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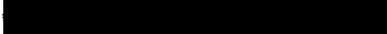
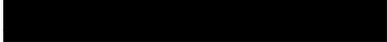
U.S. Citizenship
and Immigration
Services

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DA

File: SRC 03 045 51579 Office: TEXAS SERVICE CENTER Date: **MAY 11 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)

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 seeks to change the beneficiary's status from manager or executive (L-1A) to specialized knowledge worker (L-1B) and extend his period of stay as a nonimmigrant intracompany transferee 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 Florida that is engaged in the sale and export of educational toys for pre-school children. The petitioner claims that the U.S. entity is the subsidiary of Superdidacticos, C.A., located in Estado de Carabobo, Venezuela. The beneficiary was initially granted a one-year period of stay as an L-1A nonimmigrant manager or executive to open a new office in the United States.

The director denied the petition, determining that the petitioner had not established that the beneficiary possessed specialized knowledge. Additionally, the director noted that Citizenship and Immigration Services (CIS) cannot grant the petitioner's request for simultaneous consideration of the beneficiary's qualifications as a manager or executive was erroneous.

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: (1) the petitioner fully explained why the beneficiary possesses specialized knowledge of the company's products, market, customers and internal procedures; and (2) the denial misconstrued the requirements for specialized knowledge as outlined in a 1998 and a 2002 Immigration and Naturalization Service (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 an undated statement from the general manager of the foreign entity confirming that the beneficiary had served in an executive capacity as its general manager from 1998 to 2001. The petitioner claimed that while in this position, the beneficiary "developed his professional skills along with the commercial success of [the foreign entity]." This statement further provided that the U.S. entity has employed the beneficiary since December 2001 as its president and as purchasing and sales manager. The petitioner claims that the beneficiary's employment in the United States has demonstrated the beneficiary's ability to direct the company's purchasing and sales policies "while successfully seizing business opportunities and implementing innovative ideas." Finally, the petitioner provided a copy of the beneficiary's resume, which indicated that the beneficiary obtained an unspecified degree in psychology in 1978 from Ricardo Palma University in Peru, and further completed a course of study at the Marketing Institute of Venezuela in 1984.

In addressing the beneficiary's qualifications as a nonimmigrant intracompany transferee with specialized knowledge, the petitioner provided the following statements:

[The beneficiary] not only has special knowledge of the company's products but of all the Venezuelan children toys market[.] He is quite knowledgeable of the kinds of products the Venezuelan Market requires and the prices that Venezuelan Families can afford.

[The beneficiary] studied psychology and has become an expert in [child] education through his vast experience with small children. Our company deems him the right person to choose the toys that can enhance [child] psychological development, avoiding the harmful toys of violence.

* * *

[The beneficiary] is also a Marketing Specialist, as he studied in the marketing institute of Venezuela. Thus, the beneficiary [has] a comprehensive knowledge of our business field, he combines perfectly the psychologist expertise with marketing techniques, so he can select the most appealing products for children and [their] parents and the more healthy and beneficial products for children. For these reasons, our company has decided to appoint him as the Purchasing and Sales Manager of our U.S. subsidiary.

The petitioner went on to list the reasons why the beneficiary is an employee with specialized knowledge. These reasons included:

He possesses knowledge that is valuable to the employer's competitiveness in the Market place. He is the most knowledgeable about the specific toys which can be bought and then about the export process.

[The beneficiary] is uniquely qualified to contribute to the US employer's knowledge of foreign operating conditions. Despite the fact he was born in Peru, he has lived many years in Venezuela, he has a Venezuelan son and is familiarized with the Venezuelan Market. Thus, he can contribute to our operating conditions because of his knowledge of the market.

[The beneficiary] has been utilized as a key employee abroad and has been given significant assignment[s] which have enhanced our productivity, competitiveness, image, and financial position. As General Manager of our parent . . . company in Venezuela, he was able to help us grow to the point to the extend [sic] of reach[ing] an important participation in the Venezuelan Toy's Market.

He possesses knowledge which can only be gained through extensive prior experience with us. [The beneficiary] has worked for the Venezuelan Company since 1998, [the] year in which it was incorporated. He knows about our processes and procedures. Moreover, [the beneficiary] has developed his professional skills along with the commercial success of our company. Neither psychologist[s] nor marketing professionals can have the great experience which [the beneficiary] possesses because of the foregoing reasons.

Finally, the petitioner provided a breakdown of the beneficiary's proposed duties and the percentage of time he would devote to each of these duties. Specifically, the petitioner stated that the beneficiary would be:

Managing and directing the company purchasing, selling and exporting and formulating policies to be allowed (25%)

Selecting and purchasing the right products for the Venezuelan children (25%)

Get and provide quotations on products (5%)

Supervising the job performance of staff, and attend employee meetings (10%)

Perform negotiation with providers and customers, negotiate contract term[s], etc. (25%)

Prepare reports to the parent company, prepare budget report in conjunction with accountant, develop company plans and strategies, prepare other reports as requested by parent company, forecast performance, etc. (10%)

A request for additional evidence was issued on January 22, 2003. Specifically, the director requested the names and job titles of the other three employees of the U.S. entity. Additionally, the director requested evidence establishing that these employees were paid wages.

