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File: EAC 05 032 53444 Office: VERMONT SERVICE CENTER Date: DEC 01 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 BENEFICIARY:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 employ the beneficiary in the position of chief executive/manager as an L-1B nonimmigrant intracompany transferee with specialized knowledge 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 engaged in the carpet business and claims a qualifying relationship with [REDACTED] of Turkey.

The director denied the petition, concluding that the petitioner failed to establish that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge.

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) 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 petitioner has established that the position offered requires an

employee with specialized knowledge or that the beneficiary has such knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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 dated October 20, 2004 appended to the initial petition, the petitioner described the beneficiary's specialized knowledge and the petitioner's need of an employee possessing such knowledge as follows:

[The beneficiary] is a key person to the business because he was employed from 1995 until 2002 by the [foreign entity] as its Business Manager and Sales Manager. In this position he developed [the foreign entity's] business all over the world including Europe and the United States. Because of his position, he obtained an advanced level of knowledge of the production facilities in Turkey, the abilities of the Turkish weavers to produce various types of carpets and he obtained knowledge of how these carpets could be sent through various channels to other countries in the world in international commerce successfully. Oriental carpets are a very specialized field and the knowledge of what our company has produced and can produce is crucial to being able to explain to customers exactly what our capabilities are and how we can satisfy their needs. In addition, as sales manager, [the beneficiary] developed relationships with customers and is therefore able to advise them given his knowledge of our production facilities. While [the beneficiary] was the principal manager of the US affiliate, he was at the same time using his specialized knowledge to deal with customers including speaking with customers at various trade shows, actively seeking out markets for the particular types of carpets which [the foreign entity] produces in Turkey, and using his knowledge of our produce [sic] to increase business. Because of his knowledge, he is able to import a stock of rugs in colors and designs preferred by American customers which are able to [be] produced economically and in good quality by thorough knowledge of cost and value such as the knowledge that [the beneficiary] possesses. The company has initiated internet marketing as well and we need inquiries, from prospective US customers. Finally, a merger with [a third party] is actively being pursued and for this transaction to be successful, it requires a person who is not only familiar with the U.S. retail market but is familiar with our production facilities so that a three-sided transaction will emerge which will satisfy all parties. For this, it is necessary to have someone in the United States to negotiate this deal who is thoroughly familiar with all aspects of our Turkish operation.

On December 29, 2004, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. Specifically, the director requested evidence demonstrating that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality that is not generally known by practitioners in the beneficiary's field. The director also instructed the petitioner to provide evidence establishing that the beneficiary's knowledge of the petitioner's processes and procedures is apart from the elementary or basic knowledge possessed by others.

In response, the petitioner provided a letter dated February 13, 2005 providing more information regarding the beneficiary's purported specialized knowledge. In the letter, the petitioner states as follows:

[The beneficiary's] knowledge is uncommon. It is a combination of product knowledge, knowledge of shipping, customs and similar areas, and knowledge of Western tastes, but most of all it is a unique knowledge of our very unusual business model. That is, we are not a large international company with many offices. Nor are we a one-unit retail store with no reason to be in the United States. We are in fact a medium-sized business which finds that having a presence in the United States on a permanent basis is a great boon to our business. We have certain capabilities and our U.S. customer base relies upon [the beneficiary] to guide them concerning our capabilities and the products and custom rug making processes. There are very few firms like ours, relying principally on a tourist-trade market, which have this US presence, and consequently the international clientele that we have. [The beneficiary] has always been our "outside" man, our "traveling salesman[.]" It is he who combines the knowledge of our processes and costs with the knowledge of our customer base and its desires. Without him our business would be severely affected. Just to give an example, in case of a defect, [the beneficiary] must determine whether to repair or replace (given his knowledge of our costs and our suppliers).

[The beneficiary] did not receive any formal school training in this business. This is a family business and he grew up in the store. But we can say from experience that it would take at least two years to train somebody to be fully knowledgeable in this business. He is the only person qualified to be sent to the United States since it was he who got all the foreign sales experience, and he is our only US employee.

On April 25, 2005, the director denied the petition concluding that the petitioner failed to establish that the position offered requires an employee with specialized knowledge or that the beneficiary has such knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In examining the specialized knowledge capacity of the beneficiary, the AAO will 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 job

description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as an experienced carpet salesman, the petitioner fails to establish that this position requires an employee with specialized knowledge or that the beneficiary has such specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other people with experience in the manufacture, importation, and sale of Turkish rugs. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

The petitioner asserts that the beneficiary possesses specialized knowledge of the petitioner's products, customers, and service as well as of the petitioner's processes and procedures. The petitioner also asserts that the beneficiary's knowledge is uncommon. In support of these arguments, the petitioner relies entirely on the beneficiary's years of experience of working with the petitioner's rugs, knowing the petitioner's customers and their preferences, and understanding the petitioner's unique "business model." Also, while the petitioner admits that the beneficiary did not receive any special training, it makes the unsubstantiated assertion that it would take two years to train a replacement. The petitioner does not clarify if this purported training would be required for any replacement or only for replacements with no experience with the petitioner's product or business model. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Despite the petitioner's assertions, the record does not reveal the *material difference* between the petitioner's business model, customers, products, or service and those of other Turkish rug importers and retailers. While the petitioner asserts that the beneficiary gained his knowledge of the petitioner's business and products from years of working for the petitioner and the foreign entity, the record does not establish that the beneficiary's knowledge is different from the knowledge of the sale and importation of Turkish rugs possessed by others generally throughout the industry. Again, 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, *aff'd*, 905 F.2d 41.<sup>1</sup>

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<sup>1</sup>On appeal, counsel to the petitioner provides a letter dated May 26, 2005 in an attempt to bolster the argument that the beneficiary possesses specialized knowledge. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the director's Request for Evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose.

The AAO does not dispute the likelihood that the beneficiary is an experienced carpet salesman who would be a valuable asset to the petitioner. However, it is 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)). As stated by the Commissioner in *Matter of Penner*, 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." 18 I&N Dec. at 52. 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 firm's operation.

*Id.* at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce. While it may be correct to say that the beneficiary in the instant case 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. REP. 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

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See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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 subcommittee 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, 91<sup>st</sup> 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. v. Attorney General*, 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.”)

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by others with experience in the sale and importation of Turkish rugs. As the petitioner has failed to document any materially unique qualities to the petitioner’s business model, products, customers, or service, the petitioner’s claims are not persuasive in establishing that the beneficiary would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any employees

with experience in the sale and importation of Turkish rugs, or that he has received special training in the company's methodologies or processes which would separate him from any other employee of the foreign entity.

The legislative history of 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 would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, it is noted that instead of properly filing a petition requesting new employment, the petitioner requested a "change in previously approved employment" in Part 2 of the Form I-129, thereby attempting to avoid the required disclosures in Part 4 regarding previously denied petitions. This petition was filed on November 16, 2004. Although the petitioner's initial "new office" petition (EAC 02 124 54285) was approved on or about November 15, 2002, the beneficiary's subsequent L-1 renewal petition (EAC 04 031 53289) was denied by the director on or about June 28, 2004. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." As the petitioner failed to fully disclose the denial of the previously filed petition, this petition will be denied as a matter of discretion.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.