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FILE: SRC 05 002 53351 Office: TEXAS SERVICE CENTER Date: **SEP 09 2008**

IN RE: Petitioner:
Beneficiary:

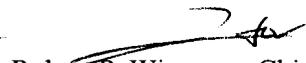


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the sale and installation of wood and laminate floors. It seeks to temporarily employ the beneficiary as an installations specialist 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 not established that the beneficiary possessed the requisite specialized knowledge nor that the intended employment required specialized knowledge, and specifically noted that the beneficiary did not hold a “key personnel” position within the organization.

The petitioner subsequently filed an appeal. On appeal, counsel submits a brief and asserts that the denial was erroneous in that the director failed to see that the beneficiary was in fact coming to the United States as a key employee and that, although the director failed to find that the beneficiary possessed specialized knowledge, such knowledge was recognized as being present in the beneficiary by the petitioner.

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(1)(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 12, 2004, the petitioner stated that the beneficiary began working for the foreign company in January 2001 as an installations specialist, and that he had been employed by a different branch of the foreign entity in the same position since 1995. The petitioner alleges that due to his nine years of experience as an installation specialist, the beneficiary was well qualified for the transfer to the United States, since he was familiar with the petitioner's product and could "execute the floor installation process and direct the work of others from knowing the product to be installed, the surface, floor features and company procedures."

In a document entitled "Addendum Specialized Knowledge," dated September 12, 2004 and prepared by [REDACTED], the foreign entity's president, the beneficiary's qualifications were described as follows:

During his experience with us [the beneficiary] has gained the specialized knowledge in how our companies, dedicated to the sale and installation of wood and laminated floors, operate as wood and laminated floor installers. [The beneficiary's] specialized knowledge can be resumed [sic] in the following factors:

Products

- Wood: Mahogany – Specific Wood – Place of storage – Maintenance
- Laminated: [Foreign Entity] – Own trademark – Measures – Treatment recommendations

Processes and Techniques:

- Conditions: Humidity analysis and definition of piece separation based on it
- Furniture moving: Analysis of weight, size of available space in customers premises and in [Foreign Entity] available spaces
- [Foreign entity's] Machinery set up and
- Frames installation in doors and requests
- Installation: Determine conditions for Sound Proof and or Unde-layment Plastic or fiber
- Quality control before installation
- Fix system to be applied: Click, Glue Down or other
- Revision: Check list and quality on Borders, corners, attachment, separations, frames
- Walk through with customer. Signature

Management of Floor Installations:

- Budget. Time consumption estimation of the whole work including installers and subcontractors as electricians and other.
- Organization: Assignment of functions in project: cutters, installers, framers, and others
- Relation with customers: Programmed communications, Attendance of requests and claims
- Control over material consumptions

With regard to the beneficiary's proposed duties in the United States, the petitioner provided an undated document entitled "Addendum: Job Description." This document, which claimed that the beneficiary would work as an installations specialist in the petitioner's [REDACTED] Branch, stated:

The position involves the organization, coordination and execution of the installations of the branch including but not limited to the following:

- Professional opinion of wood or laminated floor to be install[ed] as per customer convenience
- Active participation in the costs and expenses budget of each installation project: time and materials consumption, workforce, etc
- Organize the installation works : Sound proof, woods, floors, cuts, frames, materials
- Decide materials and attachment system to be used
- Analysis of weather conditions to determine installation conditions about piece separation, installation materials to be used
- Organize the workplace set up during the project after arrangement with customer: moving of furniture and other customers features, arrange with customer, placing of company's tools and materials
- Direction and execution of installation works
- Quality control over installation works and materials
- Revision: Check list and quality on Borders, corners, attachment, separations, and frames.
- Walk through with customer. Signature
- Time control estimation of the whole work including installers and subcontractors as electricians and other for budget purposes
- Control over material consumptions

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on October 14, 2004, which requested more detailed evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. Furthermore, the director requested information regarding classroom training and/or on-the-job training received by the beneficiary and the amount of time necessary to receive such training as

well as a description of how the beneficiary's training compared to other employees of the petitioner performing similar duties.

