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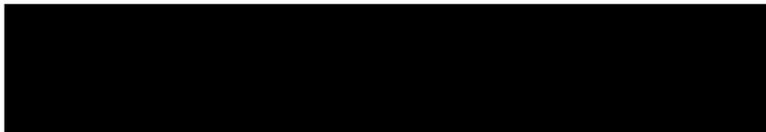
FILE: SRC 06 027 52579 Office: TEXAS SERVICE CENTER Date: **JUL 06 2007**

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)

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

The petitioner, a Texas corporation, claims to be a bulk materials packager. It seeks to temporarily employ the beneficiary as its Far East operations manager in the United States and filed a petition to classify the beneficiary as a 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 director determined that the petitioner had not established that (1) the beneficiary had been employed abroad in a specialized knowledge position; or (2) the intended employment in the United States required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has in fact met the burden of proof in this matter, and relies upon a March 9, 1994 memorandum signed by then Acting Executive Associate Commissioner James A. Puleo entitled *Interpretation of Special Knowledge*. In support of the petitioner's position in this matter, a detailed brief is submitted.

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 gained specialized knowledge during his employment abroad and was thus employed in a specialized knowledge position; 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 dated October 28, 2005, the petitioner advised that the beneficiary had been employed by the foreign entity since July of 2004. It further stated that the beneficiary obtained a "Specialized" Bachelor's degree in foreign trade from Busan Gyeongsang College in Korea in 1994, and that the beneficiary had over ten years of experience in sales, marketing and manufacturing facilities, including more than one year of operations experience with the foreign entity.

The petitioner provided a brief overview of the beneficiary's qualifications and experience. With regard to his employment abroad, the petitioner stated:

[The beneficiary] currently holds the position of Manager – Far East Operation. In this position, he is responsible for sourcing and expediting valves, pipes, flanges & fittings with suppliers in Korea, China, Taiwan, Vietnam, and India. [The beneficiary] is responsible for all quality control issues, inspection of open orders, technical discussions with factories for non conformance and rejected product. He is also responsible for completing day to day follow up of technical requirements from customers and inspecting all imported products from East Asia before delivery to the customer. The above skill set has been obtained through [the beneficiary's] extensive experience with [the petitioner], other piping companies and within the valve industry. He is involved with pricing strategies to maximize [the petitioner's] profits through negotiations with manufacturers throughout East Asia. [The beneficiary] is able to identify market strategies, non conformance products, and new manufacturers that would have a positive fit with [the petitioner's] operations and fulfill the company's desired growth. [The beneficiary] reports directly to the President about market trends and all major information. He is also responsible for expediting, logistics, developing potential customers and suppliers in local territories. He is the direct intermediary for various manufacturers throughout Korea. These manufacturers include ILSHIN Forged Valves, Hyundai Pipe, Inc., and TKS. Under the guidance of [the beneficiary], these suppliers have given [the petitioner] a competitive advantage throughout North and South America. One of the beneficiary's largest accomplishments while employed in the position of Manager Far East Operations is the successful vendor registration with Nexen Oil Canada which authorizes the products supplied by [the petitioner] manufactured by ILSHEN Forged Valve and Hyundai Pipe Inc. to be sourced for Nexen projects. [The beneficiary] utilizes his specialized knowledge of [the petitioner's] Far East operations, vendors, and suppliers as well as our policies and procedures to perform these duties.

With regard to his proposed employment in the United States, the petitioner stated:

At this time, [the beneficiary's] services are needed at our Houston office to assume the position of Manager, Far East Operations. In the position of Manager, Far East Operations, [the beneficiary] will be responsible for managing all of the organization's transactions with the Far East. He will be in charge of strengthening [the petitioner's] market share and position, while establishing a strong rapport with Far East manufacturers and customers. Moreover, [the beneficiary] will develop and implement strategies and procedures to strengthen the organization's operations in the Far East. He will evaluate and advise on the impact of long range planning and introduction of new programs and strategies, as well as regulatory action. He will be responsible for all quality control issues surrounding imported valves and he will ensure conformity to all applicable laws and regulations. Further, [the beneficiary] will oversee all materials inspections and evaluate and improve understanding of quality requirements between North American customers and Far East manufacturers. He will utilize his specialized knowledge of titanium valves to introduce a new product line to [the petitioner]. Titanium valves are an advanced product line that requires extensive manufacturing prowess found in East Asia. This newly-established product line for [the petitioner] will allow [the petitioner] access to an innovative market and strengthen [the petitioner's] market share in the titanium valve industry. In his capacity as Manager, Far East Operations, [the beneficiary] will continue to utilize his advanced knowledge of [the petitioner's] procedures, processes and operations in the Far East.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and would be employed in the United States in a position that required specialized knowledge. Consequently, a detailed request for evidence was issued on November 16, 2005, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director requested documentary evidence of what exactly the beneficiary possessed specialized knowledge, including a statement as to whether other companies in the industry used similar methodologies. In addition, the director requested information pertaining to the training the beneficiary received while employed by the petitioner, as well as a definitive estimate of how the beneficiary actually acquired this specialized knowledge.

