

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D7

FILE: SRC 06 073 51177 Office: TEXAS SERVICE CENTER Date: **APR 0 8 2007**

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)

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation, states that it is engaged in international procurement for the hotel industry. The petitioner claims that it is an affiliate of the beneficiary's foreign employer, Guillesa Internacional S.A. de C.V., located in Cancun, Mexico. The petitioner seeks to employ the beneficiary as its Mexico/U.S. customs specialist for a three-year period.

The director denied the petition, concluding that the petitioner had not established that the position offered to the beneficiary requires an individual possessing specialized knowledge, or that the beneficiary was employed by the foreign entity in a specialized knowledge capacity for at least one year within the three years preceding the filing of the petition.

On appeal, the petitioner disputes the director's decision and asserts that the offered position "absolutely requires an individual possessing specialized knowledge." The petitioner further contends that the beneficiary acquired his specialized knowledge prior to joining the foreign entity, and the company hired him due to his specialized knowledge in the customs field. The petitioner clarifies that the additional training the beneficiary received while employed by the foreign entity was to enable him to legally represent the company. The petitioner submits a brief and additional evidence in support of the appeal. In addition, the petitioner requests oral argument before the AAO.

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, 8 U.S.C. § 1101(a)(15)(L). 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct issues: (1) whether the beneficiary possesses specialized knowledge and was employed by the foreign entity for at least one year in a position involving specialized knowledge within the three years preceding the filing of the petition; 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 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 or procedures.

The nonimmigrant petition was filed on January 5, 2006. The petitioner stated on Form I-129 that the beneficiary would be employed as a "Mexico/U.S. Customs Specialist" with the following responsibilities: "Review and classification of all merchandise destined to Mexico. Coordination of U.S. export documents and Mexico import documents. Physically checking all dry and frozen product and ensuring correct classification for Mexican customs." The petitioner stated that the beneficiary has been employed by the foreign entity as a Mexican customs clearance specialist since January 4, 2005, with responsibility for documentation, classification of merchandise, health inspections and coordination of shipments from the United States to Mexico.

In a letter dated January 4, 2006, the foreign entity described the beneficiary's current position in Mexico as follows:

[The beneficiary] is our import coordinator in Cancun and is responsible for clearance of all merchandise coming from the United States, including classification of the merchandise, documentation, and maintaining the most current information on rules, regulations, and restrictions. He has been trained and has just completed the certification process by Mexican Customs to be the legal representative of our company for customs clearance. We have paid for this training and this training is specific to the functions of our company.

[The beneficiary] has a background in international commerce and is bilingual in Spanish and English and has an excellent understanding of export and import requirements of the USA and Mexico.

In a letter dated January 4, 2006, the petitioner further described the nature of its business, and the beneficiary's proposed employment in the United States:

Our company exports merchandise primarily from our location in the United States to our location in Mexico and than [sic] distributions it to our clients, which include the Marriott, Ritz Carlton, Hilton hotels, etc. It is very important that these clients receive their merchandise in a very timely manner. Our company has sent [the beneficiary] for special training and certification in customs procedures. It will be his job in the United States to physically review all merchandise going to Mexico and classify it correctly. By documenting that he has physically inspected all the merchandise before loading it on our containers and signing papers for Mexican customs (with his authorized signature) we will be able to save approximately ten days of customs clearance time. We will also be able to avoid the Mexican customs "preview" which is done prior to customs clearance. This will avoid the merchandise coming off the container previous to clearance and being mishandled; giving our customers the security of being able to purchase more merchandise that will arrive at their door in good condition. [The beneficiary's] specialized knowledge in proper classification will expedite all of our customs procedures.

[The beneficiary] speaks fluent English and Spanish and has a strong background in customs procedures. He has a full understanding of how our company operates and the level of service we provide to our clients.

The petitioner stated that it was submitting an "official letter from SAT approving [the beneficiary] as our legal representative." The record contains a letter dated November 14, 2005 from "*Servicio de Administracion Tributaria*" in which the beneficiary and another individual are named, however, the letter is in the Spanish language and the petitioner did not provide an English translation.

