

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

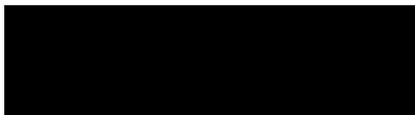
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

DF

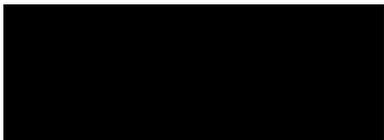


FILE: SRC 03 242 50076 Office: TEXAS SERVICE CENTER Date: JUN 28 2005

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

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

According to the evidence contained in the record, the petitioner was established in the United States in 2002 and claims to be an import and export vender and servicer of new and used heavy farm machinery and parts. The petitioner claims to be a joint venture created between [REDACTED] and [REDACTED] located in Greece. The petitioner seeks to extend its authority to employ the beneficiary temporarily in the United States as an operations manager for a period of three years, at a yearly salary of \$28,000.00. The director determined that the evidence submitted was insufficient to establish that the beneficiary had been or would be employed by the U.S. entity in a specialized knowledge capacity or that the position being offered to the beneficiary requires the services of an individual possessing specialized knowledge. The beneficiary was initially granted a one-year period of stay as an L-1A manager or executive to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay as an L-1B alien with specialized knowledge.

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

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) 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 (1)(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 serves 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 petitioner has submitted sufficient evidence to establish that the beneficiary had been and will be employed by the U.S. entity in a specialized knowledge capacity and that the position being offered to the beneficiary requires the services of an individual possessing "specialized knowledge" as defined in the Act and the regulations.

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 August 15, 2002, the petitioner described the beneficiary's position in the United States as:

[The beneficiary] will serve as the General Manager of [REDACTED]. In this capacity, he will be responsible for the success of the business. In addition to coordinating the business, [the beneficiary] will coordinate the relationship between [REDACTED] and [REDACTED] in the United States and [REDACTED] in Greece and will be responsible for ensuring the success of the United States business.

In response to the director's request for evidence on the subject, counsel for the petitioner stated that the beneficiary had been employed by the foreign entity from June 1994 through October 2000 as a mechanical technician. Counsel further stated that the beneficiary had extensive training and six years of experience as a mechanic specializing in servicing and maintaining agricultural equipment and in coordinating sales and services. Counsel also stated that the beneficiary had received technical training at the Organization for the Training of the Workforce in Greece, from which he received his certificate of completion in 1992. Counsel described the beneficiary's current duties as:

- Employee Supervision;
- Mechanical Maintenance;
- Purchase and restoration of cotton pickers;
- Handles all parts and equipment shipping and distribution; [and]
- Responsible for all order processing of new and used parts.

Counsel also requested that Citizenship and Immigration Services (CIS) amend the petition to reflect that the L-1B classification was the appropriate one sought by the petitioner on behalf of the beneficiary.

The petitioner submitted copies of the U.S. entity's organizational chart. The chart depicted a general manager over the direction of the beneficiary as operations manager and mechanic, who in turn directed the services of two machine shop helpers. The chart also showed the general manager over the direction of a sales manager, who in turn supervised a secretary. The petitioner also submitted a list of U.S. employees, along with their job titles, salaries, and job descriptions. The petitioner described the beneficiary as an operations manager and mechanic who earns \$600.00 per week overseeing two machine shop helpers, purchasing and restoring cotton pickers, and handling all parts and equipment shipments and distributions. The petitioner stated that the beneficiary was also responsible for processing all orders dealing with new and used machine parts. The petitioner described the machine shop helpers as assisting the beneficiary with the mechanics, cleaning shop, and running machine parts for the company.

The director subsequently denied the petition, determining that the record was insufficient to establish that the beneficiary had been and will be employed by the U.S. entity in a specialized knowledge capacity and that the position being offered to the beneficiary requires the services of an individual possessing "specialized knowledge." The director noted that the beneficiary's duties outlined by the petitioner did not appear to be significantly different from those of any other mechanic in the industry. The director also noted that the petitioner had failed to establish that the duties, as described, warranted the expertise of one possessing specialized knowledge.