The petitioner submitted a detailed response dated January 8, 2005. The petitioner submitted literature showing the company's capabilities regarding the installation of laminated and wood flooring, and claimed that the designs contained therein could only be produced as a result of the expertise of their installations specialists. The petitioner further explained that it used special machines, called "Fresadoras," which could produce several types of cuts in their materials with difficult angles. With regard to the beneficiary's training, the petitioner stated:

To reach the grade of expertise that we need to fill the position the minimum amount of time of training will be three to four years depending [on] the ability of the candidate if the candidate has the necessary skills to develop the needed techniques to achieve special floor installation assignments. In addition to the owners, there are only two workers in our organization in Chile in this position and with this expertise, the beneficiary and Mr. [REDACTED]

[REDACTED] There is a difference between these two installation specialists and it is that [the beneficiary] is much more prepared to produce and control budgets over difficult installation jobs. The rest of the floor installers that work in our organization have the position of Installers. The beneficiary and Mr. [REDACTED] have received the same training from the owners of the company during their work and none of the rest of employees has received the same training basically because they did not show the ability to acquire the mentioned expertise.

With regard to the manner in which the beneficiary received this training, the petitioner stated:

[The beneficiary] gained [his] specialized knowledge through the course of the on-the-job experience and the beneficiary was selected to receive this training because of his particular abilities and expertise with the final product, the machinery, the techniques, tools and materials used in these special installations works.

The petitioner then referred to a training outline, which set forth the differences between the beneficiary's training and that of a standard installer, and stated:

Please note that the knowledge attained by the Installation Specialist was different because in the first part of his work-training he was taught more techniques in less time than the other installers and in the second part he was taught the different techniques for more complex jobs.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge, and concluded that the beneficiary was not "key personnel." The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified installers. The director concluded that the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct and distinguished from other practitioners in the field, and consequently denied the petition.

On appeal, the petitioner submits a brief in support of its assertions that the beneficiary possesses specialized knowledge. No additional documentary evidence was submitted.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with 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 provided an abbreviated description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a technical consultant. Despite specific requests by the director, namely, whether the beneficiary had worked abroad on specific projects such as the American Stock Exchange project, the petitioner failed and/or refused to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record and again on appeal that only two persons, the beneficiary and his co-worker, have the necessary training to perform the duties of the proposed position. The petitioner continually asserts that the beneficiary possesses specialized knowledge as a result of his more than three years of experience as an installations specialist and that such knowledge is far beyond that commonly found throughout the industry. Finally, the petitioner concludes by contending that the petitioner's natural abilities and his training received in the profession have given the beneficiary specialized knowledge.

The director's request for evidence was extremely specific. For example, the petitioner was requested to clarify how the petitioner's unique methodologies and tools were different from the methodologies and tools used by other companies. In addition, while the petitioner did note the use of special machines called "Fresadoras," the petitioner failed to explain what made this machine unique, and further failed to discuss whether other companies or competitors used this type of a machine or other similar devices. Other than stating that the machine was able to cut difficult angles, no further information was provided. Finally, although a list of the training elements the beneficiary received was provided, the petitioner disregarded or overlooked the director's request for specific documentation from the petitioner's human resources department attesting to the exact type, nature, and duration of the beneficiary's training. Although specifically requested by the director, the record contains no definitive evidence of the beneficiary's training, experience, daily duties, or level of expertise. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the foreign entity. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possesses specialized knowledge, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. Going on record without supporting 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)).

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making

process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *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 firm's operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, 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. 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 that employee and the remainder of the petitioner's workforce.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other installers in the field is its assertion that the beneficiary's training and abilities have allowed him to gain an expertise in his field in an accelerated period of time, unlike other installers whose training has taken longer due to their inferior natural abilities. Again, the petitioner has not provided any information pertaining to the exact

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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(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.

day-to-day duties of the beneficiary, an installations specialist, in comparison to the daily duties of the standard installers. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees, aside from saying that he received accelerated training in the same field. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of wood and laminated floor installation as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, 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 Soffici*, 22 I&N Dec. at 165. The claim that the beneficiary has been employed by the petitioner for over three years and that during this entire period he worked as an installations specialist does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a three to four year period. 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. 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.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. 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." *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 legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary

should be considered a member of the "narrowly drawn" class of individuals possessing specialized knowledge. *See 1756, Inc.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not shown that a qualifying relationship exists between the petitioner and the foreign entity. Although the director noted that this requirement had been proven, the AAO finds the evidence in the record to be insufficient to establish this relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner claims that the foreign entity owns 50% of the U.S. entity, and has submitted a copy of its stock certificate number 1, noting that the foreign entity owns 50 shares out of the 100 shares authorized. The regulation at 8 C.F.R. §214.2(l) provides that a parent-subsidiary relationship can exist when a parent owns, directly or indirectly, half of the entity and controls the entity. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. For this additional reason, the petition may not be approved.

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).

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.