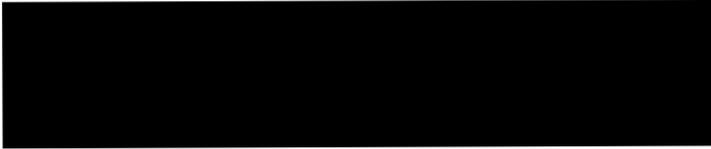


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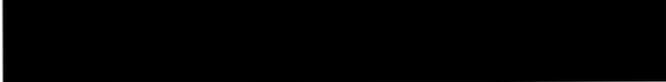
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and Immigration
Services

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FILE: EAC 05 028 50743 Office: VERMONT SERVICE CENTER Date: **SEP 08 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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, 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 appeal will be dismissed.

The petitioner is engaged in the exercise and health industry. It seeks to temporarily employ the beneficiary as a Senior Brain Respiration Instructor 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.

The petitioner subsequently filed an appeal. On appeal, counsel submits a brief and asserts that the denial was based on an inaccurate or incomplete review of the evidence provided, and thus did not correctly apply the statute and regulation.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special

knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In a letter submitted with the petition dated October 27, 2004, the petitioner stated that the company has developed a "unique, proprietary method of providing instruction in the practice of **Brain Respiration (BR)**, through scientific research of the brain combined with traditional Asian training methods." With regard to the proposed position of the beneficiary, the petitioner stated:

The position of Senior Brain Respiration Instructor requires a certificate of completion of [the foreign entity's] two-year instructor training program, and certificates of completion of [the foreign entity's] Brain Respiration training programs. In Korea we have approximately 900 instructors teaching at more than 360 [of the foreign entity's] meditation centers. Currently, the only school where Dahnhak instructor training certification can be obtained is located in Korea.

With regard to the beneficiary, the petitioner stated that the beneficiary had previously worked as a Senior Brain Respiration Instructor, Brain Respiration Instructor, Dahnhak Instructor, and Assistant Dahnhak Instructor abroad. With regard to the intended position in the United States, the petitioner stated:

In the position of Senior Brain Respiration Instructor, [the beneficiary] will perform in a *specialized knowledge* capacity teaching the techniques of Brain Respiration according to the methods developed by [the foreign entity]. The position of Senior Brain Respiration Instructor involves provision, utilization, and application of specialized knowledge of the company's products, services, and techniques. [The beneficiary] will be responsible to develop, execute and coordinate training and programs in Brain Respiration. She will discuss and demonstrate the practicality of the Brain Respiration practice with participants and monitor and evaluate each participant's progress for admission to the next level of training on an individual basis.

With regard to her experience and qualifications abroad, the petitioner stated that the beneficiary worked for the foreign entity for seven years progressing from an Assistant Dahnhak Instructor to a Senior Brain Respiration Instructor, and claims that through this term of employment she obtained the required level of unique and specialized knowledge and expertise not available in the United States.

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 denied the petition on January 13, 2005. Specifically, the director found that the petitioner had failed to show that

the beneficiary's duties and training were significantly different from other similarly-qualified instructors. In addition, the director noted that after a review of the petitioner's web site, it appeared that the process in which the beneficiary was instructing others could be learned without personal instruction at home. Finally, the director noted that the website further instructed interested individuals to visit over 360 Brain Respiration

Centers located throughout the world, including the United States, despite the petitioner's claim that such instruction was not available in the United States.

On appeal, counsel asserts that the petitioner's procedures are "comparatively new methodologies" and not well known, and asserts that currently there are only centers in 12 out of the 50 United States. Counsel further asserts that no instructors at her level are currently available in the United States. Finally, counsel relies on a Service Memorandum dictating the nature of specialized knowledge and asserts that in accordance with this memo, the beneficiary should be granted the classification sought as she clearly satisfies the regulatory requirements.

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, her intended employment in the U.S. entity, and her responsibilities as an instructor in the United States. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes her knowledge as specialized. The petitioner repeatedly states throughout the record and again on appeal that despite the fact that there are 900 similarly-trained persons employed abroad with the foreign entity, only the beneficiary has 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 her seven years of experience with the foreign entity and that such knowledge is far beyond that commonly found throughout the industry. Finally, the petitioner concludes by contending that there are no similarly qualified persons in the United States to perform the duties of the beneficiary.

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

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

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 her 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 does not contend that the beneficiary's knowledge is more advanced than other instructors abroad. In fact, the petitioner identifies the beneficiary as being one of many talented instructors in this up and coming field, and does not assert, specifically, that the beneficiary has received any additional training above and beyond that received by her fellow instructors. The petitioner relies on its contention that the industry in which the beneficiary is trained is a unique discipline that is not widely available throughout American society at present. The petitioner, however, has not provided any information pertaining to the exact day-to-day duties of the beneficiary, a Senior Brain Respiration Instructor, in comparison to the daily duties of the standard instructors or other instructors presently working in this field in the United States. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees of the petitioner and the foreign entity. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of this discipline as special or advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. 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

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.

by the foreign entity for over seven years and that during this entire period she worked as an instructor at various levels 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 similar seven 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 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.

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.