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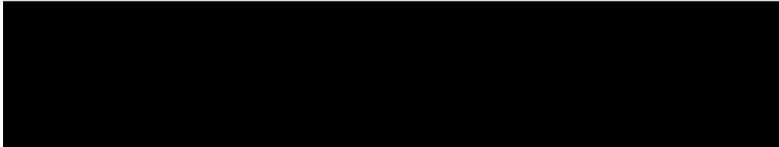
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U.S. Citizenship  
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FILE: WAC 04 054 52477 Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2007**

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, 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 dismissed.

The petitioner, a California corporation, claims to be a tax-exempt language institute which provides foreign language services. It seeks to temporarily employ the beneficiary in the position of Korean language instructor 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 petitioner claims to be the subsidiary of Yonsei University, located in Seoul, South Korea. On March 25, 2004, the director denied the petition, finding that the beneficiary neither possessed specialized knowledge or that 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 that the director failed to consider important evidence submitted. In support of the petitioner's position in this matter, additional letters of support were submitted on appeal.

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 from the petitioner dated December 15, 2003, the petitioner advised that the beneficiary had been employed by the foreign entity as a Korean Language Instructor since June of 1997. The petitioner explained that her six years of experience teaching the Korean language uniquely qualified her for the proposed position. The petitioner also submitted the beneficiary's resume, which indicated that she possessed a Bachelor's degree in Korean Literature and Linguistics, a Master's degree in Korean Linguistics, and had completed a Ph.D course in Korean Linguistics as of March 1998.

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 February 6, 2004, 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 more detailed description of the beneficiary's technique and how such a technique would be used as a language instructor in the United States.

Counsel for the petitioner responded on March 4, 2004. Counsel submitted sample textbooks, an institutional approval certificate, school catalog, a handbook and brochure, and other materials. In his accompanying letter, counsel described the beneficiary's specialized knowledge in the following manner.

[The beneficiary] has taught Korean language at [the foreign entity] since May of 1997. She has, therefore, over six years of experience teaching the Korean language utilizing [the petitioner's] textbooks. The beneficiary is extremely familiar with the textbooks, its contents, updates and methods of teachings.

On March 25, 2004, the director denied the petition. The director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of Korean language instructor 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 instructors 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.

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 brief description of the beneficiary's duties, and concludes that her knowledge of the Korean language is the basis for the specialized knowledge claim. Specifically, the petitioner relies on the fact that teaching Korean to non-native speakers distinguishes the beneficiary as an employee that is more than merely skilled.

Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained instructors in the field and what training she had received from the foreign entity to set her 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 her daily duties distinguishes her knowledge as specialized. Despite counsel's explanations in response to the request for evidence, which state that one aspect of the beneficiary's specialized knowledge was to provide "up-to-date instruction," this claim does little to distinguish the beneficiary from any other similarly-trained and educated Korean instructor. Moreover, counsel indicated that the beneficiary is part of a rotation of the entity's language instructors, which suggests that the beneficiary is one of many similarly-trained instructors, and it therefore would not be burdensome to rotate or hire a different language instructor in place of the beneficiary. While the beneficiary undoubtedly has a strong educational background and appears to be a Ph.D candidate in the field, there is insufficient evidence to conclude that this factor alone attributes her 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 mastering the Korean language certainly gives the beneficiary an advantage in the educational field, this fact alone does not establish that the beneficiary has developed specialized knowledge under the regulatory definitions. For example, there is no evidence in the record that the beneficiary received any specialized training in a specific process or procedure implemented by the foreign entity and its American subsidiary. There is no claim in the record that a unique teaching method or approach is offered by the petitioner which would preclude other language instructors, which lack experience working for the petitioner or the foreign entity, from teaching courses in the Korean language. The petitioner further claims that the beneficiary's six years of experience with the foreign entity have qualified her for the proffered position, yet the petitioner provides no evidence of any on-the-job training received by the beneficiary, and claims, essentially, that her training was received through her education.

The petitioner, therefore, fails to show that the beneficiary possesses specialized knowledge of a methodology, application or process of the petitioner. There is no indication in the record that a similarly-educated person who has completed a Ph.D course in Korean linguistics as well as having six years of general teaching experience could not perform the same duties. The petitioner provides no evidence of specific training or instruction received by the beneficiary in special or unique teaching methodologies. Regardless, the fact remains that the record does not demonstrate that the beneficiary possesses specialized knowledge of any process or methodology used and implemented by the petitioner. While her impressive credentials certainly make her a valuable asset to the university, there is nothing to suggest that the beneficiary acquired specialized knowledge of any unique or advanced methodologies or procedures in the six years she has worked for the petitioner.

The petitioner makes no mention or connection on why knowledge of the Korean language would distinguish the beneficiary from other Korean language instructors in the industry. Although the beneficiary has worked for the petitioner for six years, there is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something unique or special to the petitioner which other similarly-trained persons could not have gained from working in the education industry in general.

Moreover, there is insufficient evidence to conclude that 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 her knowledge was allegedly gained is unclear, since the petitioner failed to supplement the record with details regarding the exact nature of any training the beneficiary received from the petitioner in the form of classroom instruction or on-the-job training. 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.

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 her instruction with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of her colleagues. No documentation was submitted that distinguishes the beneficiary from other Korean speakers or instructors, and no evidence of training exclusively offered to the beneficiary was provided, thereby rendering it unlikely that the beneficiary is one of only a few employees capable of providing Korean language instruction for the petitioner.

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 six years 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)).<sup>1</sup> As stated by the Commissioner in

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<sup>1</sup> Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990

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

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

*Id.* at 53.

In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable her to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of 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 she received creates a presumption of ineligibility. What remains unclear is why or how the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that there are undoubtedly many Korean language speakers and instructors available in the United States. It is not unreasonable, therefore, to conclude that other similarly trained persons in the area of foreign language instruction, particularly Korean, have received the same training. Again, since the petitioner has failed to demonstrate a specific methodology or process unique or special 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 attaining the same education and simply working in the industry for six years for various universities.

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

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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.

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 she received in six years made her an expert in the area 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 success of the university 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 these reasons, 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.