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U.S. Citizenship
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FILE: LIN 03 213 51944 Office: NEBRASKA SERVICE CENTER Date: APR 04 2005

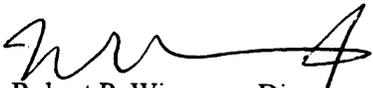
IN RE: Petitioner:
Beneficiary:

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 Director, Nebraska 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 filed this nonimmigrant petition seeking to employ the beneficiary as its transmission sales liaison in the nonimmigrant visa classification of L-1B intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is engaged in the design, development, manufacture, and sale of manual axles/transmissions and transmissions/engine components. The petitioner claims to be a subsidiary of ██████████, located in Germany. The petitioner seeks to employ the beneficiary in the United States for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's claimed foreign employer. The director also determined that the record lacks evidence to establish that the beneficiary has specialized knowledge.

On appeal, counsel disputes the director's conclusions and submits a brief addressing each of the objections discussed in the denial.

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 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 petitioner has established that it has the requisite qualifying relationship with the beneficiary's foreign employer.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

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

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

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.

The Supplement to Form I-129 shows that the beneficiary is currently employed abroad by [REDACTED] (Germany) and further indicates that [REDACTED] owns 51% of the petitioner's stock. In a letter dated July 1, 2003, submitted in support of the petition, the petitioner stated that [REDACTED] Germany, the beneficiary's foreign employer, owns 67.8% of [REDACTED]

U.S. Holding [REDACTED] and that [REDACTED] Germany, therefore, indirectly owns more than 50% of the U.S. petitioner. [REDACTED] 51% ownership of the petitioning entity is reflected in the petitioner's Notes to Consolidated Financial Statements through December 31, 2001, which is part of the petitioner's Report of Independent Auditors. The record also contains three stock certificates, two of which show [REDACTED] U.S. Holding's ownership of 2,374 shares of the petitioner's stock.

On July 7, 2003 the director issued a notice requesting additional evidence. The director acknowledged the financial statement and stock certificates submitted by the petitioner, but stated that the record lacks evidence to support the claim that the beneficiary's foreign employer, [REDACTED] Germany, owns 67.8% of [REDACTED] U.S. Holding [REDACTED]. The director specified that the petitioner is required to submit documentary evidence to establish common ownership and control between the U.S. entity and the beneficiary's current foreign employer.

The petitioner responded with a letter dated July 17, 2003 in which it claimed that the beneficiary is actually employed by [REDACTED] which is entirely owned by [REDACTED] (Germany). The petitioner further indicated that all these companies, along with others, comprise the [REDACTED] Group. In an effort to further illustrate the corporate make-up of the [REDACTED] Group the petitioner submitted an organization flow chart naming the different companies and individuals, along with their respective ownership interests in any of the named companies.

On July 28, 2003 the director denied the petition, basing a portion of his decision on the petitioner's failure to provide evidence to establish that it has a qualifying relationship with the beneficiary's overseas employer. The director acknowledged the submission of evidence regarding the petitioner's ownership. However, the director's primary objection was that the petitioner failed to provide corroborating evidence to establish who owns [REDACTED] Germany's relationship the U.S. petitioner, its direct parent company, [REDACTED] U.S. Holding, or with the beneficiary's overseas employer, [REDACTED].

On appeal, counsel resubmits the organizational flow chart, which names the different companies that are part of the [REDACTED] Group. Counsel also claims that the petitioner has filed a number of petitions with less supporting documentation and questions the accuracy of the instant denial in light of such prior approvals.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this immigrant visa classification. *Matter of Church of 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 context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. In the instant case, the petitioner consistently maintains the claim that the petitioner and the beneficiary's foreign employer have a qualifying relationship by virtue of their common ownership. However, 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). Contrary to counsel's apparent misconception, the company-generated flow chart provided by the petitioner is not documentary evidence that establishes ownership of either of the relevant entities. Furthermore, the petitioner has made two distinct claims regarding the beneficiary's foreign

employment. In the initial petition, the petitioner indicated that the petitioner was employed by [REDACTED] (Germany). In a subsequent response to the request for evidence the petitioner claimed that the beneficiary is actually employed by [REDACTED]. Regardless of the petitioner's claim that both companies belong to the [REDACTED] Group, they are two distinct companies, both of which have been named as the beneficiary's overseas employer. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner, in the instant case, has neither resolved the apparent inconsistency, nor even acknowledged that this inconsistency exists.

On review, the record does not contain sufficient evidence to establish the existence of a qualifying relationship between the petitioner and the foreign employer. Nor is the record entirely clear as to who the foreign employer actually is. Based on this lack of evidence and apparent factual inconsistency, the AAO cannot affirmatively determine that a qualifying relationship exists. For this initial reason, this petition cannot be approved.

