

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D 7



FILE: WAC 03 065 55565 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

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:



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

D

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

According to the evidence contained in the record, the petitioner was incorporated November 22, 2002, and claims to be a Middle Eastern ethnic specialty food chain and restaurant. The petitioner claims to be an affiliate [REDACTED] located in Australia. It seeks to employ the beneficiary temporarily in the United States as a head baker of ethnic specialties for one year, at an annual salary of \$35,000.00. The director determined that the evidence submitted by the petitioner was not sufficient to establish that the beneficiary had been employed or would be employed in a capacity that involves specialized knowledge.

On appeal, counsel disagrees with the director's decision and states that the evidence submitted is sufficient to show that the beneficiary has been and will be employed in a capacity that involves specialized knowledge.

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)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 regulation at 8 C.F.R. § 214.2(1)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- A) Sufficient physical premises to house the new office have been secured;
- B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (I)(1)(ii)(G) of this section; and
- C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity.

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

For purposes of section 101(a)(15)(L)[of the Act, 8 U.S.C. § 1101 (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.

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(D) defines "specialized knowledge":

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 a letter of support, dated November 8, 2002, the petitioner initially described the beneficiary's past and proposed duties as:

1. Overseeing all bread-baking operations of the company, including chefs, cooks and support personnel; developing and implementing standardized operational procedures to establish and maintain quality control;
2. Preparing specialty breads (including Turkish bread, pide (pita) bread, pizza bread) used in [REDACTED] Mixing ingredients to form dough or batter by hand or using a mixer; adjusting drafts and thermostatic controls to regulate oven temperatures; preparing the specialty fillings; cutting and shaping the right amounts of dough; cooking and determining when the breads are done in accordance with ethnic specialty techniques;
3. Coordinating activities of bread-baking workers;

4. Determining, planning, and monitoring production schedule and daily requirements to determine variety and quantity of goods to bake;
5. Maintaining sufficient inventory in accordance with menu necessities and budgetary constraints;
6. Maintaining production records to ensure for inventory is up to date [sic];
7. Being involved in hiring, and firing decisions for new and current bread-makers; [and]
8. Training newly hired bread-makers.

The petitioner stated that the beneficiary had been employed by the foreign entity as “head bread maker” since June of 2001, and that prior to that [REDACTED] employed the beneficiary as bread maker, and at other restaurant businesses the beneficiary was employed as a baker.

As evidence, the petitioner submitted an employment verification letter from [REDACTED] dated September 17, 2002, in which it is stated that the Bakehouse employed the beneficiary on a full-time basis from December 1999 to May 31, 2001. It is also stated in the letter that the beneficiary gained extensive experience while at the bakery in preparing and baking various types of breads, sweets, and cakes.

In response to the director’s request for evidence on the subject, the petitioner submitted a copy of the foreign entity’s and U.S. entity’s organizational chart. The foreign entity’s organizational chart demonstrated that the beneficiary was designated supervisor of bread products and bakery, and had two bread makers under his direction. The U.S. entity’s organizational chart demonstrated that the beneficiary’s position would be that of head baker, and that three bakers/bread makers would be under his supervision. The petitioner stated that no other U.S. entity employee performed the beneficiary’s proposed duties. The petitioner also stated that the beneficiary has and will perform duties that are unique and different from those of other company workers in the United States and abroad in that his position as “Head Baker-Ethnic Specialties” is similar to that described in DOT Code 313.361-030 as Cook, Specialty, and Foreign Food. The petitioner submitted a copy of the relevant DOT Code. The petitioner further stated,

As a Foreign Food Chef, [the beneficiary] is required to have the special skills, training and expertise in baking breads and savory pastries specific to the Turkish and Middle Eastern cuisine served at our restaurants. His knowledge of the baking of the breads and pastries involved, including [REDACTED] must be thorough....

In addition, the [REDACTED] must also be an expert in the special fire ovens used in this process, the different kinds of dough used for the various items, the proper procedures for making and incorporating the fillings and specialty ingredients, and various cooking methods, times, etc. He is also the specialist who trains and manages the apprentices and assistants in the everyday preparation of the products. These duties are unique from those of other workers employed by the petitioner as we have no other employees with the level, noted above, of skill and experience as [the beneficiary]. In addition, they are unique from those of other workers employed by other U.S. employers in this type of position (Chef/Baker) as the special skills, training and expertise in baking breads and savory pastries

required are specific to Turkish and Middle Eastern cuisines; these are rarely taught in culinary schools in the United States at the present time.