On January 12, 2006, the director issued a request for additional evidence, advising the petitioner that the evidence of record was insufficient to establish that the knowledge possessed by the beneficiary is specialized. The director observed that the petitioner had not demonstrated that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field, and advised "the specialized worker classification was not intended for all employees with any level of specialized knowledge." The director noted that "mere familiarity with an organization's product or services, such as knowledge with its nomenclature or procedures, does not constitute specialized knowledge under section 214(c)(2)(B) of the Immigration and Nationality Act." Accordingly, the director requested that the petitioner provide evidence that the beneficiary possesses knowledge that is uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field, as well as evidence that the beneficiary's knowledge of the processes and procedures of the company is apart from the basic or elementary knowledge possessed by others within the company.

Specifically, the director instructed the petitioner as follows:

- Please submit a record – as opposed to merely a letter – from your human resources department detailing the manner in which the beneficiary has gained his specialized knowledge. Documentation should indicate pertinent training courses in which the beneficiary has been enrolled while working for your company, as well as the duration of the courses, the number of hours spent taking the courses each day, and certificates of completion of these courses.
- What are the requirements for the Mexico/U.S. Customs Specialist position?
- If the specialized knowledge was attained through the course of regular on-the-job experience, please clarify exactly what knowledge was attained through the beneficiary's past employment with the company. For each facet of specialized knowledge, please explain how the particular knowledge attained at that particular time was different from knowledge attained by individuals in the identical or similar position for the company. Explain the beneficiary's knowledge that is uncommon, noteworthy, or distinguished by some unusual quality.
- Specify how many workers are similarly employed by the U.S. company and the foreign company. Of these employees, please indicate how many have received training comparable to the training administered to the beneficiary. Why is the beneficiary's knowledge of the processes and procedures of your company considered apart from the elementary or basic knowledge possessed by others within the company?
- Indicate the minimum amount of time required for the company to consider the beneficiary to be a specialized knowledge employee. If you consider the specialized knowledge to have been attained at some point after the beneficiary began employment, please specify when exactly it was attained and why that particular point is considered the date specialized knowledge was attained.
- What are the requirements for the Mexican Customs Clearance Specialist position?

The director advised the petitioner that any foreign language document submitted in support of the petition must be accompanied by an English language translation and a statement signed by the translator stating that the translator is competent to translate the document.

The petitioner submitted a response to the director's request on January 13, 2006. The petitioner's response included the following additional information regarding the requirements for the beneficiary's proposed employment as a Mexico/U.S. Customs Specialist:

1. Minimum of 5 years experience in Mexican/US Customs related positions.
2. Bilingual English/Spanish
3. Certification of "Apoderado Aduanal"
4. Full knowledge of the harmonized code system
5. Product knowledge of our represented brands for customs classification.
6. Microsoft office including access.
7. Management of SAE (Mexican government inventory program)
8. Company's in-house inventory program

9. Ability to manage and oversee a 5 person import/export team in US and Mexico

The petitioner further explained the need for the beneficiary's services as follows:

We have been able to achieve authorization for the Mexican government to have two employees certified as "apoderados aduanales." This allows us to do our own customs clearance without an agent. This certification requires several years of experience as well as being able to pass an extensive test including classification and International laws. We need to have one certified person in our US office and one certified person in our Mexican office in order to complete the process required to expedite our exports out of the US and our imports into Mexico. By being an "apoderado legal" the Mexican government allows that containers do not get unloaded in Mexican customs because the preview has been done by the authorized "apoderado" in the USA. It is a lengthy process for a company to achieve this status and requires a specialized knowledge by the person to do this. . . . the person needs to be a Mexican citizen to be an "apoderado."

The petitioner stated in its cover letter that it was attaching thirteen exhibits, and provided a brief description of each document. The submitted documents were intended to document the beneficiary's training in international trade and customs and Mexican import tax laws, and also included evidence related to the foreign entity's application to have the beneficiary certified as an "apoderado" for the company. The petitioner stated that it was also attaching an outline describing the role of an "apoderado" and noted that "it is a person that becomes a legal representative of your company and is empowered to act on your behalf in customs. They are authorized to carry out all customs procedures and have the right to sign for your company on all legal documents."