The other issue in the instant matter is whether the beneficiary possesses specialized knowledge.

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

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 has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial 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 a letter, dated July 1, 2003, submitted with the petition, the petitioner provided the following description of the beneficiary's current duties abroad:

[The beneficiary] has acquired specialized knowledge and familiarity with these transmissions and the related concerns that have arisen from [REDACTED] and [REDACTED] and she has familiarized herself with the unique procedures and methods of [REDACTED] Germany's sales department. For the past year she has been performing these specialized liaison duties working in Germany[;] however[,] it has become apparent to the Sales Department in Germany that as these projects increase in size more complications occur and in order to more effectively communicate and liase [sic] between Germany and Daimler Chrysler and Cadillac in the U.S. regarding these 2 transmission projects that she must be based in the U.S. where she is able to meet with the customers in person on a regular basis.

The petitioner also provided the following description of the beneficiary's proposed duties in the United States:

[The beneficiary] will coordinate and assist [REDACTED] and [REDACTED] communicate any questions, problems, modifications and needs they may have to the Sales Department in Germany where these transmissions are being manufactured and who are in charge of these projects. She will help explain and articulate the customers['] concerns to sales Department in Germany and she will explain and articulate the German Sales Department's responses to them in order to enhance their mutual understanding. She will need to write proposals and summations of the customers concerns to be transmitted to the Sales Department in Germany.

In the director's request for additional information, the petitioner was instructed to establish that the beneficiary possesses specialized knowledge as claimed in the petition. The director further stated that the specialized knowledge classification extends to those who are able to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished from others in a similar field.

The petitioner submitted a response in the form of a letter, dated July 17, 2003, in which the petitioner stated that throughout her one-year employment with the foreign entity, the beneficiary "has familiarized herself with" the various transmissions and new and patented products. The petitioner explained that the beneficiary's sales duties primarily focus on coordinating the sales of transmissions with the purchasing department, central planning department and logistics department. The petitioner claims that this essential task requires "knowledge and expertise of these advanced transmissions and patented parts that are not common in the sales field." The petitioner further claimed that the transmissions and parts sold by the beneficiary "are unique and proprietary to the [REDACTED] Group and to date have only been designed and manufactured in Germany." The petitioner stated that the beneficiary has been able to "answer precise and complex questions" about the products she sells and is also able to convey customers' needs and requests to the various relevant departments within the company. The petitioner indicated that the beneficiary's multilingual abilities make her an even greater asset to the company.

In a decision dated July 28, 2003 the director denied the petition, expressly stating, "[I]t is unclear how the beneficiary could have a continuous year of employment abroad in a specialized knowledge capacity if she has only been employed for one year and one day." Although the appeal will be dismissed, it must be noted that the director based his decision, in part, on an improper standard. Contrary to the implication of the director's comment, there is no statute or regulation that requires more than one year of overseas employment in a particular position in order to be deemed an employee possessing specialized knowledge. As the director's comment does not accurately reflect the statutory or regulatory requirements, it is hereby withdrawn.

However, the denial properly questions the need for proprietary knowledge in light of the beneficiary's given job, which requires her to be a liaison between the customers and the German sales department. The director also discussed the beneficiary's job duties and concluded that they do not illustrate the specialized nature of the position.

On appeal, counsel explains that although the beneficiary did not possess specialized knowledge of the [REDACTED] Group's products and processes when she first commenced her employment with that company, she nevertheless worked in a position that involved specialized knowledge. It is noted that this statement contradicts the petitioner's claim. While counsel maintains the notion that the beneficiary has worked abroad

in a specialized knowledge capacity, he clearly admits that the beneficiary did not possess specialized knowledge upon commencement of her job duties with the overseas organization. It appears, based on counsel's confusing statements, that the beneficiary purportedly gained specialized knowledge at some point during her overseas employment. However, it is unclear at what point that specialized knowledge was gained or how the beneficiary was able to perform in a specialized knowledge capacity before she actually possessed the requisite specialized knowledge. Even if, *arguendo*, the beneficiary did gain specialized knowledge at some point during her employment, counsel admits that she did not possess that knowledge for an entire year prior to the date the petition was filed and, therefore, could not have been employed in a specialized knowledge capacity for the entire one-year period.

Furthermore, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to produce a specialized product, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See*

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

generally, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. at 119. 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 the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; *see also, 1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.")

Thus, based on the intent of Congress in its creation of the L-1B visa category, as discussed in *Matter of Penner*, merely showing that a beneficiary possesses specialized knowledge does not establish eligibility for the L-1B intracompany transferee status. The legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would

the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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.