In response to the director's request for further evidence, the petitioner stated:

As evidenced from [the beneficiary's] current duties, [he] has had extensive experience in the baking of the specialty breads and pastries at the core of our restaurants offerings as well as experience in the training and managing of apprentices and assistant bakers. In addition to his experience at the Australian affiliate, [the beneficiary] also has served as Bread Maker at [REDACTED] other restaurant businesses as Baker Therefore, his training and experience are unique to others employed by the company in that [the beneficiary] has skills and experience none of the other employees possess, including an extensive background in bread production, bread making and preparation as well as training and management of apprentice bakers.

The petitioner submitted a one-page description of a baker's training course proposed for the U.S. entity. The petitioner asserted that the impact would be detrimental if the petitioner is unable to obtain the beneficiary's services. The petitioner asserted that it was presently only selling a limited amount of its baked goods. The petitioner further asserted that a vital aspect and central component of its business is the large scale production and sale of bread, and that the beneficiary's services are needed to effectuate this expansion.

The director subsequently denied the petition stating that there was insufficient evidence to show that the beneficiary's experience with the foreign entity or that which was proposed by the petitioner constituted specialized knowledge. The director noted that Citizenship and Immigration Services (CIS) does not generally regard cooks, chefs, and bakers as possessing specialized knowledge, because recipes and cooking techniques can generally be learned through a very brief exposure. The director also noted that the other duties listed as being performed by the beneficiary were administrative in nature and did not require specialized knowledge. The director stated: "The record does not establish that the beneficiary has unusual, advanced, or specialized knowledge of the petitioning organization that would be gained only by the completion of substantial or extensive specialized training, education, or experience directly related to the duties of the proffered position." The director also stated that the petitioner had failed to demonstrate that the foreign entity's food preparation techniques were so unique and out of the ordinary that their implementation required specialized knowledge.

On appeal, counsel disagrees with the director's decision and asserts that the director's denial was based upon an "erroneous interpretation of facts." Counsel asserts that the beneficiary possesses knowledge that is valuable to the petitioner's competitiveness in that he is required to have the special skills, training and expertise in baking breads and pastries specific to Turkish and Middle Eastern cuisine, and that his knowledge in bread making and production must be thorough. Counsel also asserts that the beneficiary is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry in that he is an expert in the baking of Middle Eastern breads and pastries, the operation of special fire ovens, and the training and management of apprentices and assistants in the preparation of its products. Counsel further asserts that the beneficiary has been utilized abroad in a capacity involving significant assignments, which have enhanced the foreign entity's productivity, competitiveness, image, or financial position in that he has been responsible for overseeing all bread making and production involved in a \$4 million dollar enterprise. Counsel contends that the beneficiary's keen understanding and experience of the foreign entity's operations and management will be instrumental in

replicating the foreign entity's success in the United States. Counsel further contends the foreign entity's Turkish bread, based upon a classic baking style developed approximately 10 years ago, has catapulted in the Turkish market. Counsel claims that the beneficiary possesses knowledge of the foreign entity's products and processes that cannot be easily transferred or taught to another individual in that at least 7-8 years, up to and including 12 years of preparation are required to be a cook, specialty, foreign food, and pastry chef. (DOT Code sections 313.361.030 and 315.131.014). As evidence on appeal, the petitioner submitted copies of the DOT Code sections and a copy of the Occupational Outlook Handbook section describing Chefs, Cooks, and Food Preparation Workers.

The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). 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 indicated that the beneficiary has been and will be responsible for overseeing the company's baking department in that he will bake bread and specialty pastries and will train and supervise apprentice and baker's assistants. As the petitioner indicates that anyone with experience baking specialty breads and pastries possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is a skilled employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Counsel's interpretation of the specialized knowledge provision would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. 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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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*, supra 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 that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker.

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)).

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the beneficiary possesses the skill required to work as a baker, not an advanced level of knowledge of the petitioner's processes and procedures. In the instant matter, the petitioner has not established that the beneficiary possesses specialized knowledge or that he has been or would be employed in a position requiring specialized knowledge. Accordingly, 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.