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U.S. Citizenship  
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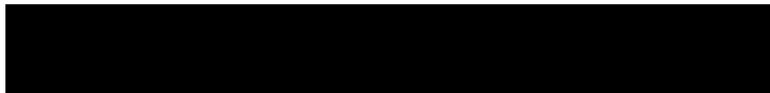
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File: SRC 05 237 51248 Office: TEXAS SERVICE CENTER Date: AUG 01 2007

IN RE: Petitioner:  
Beneficiary:



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

IN BEHALF OF 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, 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 in the position of customer support specialist 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, a limited partnership, is allegedly in the business of designing, marketing, and manufacturing furniture hardware systems. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a capacity which involves specialized knowledge or that he has specialized 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 beneficiary has specialized knowledge of the petitioner's office furniture systems inventory, equipment, and technology as well as the petitioner's corporate structure and philosophies.

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 or that the beneficiary has 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 August 17, 2005, the petitioner's business is described as follows:

[The petitioner] is an affiliate of Hettich International, a multinational operation that designs, manufactures and markets innovative hardware and fixtures for the furniture industry (including kitchen, bathroom, office and residential applications)[.] The world's largest manufacturer of European furniture hardware, [the organization] is based in Kirchleugern, Germany – the site of our parent company's founding in 1888.

[The organization] specializes in the design and development of innovative furniture hardware solutions custom tailored to the needs of each customer. Our commitment to quality begins with the choice of raw materials and extends to all of the production processes. [The organization] utilizes state-of-the-art technology for computer-aided design of product lines and invests significant time and resources in the Research and Development Division (including environmental simulation of static and dynamic stress on fittings, finite element analysis, etc.). [The organization] continues its commitment to quality by adhering to a rigorous quality assurance program involving both internal and external (ISO 9001 and EN 29001) standards.

The petitioner also described the beneficiary's job duties and purported specialized knowledge in the letter dated August 17, 2005 as follows:

As Customer Support Specialist, [the beneficiary] will serve as the primary contact for customers in the United States, Latin America and Mexico in connection with the design and development of innovative and highly sophisticated office furniture systems, custom-tailored to the needs of each customer. These office systems are designed and developed by [the organization] based upon advanced design principles and technology which is constantly evolving and improving, and much of the technology comprising [the organization's] systems

is patented and/or subject to protection under various trade secret laws and contractual obligations. The ability to make competent product and system recommendations requires in-depth knowledge of [the organization's] proprietary products and innovations. In addition, the process for ensuring timely and accurate selection and delivery of office furniture systems is a complex one that is critical to the ongoing operations of our customer base. The many different pieces within our office furniture systems inventory may have differing serial enumeration, varied shipping lead times, costing differentials due to currency fluctuation, etc. In order to perform the core job duties of the position, the Customer Support Specialist must be intimately familiar with not only the availability and compatibility of our furniture systems and products but also the shipping lead times, the cost, as well as the ultimate technical suitability of the systems for the intended customer application.

\* \* \*

Applying his specialized knowledge of [the organization's] office furniture systems inventory, equipment, technology, corporate structure and philosophies, [the beneficiary] will provide both customer and technical support, respond to requests for information and identify and resolve or arrange for resolution of design and technical problems and issues. He will also coordinate with the Accounting and Purchasing Departments to research and resolve customer inquiries, monitor incoming shipments to ensure quality and accuracy; order systems and monitor the systems inventory.

In the performance of his duties, [the beneficiary] will utilize his proficiency in AutoCad, mechanical drafting, in-depth knowledge of our manufacturing techniques, cabinet construction, industrial design and associated technical suitability.

The petitioner also provided a copy of its product catalogue as evidence of "the technical breadth and sophistication" of the petitioner's products.

On September 9, 2005, the director requested additional evidence. Specifically, the director requested evidence distinguishing the beneficiary's knowledge from similar knowledge in the industry; the number of other employees of the petitioner who currently have the same knowledge as the beneficiary; detailed training records for the beneficiary; and the minimum amount of time required to train an employee to fill the proffered position.

In response, the petitioner provided further evidence as well as an explanatory letter from counsel dated November 30, 2005. Counsel summarizes the evidence regarding the beneficiary's training and experience, and the petitioner's workforce, as follows:

As the enclosed affidavits from [the organization's] managers who have provided training to the Beneficiary indicate, the Beneficiary has completed more than three years of training specifically related to Petitioner's furniture systems which has enabled him to reach his current level of expertise and knowledge of Petitioner's furniture systems. While there are other individuals within Petitioner's organization who have knowledge of one or more

components of Petitioner's furniture systems, no one except the Beneficiary has the combination of training and experience with all the systems which makes the Beneficiary's training and knowledge unique within [the organization].

While counsel does not clarify in his letter the amount of time the beneficiary spent in training over a three-year period, the appended training overview for the beneficiary reveals that he received approximately 114 days of training. The overview and affidavits do not reveal how much of this training was in a classroom setting and how much was "on the job" training. The evidence also does not explain which aspects of the beneficiary's training allegedly imparted specialized knowledge.

