employ the beneficiary at its subsidiary in Puerto Rico as an Enterprise Application Integration Specialist. The petitioner filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding that the beneficiary would not be employed in the U.S. in a specialized knowledge capacity.

On appeal, counsel submits: (1) a detailed statement regarding the beneficiary's job duties and experience, accompanied by a glossary of terms used therein; (2) a letter from the Puerto Rican entity's treasurer; (3) a letter from Software AG, whose products and services the Puerto Rican entity represents and markets; (4) a teaming agreement between the Puerto Rican entity and GM Group, Inc.; and (5) a letter from the Department of Treasury of Puerto Rico. Counsel requests that the AAO approve the petition based upon the documentation submitted on appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). 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. In addition, 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.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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 service 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 issue in the present case is whether the beneficiary has been or will be employed in the United States in a specialized knowledge capacity, as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

The petitioner did not submit sufficient evidence with the petition to establish that the beneficiary's employment would be in a specialized knowledge capacity. As required by 8 C.F.R. § 103.2(b)(8), the director requested that the petitioner submit additional evidence on November 5, 2003. In her request, the

director requested that the petitioner “[s]ubmit probative evidence showing that the beneficiary’s knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary’s field of endeavor, or that his advanced level of knowledge of the processes and procedures of the company distinguish him from those with only elementary or basic knowledge.”¹

In response, the petitioner submitted a one-page description of the “beneficiary’s knowledge.” The director subsequently denied the petition noting that, although specifically requested, the petitioner did not provide any evidence to show that the beneficiary’s knowledge of the processes and procedures of the petitioner’s organization “is substantially different from, or advanced in relation to that of any consultant of any software company.” In addition, the petitioner’s claim that the beneficiary is its only certified XLM engineer was found to be insufficient to conclude that the beneficiary’s knowledge is uncommon or distinguished from other consultants throughout the industry. The director further determined that the beneficiary’s recently-acquired XLM certification, which was issued one month prior to the filing of the petition, was insufficient to establish that the beneficiary possessed an advanced level of knowledge in this area as claimed by the petitioner.

On appeal, counsel submits the following documentation, which was previously requested by the director: (1) a detailed statement of the beneficiary’s job duties and experience, accompanied by a glossary of terms used therein; (2) a letter from the Puerto Rican entity’s treasurer describing the beneficiary’s intended project while employed in Puerto Rico; (3) a letter from Software AG, whose products and services the Puerto Rican entity represents and markets, confirming the beneficiary’s experience and qualifications; (4) a teaming agreement between the Puerto Rican entity and GM Group, Inc.; and (5) a letter from the Department of Treasury of Puerto Rico granting the Puerto Rican entity’s project proposal on which the beneficiary is intended to work. Counsel requests that the AAO approve the petition based upon the additional evidence.

On review, the AAO agrees with the decision of the director. The record does not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director’s request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Should the petitioner wish the service to consider the submitted evidence, the petitioner may file a new visa petition on the beneficiary’s behalf that is supported by competent evidence that the beneficiary is entitled to the status sought under the immigration laws.

¹ The request for evidence also requested additional documentation establishing that the petitioner and the beneficiary satisfied the requirements under 8 C.F.R. § 214.2(l)(3) for an intracompany transferee visa. Since the petitioner satisfied these evidentiary requirements, the director did not base her decision to deny the petition upon these issues. Therefore, these issues will not be discussed within the scope of this decision.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.