Counsel for the petitioner responded on December 27, 2005. First, counsel clarified that the petitioner would not be working on any specific projects while in the United States; rather, he would generally be managing all of the petitioner's Far East operations. Regarding the specific methodologies or applications used by the petitioner, counsel explained that the petitioner's president had spent an entire year traveling the world in order to build and strengthen contacts with manufacturing facilities and mills. Counsel further claimed that as a result of the beneficiary also visiting these mills, the beneficiary strengthened these relationships and has been educated on specific products that will be produced by a particular mill, thereby endowing him with specialized knowledge that cannot be duplicated by any form of study. As a result of this specialized experience, counsel claimed that it would take the petitioner 5-10 years to train an American employee to fill this position, since it would require extensive travel to the Far East to gain similar first hand knowledge to that of the beneficiary. Finally, counsel stated that there are no other employees in either the foreign or the U.S. office that hold similar positions to that of the beneficiary.

The director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of Manager, Far East Operations, required an employee with specialized knowledge as defined by the regulations. The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified persons in the industry, or that the beneficiary's knowledge gained as a result thereof was uncommon or noteworthy in

comparison. On appeal, counsel for the petitioner requests reconsideration of the beneficiary's qualifications and relies on the Puleo memorandum for support for her contentions.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the proposed employment would be in a specialized knowledge capacity.

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) and (iv). 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 a lengthy description of the beneficiary's employment in the foreign office and his responsibilities as its Far East Operations Manager. Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained programmers in the field and what training he had received to set him apart from other similarly qualified individuals in the industry, no concrete evidence was submitted. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. Despite counsel's explanations in response to the request for evidence, which state that the beneficiary gained his specialized knowledge by individually visiting mills and learning about their operations first-hand, there is insufficient evidence to conclude that this factor alone attributes him with specialized knowledge. The record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field.

While personally visiting potential clients and contacts in the Far East certainly gives the beneficiary an advantage in the business sector and in negotiations, the fact that the beneficiary has developed personal contacts does not equate to specialized knowledge under the regulatory definitions. For example, in response to the director's request for evidence, counsel for the petitioner claims that the beneficiary did not receive any specialized training, but gained specialized knowledge based on his travels and meetings with various companies throughout the Far East. The petitioner further claims that the beneficiary's ten years of experience in the industry, and more specifically his fifteen months working for the petitioner, has established his knowledge of the petitioner's methodologies and application as specialized. However, the petitioner provides no evidence of any training received by the beneficiary, and claims, essentially, that his training was received through his travels.

The petitioner, however, fails to specifically clarify how the beneficiary possesses specialized knowledge of a methodology, application or process of the petitioner merely by traveling through the Far East. There is no indication in the record that a similarly-trained person, with a degree in Foreign Trade and ten years of experience in the valve and related industries, could not perform the same duties. The petitioner provides no evidence of specific training or instruction received by the petitioner in methodologies exclusive to the petitioner in his fifteen months of employment abroad. Instead, it appears that the petitioner is basing its claim that the beneficiary in fact possesses specialized knowledge on the fact that he has extensive contacts in the industry. Regardless, the fact remains that the record does not demonstrate that the beneficiary possesses specialized knowledge of any process or methodology exclusively used and implemented by the petitioner. While his extensive contacts in the Far East certainly make him a valuable asset to the company, there is nothing to suggest that the beneficiary acquired specialized knowledge of any unique or proprietary methodologies or procedures in the fifteen months he has worked for the petitioner.