Counsel's letter and an appended affidavit also give examples of five furniture systems which are allegedly unique and/or proprietary to the petitioner's organization and of which the beneficiary has knowledge.

On December 15, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a capacity which involves specialized knowledge or that he has specialized 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 beneficiary "possesses specialized knowledge of Petitioner's proprietary and patented office furniture systems inventory, equipment and technology as well as Petitioner's corporate structure and philosophies."

Upon review, counsel'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) or that he has specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. In this case, while the beneficiary's job description adequately describes his duties as a customer support specialist, the petitioner fails to establish that this position requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States will require "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 similarly experienced employees in the industry at large. 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).

In support of its assertion that the beneficiary's knowledge of the petitioner's "office furniture systems inventory, equipment and technology" and its "corporate structure and philosophies" constitutes "specialized knowledge," the petitioner relies heavily on its position that the furniture systems are unique, patented, and/or proprietary to the petitioner's organization. The petitioner further asserts that the beneficiary gained this specialized knowledge through relevant training and experience over a three-year period.

Despite the counsel's assertions, the petitioner has not established that the beneficiary's knowledge of the petitioner's "office furniture systems inventory, equipment and technology" and its "corporate structure and philosophies" constitutes "specialized knowledge." While the record may establish that many of these products, including products of which the beneficiary has knowledge, are unique or proprietary to the petitioner's organization, the record does not reveal the *material difference* between the petitioner's products, systems, corporate structure, or philosophies and other similar products, systems, structures, or philosophies in the industry. Without producing evidence that the petitioner's product or service is different in some material way from similar products or services offered on the market which would make the beneficiary's knowledge economically burdensome to impart to a similarly experienced employee, the petitioner cannot establish that the beneficiary's knowledge of the petitioner's product is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Simply asserting that the petitioner's product is "unique" or "proprietary" is not sufficient to establish that knowledge of the product is indeed "specialized." Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Likewise, the petitioner has not established that the beneficiary's training or experience imparted "specialized knowledge." While the petitioner did submit evidence that the beneficiary received training, this training appears to have lasted approximately 114 days spread out over a three-year period. First, the petitioner does not clearly connect all of this training with the petitioner's product or service and does not explain whether this training was an official training program or whether it was "on the job" training, which might better be characterized as work experience. In fact, much of the training appears related to administering product shows and exhibitions, and it is unclear how much of this training is actually related to the technical aspects of the petitioner's products.

Second, while the regulations do not require that a beneficiary receive a certain amount of training in order for knowledge to be deemed "specialized," specialized knowledge must nevertheless be difficult to impart to another individual without significant economic inconvenience to the petitioner. In this matter, the beneficiary allegedly received 114 days of training. Moreover, the petitioner admits that other employees already have knowledge of "one or more components" of the petitioner's furniture systems. Thus, as some employees already share some, if not most, of the beneficiary's knowledge, it must be concluded that these employees would require even less "training" to be able to perform the duties of the proffered position. However, the petitioner does not reveal which components of the purported specialized knowledge are unique to the beneficiary or explain how long it would take to train another similarly experienced employee, who may be missing knowledge of one or more components, to be as knowledgeable as the beneficiary. Therefore, the petitioner has not established that the beneficiary's training imparted specialized knowledge or that it would be an economic inconvenience to provide further training to similarly experienced employees in order to lift them to the beneficiary's purported level of expertise.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced customer support specialist who has been, and would be, a valuable asset to the petitioner's organization. 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. 49, 52 (Comm. 1982). Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business firm's operation.

*Id.* at 53.

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

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. REP. NO. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be 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 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 other similarly experienced persons employed by the petitioner’s organization or in the industry generally. As the petitioner has failed to document any materially unique qualities to the petitioner’s processes and procedures, the petitioner’s 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 knowledge that exceeds that of any furniture systems specialist, or that he has received special training in the company’s methodologies or processes which would separate him from any other persons employed with the petitioner, in the industry at large, or 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 has not been employed abroad, and 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, and for the same reasons set forth above, the petitioner has failed to establish that the beneficiary has been employed abroad in a specialized knowledge capacity. The record is devoid of any evidence which materially distinguishes the beneficiary's knowledge from that of other similarly experienced employees of the petitioner's organization abroad or in the industry at large. As explained above, without producing evidence that the petitioner's product or service is different in some material way from similar products or services generally offered on the market, the petitioner cannot establish that the beneficiary's knowledge of the petitioner's product is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by similarly experienced personnel engaged within the beneficiary's field of endeavor. Simply asserting that the petitioner's product is "unique" or "proprietary" is not sufficient to establish that knowledge of the product is indeed "specialized."

Beyond the decision of the director, the petitioner did not establish that it has a qualifying relationship with the foreign employer.

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

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.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section." An "affiliate" is defined in pertinent part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual."

In this matter, the petitioner, a limited partnership, asserts that both it and the beneficiary's current employer in Mexico are owned by ██████████. However, the record is devoid of any evidence supporting this claim. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. As the petitioner has not carried its burden of proof, the petition may not be approved for this additional 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.