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U.S. Citizenship
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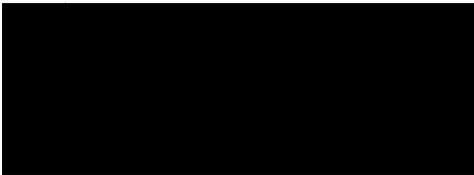
Date: FEB 23 2005

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

The petitioner [REDACTED] states that it is an affiliate of [REDACTED] located in Colombia. The petitioner is engaged in the restaurant business. The U.S. entity was incorporated in Puerto Rico on October 10, 2000. In September 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 ethnic chef instructor at a weekly salary of \$400.

On January 8, 2003, the director denied the petition because the petitioner failed to establish that the beneficiary has been or will be employed in a specialized knowledge capacity in the United States.

On appeal, counsel submits a brief refuting the director's findings and asserts that the beneficiary "exceeds the requirements imposed by the pertinent regulations."

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 issue in this proceeding is whether the beneficiary has been and 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) and (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.

On the Form I-129, the petitioner described the beneficiary's duties for the past three years as: "CHEF, ETHNICAL AND INSTRUCTOR FOR FOOD HANDLERS & PREPARERS." In addition, the beneficiary's proposed U.S. duties are described as: "CHEF & INSTRUCTOR TO LOCAL EMPLOYEES DEALING WITH CHINESES FOOD PREPARATION."

The petitioner further described the beneficiary's proposed U.S. job duties as:

1. The preparation, confection and cooking of gourmet ethnical culinary dishes of oriental taste;
2. The evaluation and training of present and future local personnel in the food preparation and cooking of gourmet Chinese food, as well as the training in proper training of food presentation;
3. Preparation of new dishes, as well as recommendations for the improvement of existing menu items;
4. Integration of local culinary favorites with our ethnical foods.

The petitioner also asserted, "Other responsibilities and tasks will be added as employee becomes knowledgeable of the culinary aspects and customs of the local people . . ."

On October 2, 2002, the director requested additional evidence. In particular, the director requested evidence to show that the beneficiary was employed in a position of specialized knowledge including a complete description of the beneficiary's foreign duties. Additionally, the director requested evidence 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.

In response, counsel claimed that:

[The beneficiary] will continue to apply his extensive experience as an ethnic food chef that made the foreign company one of the premier ethnic Chinese cuisine restaurants of Colombia. The addition of the beneficiary allows the domestic company to benefit from the cross-fertilization of ideas and techniques that derived from the beneficiary's advanced level of expertise to the petitioner's business. This level of knowledge is directly related to the proprietary interest of the petitioner. His skills, knowledge and abilities as an instructor and kitchen manager will enhance the petitioner's position in the competitive Puerto Rican restaurant industry. The beneficiary will be training kitchen personnel, assistant chefs, and other kitchen helpers.

In addition, counsel claimed that the beneficiary "has been instrumental in the progress of the company abroad. They want to utilize his experience, background and skills to produce the same results in Puerto Rico."

On January 8, 2003, the director denied the petition because the petitioner had not established that the beneficiary has been or will be employed in a specialized knowledge capacity in the United States. The director found that the petitioner failed to establish that the knowledge possessed by the beneficiary was specialized or that the position required someone with specialized knowledge.

On appeal, counsel submits a brief refuting the director's findings and asserts that the beneficiary "exceeds the requirements imposed by the pertinent regulations." Specifically, counsel refers to a 1994 INS memorandum as a guide for interpreting the statutory definition of specialized knowledge. Memorandum from James A. Puleo, Acting Associate Commissioner, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). In the memorandum, the Commissioner noted that specialized knowledge is not limited to knowledge that is proprietary, exclusive or unique, but also includes knowledge that is "different from that generally found in [a] particular industry." Counsel asserts that the "skills in the processing and preparation of the company's dishes are an integral part of the business operations. The ideas and methods, which distinguish the [p]etitioner's restaurant, would be enhanced by the temporary addition of [the beneficiary]."

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(1)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. See *id.* On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge. The petitioner has provided a vague description of the beneficiary's duties and qualifications and fails

to articulate exactly how it is special. 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 to prepare gourmet Chinese Food adapted to a Latin culture. Moreover, the petitioner should have demonstrated how the beneficiary's knowledge compares to other ethnic chef instructors within and outside the business. For instance, the additional evidence might establish that the beneficiary possesses knowledge valuable to the petitioner's competitiveness in the restaurant business industry or the petitioner has been utilized abroad in a capacity that has enhanced the petitioner's business, profits, or reputation. Additionally, the evidence may demonstrate that the beneficiary has knowledge of Chinese culinary expertise to the extent that the petitioning entity would experience a significant interruption of business in order to train a U.S. worker to assume the beneficiary's proposed duties. Although counsel claims on appeal that "[t]raining a new employee to fill this position to the exacting demands of the [p]etitioner is onerous and unduly burdensome," counsel has failed to demonstrate that the business would experience a significant interruption of business in order to train a U.S. worker to assume the beneficiary's proposed duties.

Further, the petitioner offers no explanation as to the educational or work qualifications necessary for an ethnic chef instructor. Nor does the petitioner provide documentation that the beneficiary received specialized training or international assignments focused specifically on Chinese gourmet cooking. While counsel, on appeal, asserts that the beneficiary "exceeds the requirements imposed by the pertinent regulations," the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed by the petitioner and in this business, fails to distinguish the beneficiary's knowledge as specialized. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition, the requirements for the position of ethnic chef instructor include "[t]he preparation, confection and cooking of gourmet ethnical culinary dishes of oriental taste" and the beneficiary will "apply his extensive experience as an ethnic food chef that made the foreign company one of the premier ethnic Chinese cuisine restaurants of Colombia." This description is ambiguous. The petitioner failed to explain how the beneficiary acquired specialized knowledge of gourmet ethnic culinary dishes or how such extensive experience applies to the petitioner's business. The petitioner further claimed that the beneficiary will be involved in the "evaluation and training of present and future local personnel in the food preparation and cooking of gourmet Chinese food, as well as the training in proper training of food presentation." However, it is unclear how this knowledge appears to be uncommon within the petitioner's operations and the knowledge to gain the status of a gourmet chef 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. It is also 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)).

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 gourmet meal, 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 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.

Here, the petitioner has provided no documentation to establish that the beneficiary's knowledge is more advanced than other employees at the restaurant. Again, the petitioner has not provided any information pertaining to the other twelve workers employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. The lack of evidence in the record makes it impossible to classify the beneficiary's culinary knowledge as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the business. 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). While it may be correct to say that the beneficiary is a skilled chef 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 (Comm. 1982). 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.")

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*, 745 F. Supp. at 16.

Finally, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, the memorandum was intended solely as a guide for employees and will not supercede the plain language of the statute or the regulations. Although memoranda may be useful as a statement of policy and as an aid in interpreting the law, such documents are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. The regulation at 8 C.F.R. § 103.3(c) provides that only "designated [CIS] decisions are to serve as precedents" and "are binding on all [CIS] employees in the administration of the Act." Therefore, by itself, counsel's assertion that the beneficiary's qualifications are analogous to the examples outlined in the memorandum is insufficient to establish the beneficiary's qualification for classification as a specialized knowledge professional. As discussed, the petitioner has not submitted probative evidence to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in the alien's field of endeavor.

After careful consideration of the evidence, 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 appeal will be dismissed.

ORDER: The appeal is dismissed.