More importantly, however, is the fact that the beneficiary received no training during his employment with the petitioner. Furthermore, the fact that the beneficiary allegedly received his training through his Far East

travels, without specific documentation explaining the manner and nature of this training, is subject to scrutiny. The petitioner makes no mention or connection on why knowledge of the Far Eastern markets, in general, would distinguish the beneficiary from other employees in the industry. Although the beneficiary has worked for the petitioner for fifteen months, there is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique to the petitioner which other similarly-trained persons could not have gained from working in the industry in general.

Moreover, the petitioner's unsupported claim that the beneficiary obtained his specialized knowledge during his fifteen months of employment abroad raises some questions regarding whether the beneficiary was actually employed abroad in a specialized knowledge capacity for one continuous year out of the three years immediately preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). As discussed above, the manner in which his knowledge was allegedly gained is unclear, since the petitioner failed to supplement the record with details regarding the exact nature of the training the beneficiary received from the petitioner in the form of classroom instruction, on-the-job, or during his Far East travels. As a result, the AAO is unable to determine if and at what point the beneficiary actually acquired specialized knowledge. It is impossible, therefore, to calculate whether the beneficiary worked abroad for one full continuous year in a specialized knowledge capacity. If, as the petitioner claims, the beneficiary gained his specialized knowledge during his day-to-day employment with the petitioner, it stands to reason that the beneficiary did not possess specialized knowledge when he commenced his employment abroad fifteen months ago.

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of his colleagues. No documentation was submitted that distinguishes the beneficiary from other managers in the industry dealing exclusively with the Far East. Finally, no evidence of training exclusively offered to the beneficiary was provided, thereby rendering it unlikely that the beneficiary is the specialized knowledge employee that is capable of dealing with operations in the Far East.

The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing and thus was employed for one year in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner's failure to provide sufficient evidence of the beneficiary's training and experience renders it impossible to conclude that at least twelve consecutive months out of fifteen abroad were in a specialized knowledge capacity.

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

Matter of Penner, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

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

Id. at 53.

In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that he received no training and gained his knowledge from visiting mills and traveling through the Far East. It is not unreasonable, therefore, to conclude that other similarly trained persons in the area of foreign trade have also traveled through the sector to familiarize themselves with the market in which they work. Again, since the petitioner has failed to demonstrate a specific methodology or process unique to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by simply working in the industry for ten years for various companies.

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

denial, the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

"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.

On appeal, counsel for the petitioner relies heavily on the Puleo memorandum and claims that the beneficiary's knowledge contributes to the petitioner's competitiveness, is not generally found throughout the industry, and could only be gained through employment with the petitioner. The AAO disagrees. As discussed above, the petitioner believes the beneficiary's knowledge is specialized due to the fact that he is the point of contact for the petitioner's clients in the Far East, and that as result of his contacts in that sector and his personal visit to their mills, he is therefore irreplaceable. The petitioner fails to consider the director's comments in the denial regarding the business sector in which the petitioner is involved. For example, it is presumed that the petitioner has competition in the industry, and that its competitors also employ managers who devote their time exclusively to the Far East sector of the market. It stands to reason that the petitioner's competitors also employ managers who are familiar with the sector and have personally visited client mills. The petitioner overlooks two critical factors here: specifically, what specific knowledge did the beneficiary gain by working with the *petitioner* for fifteen months that renders his knowledge so advanced that only a select few in the industry can perform his duties? And moreover, did he gain this knowledge within the first three months of his employment, such that he spent the remaining twelve months employed in a specialized knowledge capacity while abroad? The petitioner has failed to provide an adequate response to these questions.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other managers in the field is its assertion that the beneficiary's experience, specifically his personal visits to and personal contact with the petitioner's clients, is not possessed by anyone else in the industry. While the beneficiary's knowledge of specific clients and their product lines may be unique to him, the fact remains that this is a general requirement of any manager devoted solely to one sector in the industry. Again, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other managers working in the Far East sector. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other persons with ten years of experience in the industry and a degree in foreign trade. Moreover, there is no independent evidence corroborating the claims of the petitioner. There is no evidence in the record to suggest that a similarly-educated person with ten years of experience in the Far East sector could not perform the position offered to the beneficiary. This lack of tangible evidence makes it impossible to classify the beneficiary's knowledge of the petitioner's business procedures as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged on-the-job experience he received in fifteen months made him an expert in the areas claimed. 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). Mere skill or knowledge in the sector in general does not constitute specialized knowledge for purposes of this matter. 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.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, was not employed abroad in a position involving specialized knowledge, and would not be employed in the United States 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.

ORDER: The appeal is dismissed.