

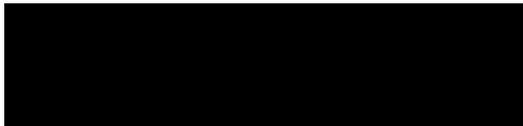
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U.S. Citizenship  
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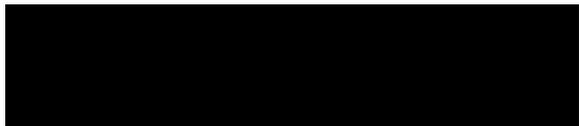
DA

File: SRC 04 064 50612 Office: TEXAS SERVICE CENTER Date: JUN 29 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)

IN 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, Texas 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 is engaged in the hospitality and restaurant business and operates a restaurant. It seeks to temporarily employ the beneficiary as a chef in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The United States entity is a corporation organized in the State of Texas and claims to be the subsidiary of Poshak International, located in Riyadh, Saudi Arabia with headquarters in Karachi, Pakistan. The director determined that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and asserts that the petitioner fully explained why the beneficiary possesses specialized knowledge, and that the denial misconstrued the requirements for specialized knowledge as outlined in a 1998 and a 2002 Immigration and Naturalization Service (INS - now Citizenship and Immigration Services (CIS)) memorandum.

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 primary issue in this 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 support of the petition, counsel for the petitioner submitted a letter from the petitioner dated December 18, 2003, stating that the beneficiary had been employed by the foreign entity as a chef since September 2002. The petitioner claimed that the beneficiary had several years of work experience in both Pakistan and Saudi Arabia, and that he possessed excellent culinary and restaurant management skills. The petitioner stated that the beneficiary began his career as a "cook helper," and later became a cook. Between 1985 and 2001, the petitioner claims that the beneficiary was employed as a "cook supervisor" and chef for various restaurants in Saudi Arabia, which helped him to perfect his skills. The petitioner provided the following statement with regard to the beneficiary's proposed duties:

Direct the preparation and presentation of ethnic South Asian dishes. Coordinate food service activities of the restaurant on a daily basis and during social functions. Estimate food and beverage costs and requisitions on purchase of supplies. Confer with food preparation and other personnel to plan menus and related activities, such as dining room, bar, and banquet operations. Direct the hiring and assignment of personnel in the food preparation area. Investigate and resolve food quality and service complaints. Review financial transactions and monitor budgets to ensure efficient operation, and to ensure food expenditures stay within budget limitations.

The petitioner failed to specifically address the beneficiary's qualifications as a nonimmigrant intracompany transferee with specialized knowledge.

A request for additional evidence was issued on January 8, 2004. Specifically, the director requested precise details with regard to the training the beneficiary would provide to the petitioner's employees. In addition, the director requested information with regard to other L-1B specialized knowledge employees transferred to the United States in the last twelve months, and requested their names, titles, and position descriptions. The petitioner was given ninety days to respond to the request.

On March 31, 2004, one week before the response to the director's request was due, counsel for the petitioner submitted a request for additional time to submit the requested evidence. Specifically, counsel stated that the petitioner's director was frequently traveling, and as a result was still in the process of gathering the requested information. Counsel requested an additional thirty days to submit the response.

On April 12, 2004, the director denied the petition. The director concluded that the petitioner's description of the beneficiary's alleged knowledge was not so specialized that it satisfied the regulatory requirements for the L-1B classification. In addition, the director stated that since the petition was not devoid of initial evidence when filed, the petitioner was not entitled to the requested extension to file the response to the request for evidence.

Counsel submits a brief on appeal in support of the petitioner's assertions that the beneficiary possesses specialized knowledge. Counsel restates the description of the beneficiary's duties and the director's conclusions, submits some of the evidence requested in the request for evidence, and argues that the director erred by denying the request for additional time to file the response. In addition, counsel asserts that the director's failure to find that the beneficiary in fact possessed specialized knowledge was contrary to an INS policy memorandum dated March 9, 1994. This memorandum, counsel alleges, makes readily apparent the distinction between "duties" and "specialized knowledge."

Counsel asserts on appeal that the director's denial of the petitioner's request for additional time to submit its response to the request for evidence is a "harsh reinterpretation/modification" of 8 C.F.R. § 103.2(b)(8). The cited regulation requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. In this case, the director did not deny the petition based on initial insufficient evidence of eligibility. Instead, the director as a courtesy offered the petitioner an opportunity to supplement the initial evidence submitted and afforded the petitioner a reasonable amount of time to submit this evidence. However, despite the clearly stated deadline, the petitioner failed to submit a timely response.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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). 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).

