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File: WAC 05 076 50425 Office: CALIFORNIA SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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, 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 filed this nonimmigrant petition seeking to employ the beneficiary in the position of an accountant 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 production and sale of castings. The petitioner claims a qualifying relationship as a parent of Maquiladora S.A. de C.V. of Mexico. The petitioner seeks to employ the beneficiary for a period of two years.

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. Specifically, counsel asserts that the director erred in not properly considering and evaluating the evidence presented and in not providing a reasoned explanation for his denial of the petition.

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.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity which involves specialized 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 January 4, 2005 appended to the initial petition, the petitioner describes the beneficiary's job duties as follows:

As the Accounting [sic], [the beneficiary] will utilize her Specialized Knowledge to prepare, monitor and oversee all accounting functions of [the petitioner] and the Company's international business operations. Her duties will include, but are not limited to:

- Audit all incoming financial statements from the [foreign subsidiary];
- Summarize disbursement and payroll reports, conduct the physical inventory count, perform bank reconciliation's [sic], and review the peso trial balance with the US dollars trial balance and run financial statements;
- Plan, coordinate and audit of the Company's data processing systems to safeguard assets, ensure accuracy of data and promote efficiency;
- Establish and audit objectives, devising an audit plan, and analyzing the data to evaluate effectiveness of controls and the efficiency and security of domestic and international operations;
- Prepare reports and attend monthly meetings, and conduct analysis of the financial statements and notes, and analyze the budget for the domestic and international operations;
- Oversee, coordinate and monitor the purchase of factory (foundry/facilities) supplies and raw materials, perform analysis of incoming reports from the [foreign subsidiary] and joint venture facility DDF, pertaining to production, scrap sales and physical counts;
- Identify and maintain records of the Company's owned and leased equipment by

- recording the description, value, location and other pertinent information;
- Coordinate and conduct periodic inventories to keep records current and ensure that the equipment is properly maintained;
- Prepare inventory analysis which requires distributing the cost of maintenance, examining records to determine that the acquisition, sale, retirement and other entries have been maintained, as well as preparing statements reflecting the monthly appreciated and depreciated values;
- Responsible for summarizing all statements and reports on an annual basis for income purposes;
- Conduct the production analysis. Review and analyze actual and standard production costs and selling prices from [foreign subsidiary] and DDF by analyzing the records of present and past production trends and costs. Estimate revenues, administrative costs and obligations incurred to project future production revenues;
- Audit invoices and purchase orders for payments to vendors. Audit contracts and agreements, preparing reports to substantiate all transactions prior to payment; and
- Monitor and coordinate the US and international business financial operations, assuring that each foundry and facility comply with US and foreign tax laws. Audit financial statements to determine tax liability by reviewing material assets, income, surpluses, liabilities and expenditures to verify net worth and financial status.

The petitioner also asserts that the beneficiary has been employed by the petitioning organization as the accounting manager since 2001 and, from 1997 until 2001, as the managing controller.

In addition to the letter described above, the petitioner provided materials describing both the petitioner's business and its relationship to the foreign employer.

On January 28, 2005, the director requested additional evidence. Specifically, the director requested further explanation regarding the beneficiary's duties, the product of which the beneficiary allegedly has specialized knowledge, the beneficiary's training, and the impact on the petitioner's business should the petitioner not be able to obtain the beneficiary's services.

In response, the petitioner provided a letter dated April 20, 2005, which summarizes both her experience and those skills necessary for the beneficiary's position in Mexico and prospective position in the United States. The only knowledge or skills identified in this letter which appear unique to the petitioner or its business type are:

- Knowledge of [foreign subsidiary's] operations.
- Knowledge of Foundary operations.

\* \* \*

- [The beneficiary] has been instrumental in organizing the [foreign subsidiary's] daily

operations with the U.S. Requirements. The [f]actory has grown to a point that we need more control from the U.S. Company. Moving [the beneficiary] to the U.S. would give us better control on our raw materials, production, [and s]hipments.

\* \* \*

- The [u]niqueness of having [the beneficiary] is the vast knowledge of our Mexico operation and blending this knowledge with our U.S. Operation will give us a better chance [to] grow the U.S. Operation as well as the Mexico [O]peration.

\* \* \*

- [The beneficiary] has been with our Mexico Operation since 1994. She has learned the accounting, government agencies, daily operation and Mexico laws.