The petitioner submitted a response dated February 24, 2005 which advised the director that this petition requests classification of the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge, and not as an L-1A manager or executive. In response to the director's subsequent request for additional information, counsel for the petitioner submitted a detailed overview of the reasons for electing to classify the beneficiary as a specialized knowledge employee, along with a more detailed statement of the beneficiary's credentials on June 25, 2003. As the response is part of the record, it will not be repeated in its entirety herein. Counsel for the petitioner explained that the beneficiary's special knowledge of the company's products, processes, and methods of child psychology, coupled with the claim that he is a marketing specialist, should satisfy the definition of specialized knowledge. The beneficiary's background, combined with his most recent experience as president and manager of the U.S. entity, was, according to the petitioner, sufficient proof that the beneficiary qualified as an employee who possessed specialized knowledge.

The director determined that the record did not establish that the beneficiary's knowledge was specialized or advanced. The director stated that while CIS "does not doubt the beneficiary has a certain amount of knowledge of the petitioner's internal functioning," the petitioner had failed to clarify the precise nature of the beneficiary's knowledge of the petitioner. Furthermore, the director advised that merely completing a course of study in marketing does not automatically bestow specialized knowledge upon the beneficiary. Finally, the director advised that the petitioner's request for *de facto* consideration of the beneficiary's eligibility for L-1A classification as a manager or executive in the event that he was not deemed to be qualified for L-1B classification was misplaced and would not be considered. The director consequently denied the petition.

Counsel submits a lengthy 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

subsequent knowledge he gained as a result of these duties, and argues that the director's failure to find that the beneficiary in fact possessed specialized knowledge was contrary to an INS policy memorandum dated October 27, 1998. This memorandum, counsel alleges, "liberalized the previous restrictive [CIS] policy on specialized knowledge." Finally, counsel asserts that the director erred by equating "specialized" knowledge with "unique" knowledge, and claims that the director narrowly denied the petition based on a shallow review of the evidence submitted.

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 president and as purchasing and sales manager. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary is a marketing specialist and is uniquely qualified for the position due to his familiarity with the Venezuelan culture. In addition, the petitioner alleges that the beneficiary's background in psychology dually qualifies him for the benefit sought, since this credential, accompanied with his marketing expertise and familiarity with the United States and foreign entities, allows for him to easily make marketing and purchasing decisions within the toy industry. The petitioner, however, offers no explanation as to the work qualifications necessary for a president or purchasing and sales manager, or the responsibilities of each position. Although the petitioner provided a breakdown of the percentage of time the beneficiary would devote to each of his stated duties, 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 the petitioner and counsel assert that the beneficiary is a marketing "expert" with 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 fellow classmates at the Marketing Institute. 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. 533, 534 (BIA 1988); *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)).¹ As stated by the Commissioner in

¹ 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

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 or create a specialized product or service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. Specifically, the record indicates that the beneficiary possesses degrees or certificates in both marketing and psychology. Consequently, the petitioner alleges, this combination enables him to apply this experience in a practical manner when performing the marketing and purchasing functions of the petitioner. However, 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 is psychology, for example, merely serves as an advantage to the petitioner in that he can logically assess the toy market in relation to the needs of children better than another person who lacks a similar degree. While this is certainly a benefit in dealing with the outside market, there is no evidence that the beneficiary possesses similar 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

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.

"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 equating specialized knowledge with

"unique" knowledge of the company's products. In support of this assertion, counsel refers to three CIS policy memoranda, dated December 2002, October 1998, 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 Memorandum of James A. Puelo, Acting Executive Associate Commissioner, Office of Operations, Interpretation of Special Knowledge, CO 214L-P (March 9, 1994). However, since the petitioner specifically claimed that the beneficiary's knowledge "is unique in international markets," the director did not err in using the term, nor was this the director's only basis for denying the petition. In addition, 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 the beneficiary 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, most especially because the beneficiary is a trusted individual. 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 corporation 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 of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job for both the foreign entity and the U.S. petitioner. 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 findings in the previous decision, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has not demonstrated that a qualifying relationship still exists with the foreign entity. Although the petitioner claims that the U.S. entity is the subsidiary of the foreign entity, insufficient documentation evidencing the foreign entity's ownership interests has been

submitted to corroborate this claim. The record contains a copy of the U.S entity's Articles of Incorporation, dated July 11, 2000. The articles list the beneficiary and his wife as the two shareholders of the company, with each owning a 50% interest. A share certificate contained in the record, however, indicates that the foreign entity owns 1,000 shares in the U.S. entity. The evidence of record does not establish the ownership of the U.S. entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For this additional 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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.