Where, as here, 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); *see also Matter of Obaigbena*, 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. The AAO, therefore, will only evaluate the petition and the evidence contained therein prior to adjudication.

When 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(l)(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. *Id.*

In the present matter, the petitioner provided a thorough description of the beneficiary's intended employment with the U.S. entity and of his responsibilities as a chef at the petitioner's restaurant. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner states throughout the record that the beneficiary is uniquely qualified for the position due to his familiarity with South Asian cuisine. The petitioner, however, offers no explanation as to the work qualifications necessary for a chef at the petitioner's restaurant or the responsibilities of each position. The record does not contain sufficient evidence that demonstrates that another employee of the company is incapable of performing the same or similar duties. Nor does the petitioner provide documentation that the beneficiary received training or work assignments focused specifically on the petitioner's processes or products. While counsel asserts that the beneficiary possesses specialized knowledge, 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 industry, fails to distinguish the beneficiary's knowledge as specialized. As noted by the director, there is nothing in the record to suggest that the beneficiary's knowledge is more specialized and unique than that of his co-workers both in the United States and abroad. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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)).<sup>1</sup> 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

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<sup>1</sup> 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.

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 or create a specialized product or service, namely South Asian cuisine, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. There is no indication that the beneficiary's background is specialized, in that it would enable him to perform a key process or function of the company. His background in the restaurant industry indicates that he obtained his experience over thirty years of working for different restaurants. There is no evidence that the beneficiary possesses specialized knowledge of the petitioner's *inner* processes or procedures.

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. 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 makes no claim that the beneficiary's knowledge is more advanced than other employees, 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 knowledge of the petitioner's products or procedures as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Simply 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 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 (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.")

Counsel also alleges that CIS is not following its own policy guidelines as to the nature of specialized knowledge. Specifically, counsel asserts that the director erred in finding that the beneficiary does not have knowledge of the "companies information." In support of this assertion, counsel refers to two CIS policy memoranda, dated December 2002 and March 1994, which reflect CIS's current interpretation of specialized knowledge. Counsel is correct that "[t]here is no requirement in current legislation that the alien's knowledge be unique, proprietary, or not commonly found in the United States labor market." *See* Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*). However, while the petitioner need not establish that the beneficiary's knowledge is proprietary or unique, the knowledge must be different or uncommon. *Id.* As discussed above, the petitioner has not established that the beneficiary's knowledge meets this lesser, but still strict, standard. On appeal, counsel simply restates the previously submitted description of the beneficiary's duties and the knowledge they require and asserts that, since the beneficiary is the only employee who possesses South Asian food preparation and presentation knowledge, he has consequently satisfied the definition of specialized knowledge. Additionally, prior to adjudication and again on appeal, the petitioner alleges that the beneficiary's knowledge is valuable to the petitioner's productivity, competitiveness, and financial position. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the

possession of specialized knowledge. While the beneficiary's contribution to the economic success of the restaurant may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge of the company products and their application in international markets is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee and asset to the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job for the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel," nor does it establish employment in a specialized knowledge capacity.

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.*, 745 F. Supp. 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.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary as required by the regulations. Although evidence establishing the payment of wages to the beneficiary was requested, the petitioner failed to submit such evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While not addressed in the decision, CIS should examine the home country as well when considering the general knowledge of a product within a specific industry, especially given that the same specialized knowledge was claimed for the beneficiary's required one year of employment abroad with the foreign entity. While the South Asian way of cooking food does not need to be proprietary, it should not be common and generally shared by other South Asian chefs. In this case, no evidence was presented indicating that a South Asian chef is uncommon in South Asia or that the beneficiary's South Asian cooking is uncommon or somehow different from other chefs in that region of the world. As indicated by [REDACTED] in her September 9, 2004 memorandum, a chef will not be considered to possess specialized knowledge simply because he or she has knowledge of a "particular type of ethnic cooking [that may] represent[] the culmination of centuries of cooking practices." Memo. from Fujie O. Ohata, Dir., Serv. Ctr. Operations, U.S. Citizenship and Immigration Serv., to Serv. Ctr. Dir., *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks seeking L-1B status*, 2 (Sept. 9, 2004).

Beyond the decision of the director, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). Specifically, the petitioner only submitted a copy of its corporate minutes as

evidence that it is a subsidiary of the foreign entity. 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 visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the 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.

As general evidence of a petitioner's claimed qualifying relationship, corporate minutes alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. In addition to the minutes of relevant annual shareholder meetings, the corporate stock certificates, stock certificate ledger, stock certificate registry, and corporate bylaws must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, the AAO is unable to conclude that the petitioner is owned and controlled by the foreign entity.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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.