On appeal, counsel disagrees with the director's decision and asserts the beneficiary possesses specialized knowledge and that this knowledge must be considered in relation to his knowledge and expertise with the U.S. entity's mechanical equipment, not that of another company or an individual who works for another company. Counsel further asserts that the beneficiary performs with specialized knowledge for the U.S. entity. Counsel also asserts the beneficiary was employed by the foreign entity for six years, during which time he was familiar with and responsible for the entity's mechanical, sales, service, and management processes. Counsel asserts the beneficiary was essential to the success of that part of the foreign business' operation, and therefore, "a key employee." Counsel cites *Matter of Penner* to substantiate his claim. Counsel claims that with the transfer of much of the mechanical functions of the foreign entity's operation to the U.S. entity, the beneficiary is essential to the U.S. business as well. Counsel describes the beneficiary's duties as "solely responsible for the maintenance and restoration for the equipment sold to its clientele." Counsel contends that the majority of the petitioning entity's clientele is Greek, and that it therefore requires the services of an employee who possesses a unique combination of knowledge of the mechanical workings of the company's equipment and the Greek language. Counsel further contends no other employee besides the beneficiary possesses such unique qualities, and that therefore; his knowledge is "specialized and key." Counsel also contends the beneficiary is employed by the U.S. entity in a primarily managerial or executive capacity.

On review, the assertions of counsel are not persuasive. Although counsel states that the petitioner is petitioning for L-1B intracompany transferee (an employee with specialized knowledge) status for the beneficiary, the record does not substantiate its claim. 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). Doubt cast on any

aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). There has been insufficient evidence presented to demonstrate that the beneficiary will be employed in a specialized knowledge capacity or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position.

The beneficiary's duties have been described as "employee supervision, mechanical Maintenance, purchase and restoration of cotton pickers, handles all parts and equipment shipping and distribution, [and] responsible for all order processing of new and used parts." These duties do not involve a specialized knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Although not directly addressed by the director, another issue is whether the beneficiary has been and will be employed by the U.S. entity in a managerial or executive capacity.

Counsel asserts on appeal that the beneficiary performs managerial and executive duties as well as duties that require specialized knowledge. In response to the director's request for evidence, the petitioner requested that the beneficiary be considered as a specialized knowledge employee. On appeal, counsel is requesting that the beneficiary also be considered for classification as a managerial or executive employee.

CIS regulations affirmatively require a petitioner to establish eligibility for the benefits it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). If the petitioner believed that the beneficiary was eligible for this nonimmigrant visa classification as an employee who was employed in a managerial or executive capacity, the petitioner was required to request such classification when filing the petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). In this matter, counsel clearly indicated that the petitioner sought L-1B classification for the beneficiary. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Furthermore, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, *supra*. If the

petitioner wishes to seek classification of the beneficiary as an L-1A intracompany transferee, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

Even if the beneficiary's eligibility for managerial or executive status were before the AAO, the evidence submitted by the petitioner would be insufficient to establish that the beneficiary's duties have been or will be primarily managerial or executive in nature. The evidence demonstrates that the beneficiary is a machine mechanic who supervises two machine shop helpers and who is involved in the sale and distribution of the U.S. entity's agricultural machines. The record does not show that the beneficiary has been or will be managing a subordinate staff that is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Because the beneficiary is primarily supervising a staff of non-professional employees, the beneficiary cannot be deemed to be primarily acting in a managerial capacity.

Contrary to counsel's contentions, there is no evidence in the record to show that the beneficiary has been or will be performing an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). In this matter, the evidence shows that the beneficiary will be performing the functions rather than managing the same. Furthermore, even though the petitioner claims that the beneficiary is primarily in charge of the maintenance department within the U.S. entity, it does not claim to have anyone on its staff to actually perform the maintenance and restoration functions of the organization. The petitioner described the shop helper's duties as: "assisting [the beneficiary] with mechanics." Thus, either the beneficiary himself is performing the functions or he does not actually manage the functions as claimed by the petitioner. For these additional reasons, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely 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.