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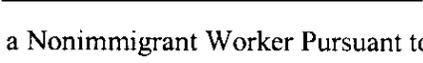


U.S. Citizenship
and Immigration
Services

D 7



FILE: EAC 02 102 53333 Office: VERMONT SERVICE CENTER Date: **JUN 30 2005**

IN RE: Petitioner: 
Beneficiary: 

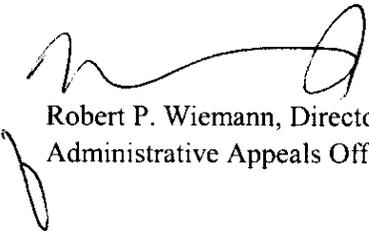
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner was established in the United States June 15, 2000, and claims to be in the bookbinding, restoration, and rebinding business. The petitioner claims to be a subsidiary of [REDACTED] located in Lebanon. The petitioner declares four employees. The petitioner seeks to employ the beneficiary temporarily in the United States as a marketing manager of its new office for a period of one year, at a yearly salary of \$40,000.00. The director determined that the evidence submitted was insufficient to establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity.

On appeal, counsel disagrees with the director's decision and states that the evidence is sufficient to establish that the beneficiary 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

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 possesses and will be employed primarily in a "specialized knowledge" capacity 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.

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.

The petitioner initially described the beneficiary's proposed duties in the petition as setting strategic planning goals, setting sales quotas and expenses, advertising development, and promoting the U.S. entity's products.

In a letter dated January 29, 2002, the petitioner stated that the beneficiary is responsible for developing and implementing marketing strategies including promotion, advertising, pricing research, and creating product samples.

The petitioner submitted a translated copy of the beneficiary's Bachelor of Arts degree received from Notre Dame University, Louaize. The petitioner also submitted samples of booklets and other materials bound and rebound by its company. The petitioner submitted a copy of the beneficiary's resume that described her experience as a marketing and sales manager including:

- Developing and implementing marketing strategies; responsible for product development, promoting and advertising the bindery services.
- Identifying market opportunities by applying advanced prospecting and direct selling, as well as monitoring customer satisfaction system.
- Responsible for introducing advertising approaches that would boost sales and increase product and binding service awareness.
- Prepare sales data and references for product analysis.
- Dealing and serving the needs of demanding professional clients.
- Training and managing the daily activities of the staff in order to meet objectives in growth, development and profitability.
- Conducting research on pricing and product samples to deliver measurable business results.
- Evaluating internal management structure analysis, recommending enhancements, implementing solutions in order to formulate risk-management strategies.

- Assist management with recruiting and employee relation issues and provide counsel in corrective action.
- Working closely with the G.M on the identification, selection, and monitoring of key project developments including the company expansion into the United States. As well as assisting in the submission of sophisticated business plan.

In response to the director's request for additional evidence on this issue, the petitioner provided a breakdown of the beneficiary's proposed duties as:

[The beneficiary's] job duties are broken down as follows: Marketing and sales 50% of the time devoted to marketing, sales and promotions (i.e. meeting with prospective customers, developing advertising, compiling sales reports, listings, web sites, etc.). She would work closely with the general manager in identification and monitoring of key developments and product/service improvement and innovation. She will also dedicate 40% of her time to management and production in order to meet production deadlines and insure quality, and also administering finances, etc.

In a letter dated May 10, 2002, the general manager of the foreign entity described the beneficiary's duties as being responsible for marketing and selling the petitioner's product, closing deals, and negotiating prices. In a letter dated May 7, 2002, the Director of Geographic Affairs, Ministry of Defense, stated that the beneficiary sets and negotiates prices for the foreign entity's products and services, and "explains impositions and materials to use."

The petitioner submitted a company business plan for the U.S. entity, which included a description of a management plan as follows:

... [REDACTED] management plan, along with the marketing and financial management plans, sets the foundation for and facilitates the success of our business. Responsible managers will be involved in evaluating internal management structure analysis, recommending enhancements, implementing solutions in order to formulate risk-management strategies. Assist management with recruiting and employee relation issues and provide counsel in corrective action. Manage the information system (Reports, correspondence, filing, orders...etc.). Track and delegate workflow and oversee administrative support services. Insure proper source utilization and operational standards.

The director denied the petition after determining that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. The director stated that the evidence failed to show that the beneficiary, as a marketing manager, would need specialized knowledge to perform her duties. The director noted that a marketing manager needs to be familiar with the product he or she is selling, but the familiarity does not constitute specialized knowledge.

On appeal, counsel disagrees with the director's decision and asserts that the beneficiary has acquired proprietary knowledge of the company's products and processes and has developed marketing techniques essential to market the entity's products in the United States. Counsel also asserts that the beneficiary possesses knowledge that is valuable to the petitioner's competitiveness in the marketplace. Counsel contends that the beneficiary is uniquely qualified to contribute to the petitioner's knowledge of the foreign entity's operating procedures as a result of being a marketing manager abroad.

Upon review of the petition and evidence, the record as presently constituted is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that the beneficiary will be employed in a capacity involving specialized knowledge. Although the petitioner asserts that the beneficiary's proposed position requires specialized knowledge and that she has acquired proprietary knowledge of the petitioner's products, marketing techniques, and services, it has failed to produce independent documentary evidence to substantiate such claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In examining the specialized knowledge capacity claim, the AAO will initially look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* In the instant matter, the petitioner stated that the beneficiary would spend 50 percent of her time devoted to marketing, sales, and promotions; and would spend 40 percent of her time devoted to the management and production of the company's product. Skill in performing marketing and sales tasks does not equate to a special knowledge of the entity's product, service, research, equipment, techniques, or other interests and its application in international markets. The petitioner has not established that the beneficiary possesses an advanced level of knowledge of, or expertise in, the organization's processes or procedures.

The petitioner submitted a copy of the beneficiary's resume, which indicated that the beneficiary had experience in developing and implementing marketing strategies, introducing advertising approaches, identifying market opportunities, and preparing sales data. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position as marketing manager that would differentiate that employment from the position of marketing manager at other companies within the industry. 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, supra.* Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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. See section 214(c)(2)(B) of the Act. Here, the evidence demonstrates that the beneficiary possesses the skill required to work in the U.S. entity's marketing, sales, and advertising departments dealing with various bookbinding applications and processes, not a special knowledge of the petitioner's processes and procedures. Furthermore, although the petitioner's approach to bookbinding processes may be unique or specialized, the beneficiary's proposed duties in the marketing, sales, and advertising departments will not necessarily qualify as advanced.

In conclusion, there is no evidence of record to show that the position offered by the U.S. entity requires specialized knowledge to perform. The petitioner has not established that the beneficiary possesses specialized knowledge of the petitioner's products, processes, or procedures.

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.