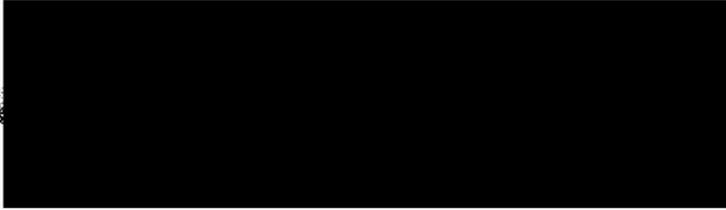


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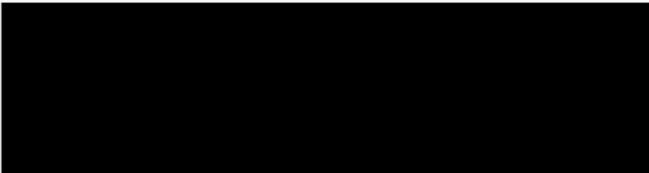
File: SRC 04 032 54130 Office: TEXAS SERVICE CENTER Date: APR 10 2006

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 filed this nonimmigrant petition seeking to extend the employment of its head baker as a "specialized knowledge" L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of New York and is engaged in hotel and hospitality operations. The petitioner claims that it is the subsidiary of Club Mediterranee S.A., located in Paris, France. The beneficiary was initially granted a three-year period of stay in the United States, and the petitioner now seeks to extend the beneficiary's stay.

Upon initial review of the matter, the director sent the petitioner a request for additional evidence on November 26, 2003. **Specifically, the director requested the following:** (1) evidence of the "unique methodologies, tools, programs, and/or applications" that are used by the petitioner, including detailed information on how they "are different from the methodologies, tools, programs and/or applications used by other companies;" (2) more detail on "the equipment, system, product, technique, or service of which the beneficiary . . . has specialized knowledge;" (3) a record "detailing the manner in which the beneficiary has gained his/her specialized knowledge" including "the number of hours spent taking the courses each day, and certificates of completion of these courses;" (4) "the minimum amount of time required to train an employee to fill the proffered position;" (5) the number of workers similarly employed by the organization and the training received for these employees; and (6) the knowledge gained "on-the-job" by the beneficiary and how this knowledge was different from that gained by employees in the same or similar position.

In response, the petitioner declined to submit the requested records and evidence. Instead, counsel for the petitioner submitted a two-page letter which discussed the definition of "specialized knowledge," the standards to be applied, and a brief summation of the job duties previously submitted. As will be discussed, the petitioner's failure to submit the requested evidence is fatal to its claims.

Upon reviewing the response, the director denied the petition concluding that the petitioner "failed to establish eligibility for classification as an L-1B nonimmigrant employee possessing 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 for the petitioner asserts that numerous errors were made by the director, including (1) she was "arbitrary and capricious" in her adjudication of this matter and (2) she substituted her "own opinion" for the "regulations and guidance memorandums." In support of this assertion, the petitioner did not submit any additional evidence.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive and, thus, the AAO will dismiss the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) 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 the present matter is whether the beneficiary will be employed by the United States entity in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184 (c)(2)(B), provides that "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 the term "specialized knowledge" as "special 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."

On reviewing the petition and the evidence, the petitioner has not established that the beneficiary has been and will continue to be employed in a capacity that involves specialized knowledge.

As an initial matter, the petitioner's failure to submit the evidence requested by the director precludes the approval of this petition. Any failure to submit requested evidence that bars a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As the petitioner ignored the director's request for

specific and relevant evidence, and further failed to submit that evidence on appeal, this appeal will be dismissed and the petition denied.

Notwithstanding the petitioner's failure to submit the requested evidence, the AAO will examine the question of the beneficiary's claimed 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(I)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether specialized knowledge is involved in the performance of the duties. *See Id.* *See also* 8 C.F.R. § 214.2(I)(1)(ii)(A).

On review, the petitioner fails to provide a detailed and specific description of what the beneficiary does on a day-to-day basis that involves specialized knowledge. For example, in its letter dated November 7, 2003 the petitioner states that the beneficiary's duties include "good quality French-style bakery products according to Club Med's standards," "trains staff in the specifics of Club Med food preparation techniques and standards," "uses his experience and advanced knowledge [of] Club Med's display of culinary art, particular to bakery goods," "verifies the display and arrangement of croissants, breads and [baked] rolls," and "use[s] his specialized knowledge in the culinary art of baking and his knowledge of the position of Head Baker in the Club Med environment."

The petitioner did not, however, define Club Med's standards for "French-style bakery products," the specifics of "Club Med food preparation techniques and standards," the Club Med culinary art display techniques, and other noteworthy, uncommon, or advanced knowledge required for the position offered. *See* Memo. from Fujie O. Ohata, Assoc. Comm'r., Serv. Ctr. Operations, Immigration and Naturalization Serv., *Interpretation of Specialized Knowledge*, 1 (Dec. 20, 2002). In addition, the submitted training manual provides little detail with regard to the petitioner's bakery operations. At most, the training manual contains a few check lists which include lines for "bread basket," "breads (baguette, country loaf)," and "Danish pastries."

