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U.S. Citizenship
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FILE: WAC 02 223 50571 Office: CALIFORNIA SERVICE CENTER Date: JAN 10 2007

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

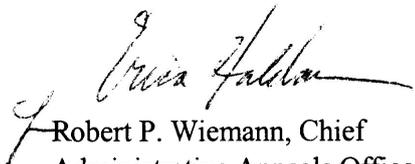
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of manager 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 states that it is engaged in the international trade and restaurant management business. The petitioner claims to be a wholly owned subsidiary of [REDACTED] Company, located in China. The petitioner seeks to employ the beneficiary for a period of three years.

On November 4, 2005, the director denied the petition concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge. ¹

The petitioner subsequently filed an appeal on November 29, 2005. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On the Form I-290B Notice of Appeal, counsel for the petitioner asserts: "We believe that the beneficiary will be employed in a capacity as restaurant manager that requires specialized knowledge."

Counsel indicated on Form I-290B that she would submit a brief and/or evidence to the AAO within 30 days. As no additional evidence has been incorporated into the record, the AAO contacted counsel by facsimile on December 7, 2006, to request that counsel acknowledge whether the brief and/or evidence were subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. To date, counsel has not responded to the AAO's request. Accordingly, the record will be considered complete.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the

¹ The director initially denied the instant petition on May 15, 2003 concluding that the petitioner had not established that the beneficiary had been or would be employed in a primarily managerial or executive capacity. On appeal, the AAO withdrew the director's decision and remanded the petition to the director, instructing him to request additional evidence in support of the petitioner's claim that the beneficiary is qualified as an intracompany transferee in a specialized knowledge capacity, as indicated on the Form I-129 petition. The director requested additional evidence on July 5, 2004 and the petitioner submitted a timely response, prior to the issuance of the director's decision dated November 29, 2005.

director reached based on the evidence submitted by the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 1 (BIA 1983); *Matter of Laureano*, 19 I & N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I & N Dec. 503, 506 (BIA 1980).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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. *Id.*

Although the petitioner asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated sufficient basis to support this claim. The petitioner has provided a description of the beneficiary's proposed responsibilities as a general manager for a restaurant that specializes in Sichuan cuisine, however, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other general managers employed by the petitioner or employed in a Sichuan restaurant within 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)). The petitioner asserts that the beneficiary "has both the professional experience in creating recipe[s], preparing and cooking food, and training cooks; and administrative experience in directing and supervising the daily operations of a restaurant." It appears that the petitioner is asserting that the beneficiary's specialized knowledge is his dual knowledge in cooking Sichuan food and managing a restaurant. However, the petitioner has not explained how the petitioner's processes and procedures in preparing Sichuan cuisine differs from other restaurants that provide a similar cuisine. Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Furthermore, the petitioner did not explain the specific training the beneficiary received in Sichuan cuisine. According to the Form I-129, the beneficiary was employed by the foreign company as a deputy general manager from October 1999 until September 2001. The beneficiary also held the position of Chef and Manager of Food Department for the foreign company for two years. Although the beneficiary was employed by the foreign company to work in its restaurants for approximately five years, the petitioner has not provided any documentation of training courses or explanation of the beneficiary's practical experience. Thus, the AAO cannot determine if the beneficiary's practical experience included training in the specific application of the company's methods and procedure for preparing Sichuan cuisine that other peers in the industry could not learn. Although the beneficiary has several years of experience with the foreign company, the petitioner has not submitted sufficient evidence to indicate that this experience rises to the level of specialized knowledge and instead may be experience that is similar to any employee who has worked in a similar role in the industry for several years.

As noted by the director, the record does not distinguish the beneficiary's knowledge as more advanced than the knowledge possessed by other Sichuan chefs and restaurant managers. Further, as the petitioner has failed to document any specific training or otherwise describe or document the purported knowledge, its

claims are not persuasive. There is no indication that the beneficiary has any knowledge that exceeds that of any Sichuan chef and manager, or that he has received special training in the company's methodologies or processes which would separate him from any other restaurant manager employed with the foreign company. Furthermore, it appears that the petitioner's Sichuan cuisine is built on recipes available outside of the petitioner's group, and known by other Sichuan chefs in the field.

The AAO does not dispute that the petitioner's organization, like any restaurant, has its own internal processes and methodologies, and/or secret ingredients or recipes, which it applies to its restaurant's menu's. However, there is no evidence in the record to establish that the beneficiary's knowledge of these processes and methodologies is particularly advanced in comparison to his peers, that the processes themselves cannot be easily transferred to its U.S. employees or to professionals who have not previously worked with the organization, that the U.S.-based staff does not actually possess the same knowledge, or that the U.S. position offered actually requires someone with the claimed "advanced knowledge." The petitioner has simply submitted no documentary evidence in support of its assertions or counsel's assertions that the beneficiary's skills and knowledge of the foreign entity's processes, procedures and methodologies would differentiate him from any other similarly employed manager within the petitioner's group or within the industry. 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. Based on the evidence presented, the director properly concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.