The petitioner further stated that it was attaching: (1) "a record from Human Resources detailing the "hours of preparation for course and 'apoderado' exam"; (2) a letter from Human Resources detailing the beneficiary's duties in preparation to become an apoderado. The petitioner states that the letter details the beneficiary's "ample experience in the logistics of import/export as well as knowledge of laws and restrictions," and notes that the beneficiary "has spent the last year in our company in preparation to come an apoderado and learning how to handle merchandise for Mexico/US Customs"; and (3) a letter from Human Resources detailing the beneficiary's experience, including "use of customs computer systems, harmonized codes, import and export documents, validation documents [sic], calculation of taxes, rules and regulations, review merchandise in customs, free trade agreements, infractions and sanctions, operations manual."

All of the above referenced documents were submitted without English translations. Accordingly, the AAO cannot determine the contents of the majority of the documents or whether the evidence supports the petitioner's claims, and thus the documents have no probative value. *See* 8 C.F.R. § 103.2(b)(3). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director denied the petition on January 5, 2006, concluding that the petitioner had not established that the position being offered requires the services of an individual possessing specialized knowledge, or that the beneficiary possesses specialized knowledge and has been employed by the foreign entity in a specialized

knowledge capacity for one year. The director noted that the beneficiary completed his training to become an "apoderado" on September 24, 2005, took his examination on September 30, 2005, and received notification that he was approved to be an apoderado for the foreign company on November 14, 2005, less than two months prior to the filing of the petition.

On appeal, the petitioner asserts that the proffered position "absolutely requires an individual possessing specialized knowledge." The petitioner further explains:

This person must be able to classify merchandise using the Mexican code system. This person must physically identify products for special permits in Mexico. This person has to have complete knowledge of the Mexican customs laws and regulations, be able to interpret them correctly, and be certified to officially represent the company. This procedure starts at the point of consolidation in the USA where the person physically inspects the merchandise and takes full responsibility for declarations presented to the Mexican government.

The petitioner also addresses the director's conclusion that the beneficiary has not worked for one year as a specialized knowledge worker. The petitioner states that the beneficiary's specialized knowledge "was attained over a period of years working inside customs previous to being employed by our company." The petitioner attaches photocopies of two photo identification badges depicting the beneficiary, as "proof of customs employment dating back to 2001." The petitioner further asserts that the beneficiary was hired by the foreign entity "due to his specialized knowledge" and given further training to become an "apoderado" and legally represent the company. The petitioner claims that the fact that the beneficiary passed the examination "certifies that the specialized knowledge has been previously attained," and asserts that only persons with "three years of specialized knowledge" are eligible to take the exam.

The petitioner states that it is attaching a certification letter from "SAT" confirming that the beneficiary has passed the both the psychological and knowledge examination. The petitioner attaches a letter from "Servicio de Administracion Tributaria," dated January 26, 2006, which references the beneficiary by name. However, the petitioner has not provided an English translation of the document.

Upon review, and for the reasons discussed herein, the petitioner has not demonstrated that the beneficiary possesses specialized knowledge, or that he would be employed in the United States organization in a specialized knowledge capacity.

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 description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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. See *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)).<sup>1</sup> As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec.

---

<sup>1</sup> Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be

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' operation.

*Id.* at 53.

In this case, the petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate his current or proposed position from that of any other customs specialist working with exports from the United States to Mexico. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that he possesses an advanced knowledge or expertise in the company's processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). While the beneficiary may in fact possess extensive knowledge of Mexican customs regulations and classification systems, the petitioner has not identified any aspect of the beneficiary's position that involves special knowledge specific to the petitioning organization and its foreign affiliate and has therefore failed to satisfy the essential element of eligibility for this visa classification. Such a conclusion is supported by the petitioner's statement that the beneficiary already possessed the claimed specialized knowledge when he was hired by the foreign entity.