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). 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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner also argues that, beyond the main job duties specific to any position, its staff, commonly referred to as Gentils Organisateur ("GOs"), have secondary job duties that require specialized knowledge of the company. Specifically, the petitioner states in its letter dated November 7, 2003 that "[t]he knowledge gained by the GOs is different from that found in the resort industry. It is different and uncommon to the rest of the industry given the uniqueness of Club Med and its products." In his letter dated February 17, 2004 counsel for the petitioner adds that the beneficiary's specialized knowledge is "of the company's product (the Club Med vacation experience) and its application in international markets (at our other worldwide resorts with which [the beneficiary] is familiar with)."

Again, the petitioner and counsel's arguments are unpersuasive. First, whether GOs in their performance of secondary duties, such as mingling and socializing with guests, involve some basic form of specialized knowledge is not the issue. While the percentage of time spent on duties was not provided, it can be assumed that the beneficiary's position of head baker will spend the vast majority of his or her time performing duties specific to a head baker rather than performing the secondary marketing duties common to all GOs. In other words, it is not credible that an employer could have a significant amount of time devoted by each employee, e.g., its executive chef, sous chefs, cooks, housekeeping manager, etc., to mingle with club guests at the neglect of essential, main job duties. Thus, what is at issue is whether the main duties of the position in which the beneficiary will serve involve "specialized knowledge." See 8 C.F.R. 214.2(l)(1)(ii)(A). As discussed above, the petitioner failed to provide any details on what specific specialized knowledge is involved in the proper performance of the job duties of head baker. Based upon the evidence of record, the petitioner failed to demonstrate either (1) the beneficiary's noteworthy or uncommon knowledge of the petitioner's baking products, i.e., croissants, breads, and rolls, and their application in international markets or (2) an advanced level of knowledge of the petitioner's processes and procedures with regard to its Baking operations. See Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184 (c)(2)(B).

Second, 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. 2750.¹ 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.

¹ Although the cited precedent and Congressional record 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(1), 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 case, Congressional record, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

Thus, in this case, even when considering the time spent on secondary marketing and socializing duties by every GO, the AAO agrees with the director that nothing in the record indicates that "the beneficiary has acquired either special[] or advanced knowledge beyond that which is normally received through the process of basic familiarization with any company's procedures." In addition, the AAO is unconvinced that the general GO duties of every employee cannot be easily transferred or taught to another individual. *See* Memo. from James A. Puleo, Acting Exec. Assoc. Comm'r., Office of Operations, Immigration and Naturalization Serv., *Interpretation of Special Knowledge*, 2 (Mar. 9, 1994). In fact, the training manual submitted by the petitioner appears to be designed expressly for the purpose of training new GOs quickly and efficiently, especially through the use of easy to read and comprehend cartoon drawings in both English and French.

Counsel argues in its letter dated February 17, 2004, however, that an alien is deemed to possess specialized knowledge by meeting "any one of" the "possible characteristics" listed on page two of the Puleo Memo. First, 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. In reviewing counsel's argument, however, the list provided on page two of the Puleo Memo, while not "all inclusive," is actually several of "the possible characteristics of *an alien* who possesses specialized knowledge." *Id.* (emphasis added). In other words, it would be more accurate to state that an alien who possessed specialized knowledge should have at least the listed characteristics, if not more that were not listed. In this case, based on the evidence of record, the petitioner and counsel failed to demonstrate that the beneficiary possessed at least two, if not more, of the listed characteristics in the Puleo Memo: (1) "[p]ossesses knowledge which, normally, can be gained only through prior experience with that employer," and (2) "[p]ossesses knowledge of a product or process which cannot be easily transferred or taught to another individual." *Id.* Most importantly, the memo emphasizes that the petitioner must submit evidence to establish that the alien satisfies one or more of the provided characteristics. *Id.* Given the petitioner's failure to respond to the director's request for evidence of this nature, counsel's assertions are far from persuasive.

Even if the petitioner had submitted convincing evidence that the beneficiary's position involves specialized knowledge, it would still fail to prove that the position of head baker was part of the company's key personnel that would qualify for the L-1B nonimmigrant category. 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 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 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.") In this case, the combination of the beneficiary's claimed knowledge of the petitioner's baking operations and alleged knowledge of the petitioner's general GO policies and procedures fails to establish the beneficiary as a specialized knowledge or "key" employee with unique skills, superior to those of the petitioner's other, current employees.

The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. Overall, the petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's head baker duties or secondary GO duties involve knowledge or expertise beyond what is commonly held in his field. Contrary to counsel's argument, mere familiarity with an organization's product or service, such as knowledge of its foreign resorts as well as its quality control and guest interaction procedures, does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed in a specialized knowledge capacity. For this reason, the petition may not be approved.

Moreover, as indicated above, the petitioner was put on notice of required evidence of the specialized knowledge of the beneficiary and given a reasonable opportunity to provide it for the record before the nonimmigrant petition was adjudicated. The petitioner failed to provide this critical evidence, which may have established that the proffered position involved the use of specialized knowledge. 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). For this additional reason, the petition will not be approved.

Accordingly, the petitioner has not established that the beneficiary will be employed in a specialized knowledge capacity, as required by 8 C.F.R. § 214.2(i)(3).

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.