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U.S. Citizenship
and Immigration
Services



D7

FILE: WAC 04 230 51032 Office: CALIFORNIA SERVICE CENTER Date:

NOV 10 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 Director, California 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 retail merchandise. It seeks to temporarily employ the beneficiary as a product procurement manager in the United States, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. 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 director's decision was erroneous and that the beneficiary did in fact possess specialized knowledge of the petitioner's processes and procedures and that her employment was vital to the petitioner's expansion plans.

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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires 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 a letter submitted with the petition dated August 2, 2004, the petitioner explained that the beneficiary had four years of procurement experience with the petitioner's Mexican affiliate and that she possessed specialized knowledge of the petitioner's proprietary processes and procedures. With regard to the beneficiary's proposed position in the United States, the petitioner stated:

As [p]roduct [p]rocurement [m]anager in the U.S., [the beneficiary] will be provided an opportunity to develop materials management strategies and product procurement programs leading to the [petitioner's] group's competitiveness in North and South America, and thus contribute to the expansion of the petitioner's business. [The beneficiary] will work closely with senior management in the development and implementation of the procurement programs in the U.S. for product[s] sold in the Latin American market. She will be setting policies, and monitoring and reviewing performance of the company's procurement activities. She will then modify these activities and develop new operations according to established corporate standards and policies, and make recommendations to senior management on other operations. The purpose of this important mission is to develop consistent material management procedures and policies, data access, and utilization standard throughout the group and to increase awareness of standards that have been devised.

In addition, a specific list of her proposed U.S. duties included the following:

- Responsible for procurement of products necessary for [the petitioner's] stores in Mexico;
- Coordinate vendor network expansion;
- Verify compliance with all legal requirements;

- Develop tactical and time objectives for Value 1 product sourcing;
- Develop direct contacts with manufacturers and reduce company's dependency on distributors;
- Look for logistic savings as part of an overall goal of COGS reduction;
- Research tariff classification;
- Develop and maintain updated database of necessary permits and requirements to move products;
- Analyze and classify all products to be exported to Mexico;
- Negotiate all necessary permits, authorizations and governmental formalities for export of products;
- Responsible for reviewing and approving all shipments prior to export with Mexican broker;
- Manage comprehensive information for decision making; and
- Daily review of official report to accommodate changes in procedures, requirements, rights and opportunities.

With regard to her background, the petitioner stated that she held a Bachelor's degree in Marketing from El Centro de Enseñanza Técnica y Superior (CETYS) in Mexicali, Baja California, and has been employed by the foreign entity since 2000. The petitioner further stated:

As [b]usiness [d]evelopment [m]anager for [the foreign entity], [the beneficiary] is responsible for the Home Décor and Personal Accessories category of [the foreign entity's] products. Her department accounts for 10% of all of [the foreign entity's] total sales. [The beneficiary] is responsible for the planning, organizing, and supervision of the business development by proper product procurement and marketing of home décor and personal accessory products for over 80 stores located in Mexico. [The beneficiary] oversees and directs a staff of professional workers, and controls procurement and merchandising of 10% of all products distributed throughout [the foreign entity's] stores in Mexico. She is in-charge of managing the overall daily operations of the company's home décor and personal accessories business activities and is responsible for managerial decision-making regarding all aspects of the company's procurement and marketing processes as they relate to home décor and personal accessories for [the foreign entity's] stores in Mexico. This includes the development of annual strategic and tactical plans as well as the development of a high performance merchandising team. The Transferee has comprehensive knowledge in international business and border trade analysis. She is also comfortable working with computers and other information systems to accomplish her objectives.

In a request for evidence dated August 24, 2004, the director requested additional information regarding the beneficiary's claimed specialized knowledge. Specifically, the director requested that the petitioner provide the following: (1) an explanation with regard to how the beneficiary's duties abroad and her intended duties in the United States were different or unique from those of other U.S. employees or employees of the foreign entity; (2) an explanation with regard to how the beneficiary's training is

exclusive and significantly unique in comparison to that of others employed by the petitioner and/or other persons in the field; and (3) a description of the impact upon the petitioner's business if the petitioner were unable to obtain the beneficiary's services, and what alternative action would be taken to fill her responsibilities.

The petitioner submitted a response on September 15, 2004. As the petitioner's response is part of the record, it will not be repeated in its entirety herein. With regard to the beneficiary's training, the petitioner explained that the beneficiary had not undergone formal training at the foreign entity. Instead, the petitioner explained that the beneficiary had acquired her specialized knowledge through "her performance of important job duties" since the initial establishment of the foreign entity. The petitioner re-emphasized her four years of experience with the foreign entity, and contended that this experience afforded her significant responsibility within the foreign entity and thus equipped her with an advanced level of knowledge of the companies procedures. Furthermore, the petitioner contended that a formal training program in the United States would not instill the knowledge that the beneficiary has acquired upon other employees absent a significant interruption in the petitioner's international business trade.

With regard to the beneficiary's impact on the petitioner, the petitioner claimed that it was faced with an increased product demand, and that "without [the beneficiary's] specialized knowledge, the company would not be able to sufficiently develop and implement a viable purchasing program to facilitate the increase in demand." The petitioner further contended that absent the beneficiary, the petitioner would incur significant financial losses resulting from the delayed development of additional retail outlets.