The beneficiary's training and experience in Mexican customs procedures and classification systems cannot be considered specialized knowledge related to the petitioning organization and therefore do not establish “specialized knowledge” as contemplated by the statute and regulations. Any worker who has worked extensively in the beneficiary's field could reasonably be expected to possess essentially the same knowledge, skills and experience as the beneficiary without having worked for the petitioner or the foreign entity. The petitioner has offered no documentary evidence that would distinguish the petitioner's and foreign entity's processes, strategies or operating environment from that of any other company engaged in trade between the

---

“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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the “specialized knowledge” L-1B classification.

United States and Mexico. The only job requirements specific to the petitioning organization are that the job holder must have "product knowledge of [the company's] represented brands for customs classification" and knowledge of the company's "in-house inventory program." The petitioner provided no further explanation regarding these requirements, nor did it provide evidence that the beneficiary received any specific training in either of these areas. Again, 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. at 165.

It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. Although counsel refers to the beneficiary's extensive experience in the customs field, it is clear that the knowledge and skills that allow him to successfully perform his duties are widely available to any employee performing similar responsibilities for a company engaged in trade between Mexico and the United States. The petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background. While it is undoubtedly helpful that the beneficiary is familiar with the petitioner's and foreign entity's business, the petitioner has not established that prior experience with the foreign entity is actually required in order to perform the customs inspection and documentation duties to be performed by the beneficiary. Rather, the key requirements for the job appear to be Mexican citizenship, several years of experience working in Mexican/U.S. customs positions, and designation as an "apoderado" by the Mexican customs authorities. The beneficiary may be one of few employees within the petitioner's group of companies possessing such a designation, however, the record does not establish that the duties performed by the beneficiary with the foreign entity or his proposed duties would require any knowledge that is specific to the petitioner's products, services, processes or other interests.

The AAO recognizes that the foreign entity made an investment to have the beneficiary certified as an "apoderado" so that he could serve as the company's designated representative for Mexican customs matters. However, the record suggests that the beneficiary was able to perform the same or similar duties as an import coordinator for the foreign entity prior to passing the necessary examinations to become an "apoderado," and, as noted above, the petitioner has emphasized that the beneficiary possessed the claimed specialized knowledge at the time he was hired by the foreign entity. Furthermore, based on the evidence submitted, none of the training received by the beneficiary in connection with becoming an apoderado was specifically related to the petitioner's organization. As noted above, the majority of the evidence provided in response to the director's request for evidence was submitted without the requested English translations, and therefore was not probative. The significance of the apoderado training and the details of the beneficiary's specific training regime have therefore not been fully documented or explained. The evidence submitted in support of the director's request for evidence was largely non-responsive to the director's detailed and specific requests. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). It is noted that in every instance where the petitioner attempted to distinguish the beneficiary as having specialized knowledge, the petitioner failed to submit any translated evidence that would allow the AAO to evaluate the claim. Again, 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. at 165.

The beneficiary's knowledge and expertise do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests required by the regulations. In *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." In the instant case the petitioner has successfully demonstrated that the beneficiary is knowledgeable in Mexican customs regulations and classification systems. However, the plain meaning of the term "specialized knowledge" is knowledge or expertise of a company's product or processes and procedures, rather than skill in a particular field.

The AAO acknowledges counsel's claim on appeal that the beneficiary's presence in the United States is critical to the petitioning company in achieving its objective of streamlining the customs process for exports to Mexico. However, merely establishing that the beneficiary will undertake a "key" position will not satisfy the petitioner's burden of proof. The petitioner must still submit evidence to establish that the beneficiary has been employed abroad in a position involving specialized knowledge and that he will be employed by the United States entity in a specialized knowledge capacity. While the beneficiary's skills and knowledge may contribute to the success of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge; 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(I)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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. v. Attorney General*, 745 F. Supp. at 16. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. The record does not establish that the beneficiary has specialized knowledge or that he would be employed primarily in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

The AAO acknowledges the petitioner's request for oral argument. However, the regulations at 8 C.F.R. § 103.3(b) provide that the requesting party must explain in writing why oral argument is necessary. The AAO has the sole authority to grant or deny a request for oral argument and will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, the petitioner identified no unique factor or issues of law to be resolved. Consequently, the request for oral argument is denied.

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.

**ORDER:** The appeal is dismissed.