The petitioner also explained in the April 20, 2005 letter the purported impact its inability to hire the beneficiary would have on the petitioner:

- We wish to expand our U.S. operations and cannot do this without [the beneficiary] or someone with her unique abilities and knowledge.
- We have tried several U.S. accounting firms and Law firms that claimed the ability to handle the [foreign subsidiary's] business. We have found that none knew the laws or requirements of Mexico as [the beneficiary] does. The cost of hiring these outside agencies were [sic] at \$100 to \$300 per hour. This cost plus lack of knowledge was not efficient.
- If we could find an employee in the U.S. that could handle this position with some Mexican accounting knowledge they still would not possess the 10 years of knowledge of our Mexico operation.
- It would be a financial stain [sic] and time burden to train someone from the U.S. in this position. The Mexican operation is located in Mexicali, Mexico approximately 130 miles from our office. It is very hot [and] dirty and the few people we interviewed for a position were not willing to spend the time in this desolate location to learn.

The petitioner also provided an organizational chart for the foreign entity and information regarding the petitioner's business and products.

On May 3, 2005, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge capacity.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that

the beneficiary has specialized knowledge. Specifically, counsel asserts that the director erred in not properly considering and evaluating the evidence presented and in not providing a reasoned explanation for his denial of the petition.

Upon review, and after a thorough review of all evidence presented by the petitioner with its initial petition and in response to the request for evidence, 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 duties related to an accountant working for a business with a presence in both Mexico and the United States, the petitioner fails to establish that this position requires an employee with 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 experienced accountants employed either by the petitioner or in other businesses having a presence in both the United States and Mexico. 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 makes the conclusory assertion in its letter dated January 4, 2005 that the beneficiary possesses an advanced level of knowledge of the petitioner's accounting processes and procedures, as well as the organization's products and services, and their application within the international business market. However, the record is devoid of any evidence supporting this assertion. The petitioner does not explain what knowledge the beneficiary has of the petitioner's products and services (presumably related to the production and sale of castings) and, importantly, why this is relevant to her accounting position or how it differs from knowledge of such products generally. Also, the petitioner does not explain what, exactly, are the processes and procedures of which the beneficiary has specialized knowledge and, importantly, how these processes and procedures differ from other casting companies and/or companies with a presence in both Mexico and the United States. Finally, the petitioner has not established why any experienced bilingual accountant with a knowledge of businesses having a presence in both Mexico and United States could not perform the duties described in the record. While the beneficiary is likely a valuable asset to the petitioner given her length of service to the company and her skill as an accountant (assuming these allegations are true), the petitioner has not proven that this knowledge is sufficiently specialized under the regulations.

Assuming that the beneficiary indeed has been employed by the foreign entity for the length of time described in the petition, it is likely that the beneficiary is an experienced accountant with knowledge of the business issues related to a company with a presence in both Mexico and the United States. 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 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 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 another accountant with experience working with a company with a presence in both Mexico and the United States. The petitioner notes that the beneficiary has extensive knowledge of, and experience, in the products, services, processes, and procedures of the petitioner. However, as the petitioner has failed to document any materially unique qualities to this knowledge, these claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a “key” employee. There is no indication that the beneficiary has any knowledge that exceeds that of any experienced similarly situated accountant, or that she has received special training in the company’s methodologies or processes which would separate her from

any other similarly employed person with 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, a related issue is whether the petitioner has established that the beneficiary has been employed in a capacity involving specialized knowledge overseas. Based on the petitioner's description of the beneficiary's overseas duties, experience, and skills as found in the record, it is concluded that the petitioner has not established that the beneficiary has been employed in a capacity involving specialized knowledge overseas or that the beneficiary has such knowledge. For the same reasons outlined above, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See id.*

Beyond the decision of the director, a related issue is whether the petitioner has sufficiently established that the beneficiary has at least one continuous year of full-time employment abroad with the foreign entity in Mexico as required by 8 C.F.R. § 214.2(l)(3)(iii). While the petitioner has asserted in its letter dated January 4, 2005 that the beneficiary has been employed by the foreign entity since 1997, the only evidence provided supporting this allegation is a single foreign payroll record. While the record has not been translated and will not be provided any evidentiary weight (*see* 8 C.F.R. § 103.2(b)(3)), it nevertheless appears to be from 2004 and does not provide any information regarding the beneficiary's length of service to the petitioner's overseas operation. Therefore, as the petitioner has failed to establish that the beneficiary has at least one continuous year of full-time employment abroad, the petition may also not be approved for this reason.

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.