The director determined that the record did not establish employment of the beneficiary in a position that requires specialized knowledge, nor did it establish that the beneficiary possesses specialized knowledge. The director noted that the job duties outlined by the petitioner constituted "the type of activities common to most any responsible business position in the field of purchasing," and, therefore, the position of product procurement manager does not warrant the expertise of someone possessing specialized knowledge. Additionally, the director stated that the beneficiary's job duties did not distinguish the beneficiary's knowledge as superior or unique from other similarly qualified corporate employees. Finally, the director concluded that the beneficiary's duties were merely the standard responsibilities of similarly-employed persons working in the fields of purchasing, marketing, or sales. 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 and that the intended employment requires specialized knowledge. Counsel addresses each of the director's points individually, yet fails to provide any independent and/or objective evidence which would distinguish the beneficiary's knowledge from that of other similarly qualified persons with a marketing degree.

Counsel further refers to the 1994 Associate Commissioner's memorandum and asserts that the beneficiary possesses knowledge of a product or process which cannot be easily transferred or taught to another individual, which is a characteristic of specialized knowledge according to the memorandum. *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.*). Specifically, counsel asserts that "the Beneficiary possesses specialized knowledge based on her understanding and familiarity with [the petitioner's] proprietary operating system." In conclusion, counsel claims that the beneficiary's knowledge, coupled with her four years of experience, is essential to the continued financial viability of the petitioner's enterprise.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the intended position in the United States requires specialized knowledge.

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 has provided ample description of the beneficiary's intended employment in the U.S. entity and her responsibilities as a product procurement manager. However, the petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes her knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary has noteworthy and in-depth knowledge of the foreign entity's and the petitioner's operational procedures and operating structure. The petitioner further asserts that the beneficiary possesses specialized knowledge as a result of her four years of work experience in the foreign company, all of which was spent in procurement. Counsel for the petitioner, however, offers no explanation as to the educational or work qualifications necessary for a product procurement manager and merely cites to the beneficiary's marketing degree as an extra qualification. However, the petition fails to discuss the reasoning behind the claim that the beneficiary, and not another similarly educated person with four years of experience in procurement, must perform the duties of the proffered position. Nor does the petitioner provide documentation that the beneficiary received training or work assignments focused specifically on the petitioner's procurement policies or proprietary operating system. In fact, the petitioner contends that the beneficiary received no formal training and acquired her knowledge from her four years of on-the-job experience with the foreign entity. While the petitioner and counsel assert that the beneficiary is an "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. 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

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

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 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 her to perform procurement duties, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. 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.

to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior Immigration and Naturalization Service (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.

Here, the petitioner fails to make reference to the reason that it believes that the beneficiary's knowledge is more advanced than other procurement managers in the corporate world. Again, the petitioner has not provided any information pertaining to other procurement managers employed by the petitioner. 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 alleged proprietary operating system and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Neither the petitioner nor counsel provided any documentation or discussion of a proprietary operating system unique only to the petitioner and of which the beneficiary possessed expertise. 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 to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

The petitioner also asserted that the beneficiary's knowledge is specialized because she "knows which merchandise lots and opportunities will result in a profitable procurement." Additionally, in reference to the 1994 INS memorandum, counsel claims on appeal that the beneficiary's knowledge is valuable to the petitioner's productivity, competitiveness, image and financial position, and is critical to maintaining the growth and expansion currently experienced by the petitioner. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. The AAO notes that, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Therefore, 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 in the field of procurement 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 her to competently perform her job in 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.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. Counsel contends that an increase in product demand necessitates the services of the beneficiary. Counsel also contends that the beneficiary's knowledge of specific markets is essential to the petitioner's viability. While the position of product procurement manager may require a comprehensive knowledge of the relevant existing markets and opportunities, there is no documentation, other than counsel's assertion, that a product procurement manager must possess advanced, "specialized knowledge" as defined in the regulations and the Act. Again, the assertions of counsel do not constitute evidence. *Matter of Obaigbena, supra; Matter of Ramirez-Sanchez, supra.*

Furthermore, it is noted that on appeal, counsel contends "the knowledge and experience possessed by [the beneficiary] qualifies her as a person possessing specialized knowledge, *even if the proposed specific job duties in the U.S. are not of a specialized nature.*" (Emphasis added). Counsel's statement specifically disregards the requirement that the beneficiary be employed in the United States in a specialized knowledge capacity, as set forth in 8 C.F.R. § 214.2(l)(3)(ii). The beneficiary's qualifications and experience fail to qualify her for the benefit sought if she will not be employed in the United States in a specialized knowledge capacity. Here, counsel incorrectly relies on a mistaken belief that "the only requirement for an alien to be classified as an intracompany transferee is the continuous employment of one out of the previous three years in a foreign parent, or the such, of the petitioner." Counsel

erroneously cites to "INA § 214.2(l)(1)(ii)(A)" as the authority for this statement, which is in actuality not a part of the Immigration and Nationality Act but a provision of the Code of Federal Regulations. This provision, found at 8 C.F.R. § 214.2(l)(1)(ii)(A), merely defines the term "intracompany transferee" and is not an actual regulation encompassing the requirements for obtaining a specialized knowledge visa. Counsel's reliance on this provision is therefore unpersuasive in this matter.

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. v. Attorney General, *supra* 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.

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.