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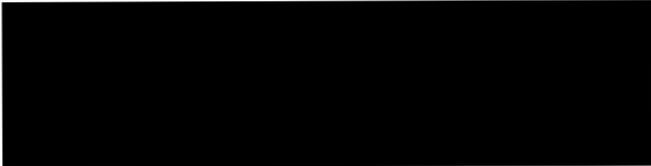
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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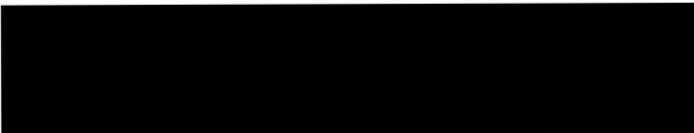


File: WAC 07 216 50878 Office: CALIFORNIA SERVICE CENTER Date: **MAY 20 2008**

IN RE: Petitioner:   
Beneficiary: 

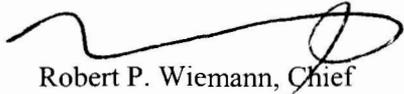
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 visa petition seeking to employ of the beneficiary as a "sous chef/sauté fry department" employee as an L-1B nonimmigrant intracompany transferee having 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 is a corporation organized under the laws of the State of California and allegedly operates restaurants serving Filipino style food.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a position involving specialized knowledge; or (2) that the beneficiary has been employed abroad in a position involving 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, the petitioner asserts that the beneficiary has specialized knowledge of preparing and cooking Filipino style sauté and fry dishes.

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.

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.

The primary issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary has specialized knowledge as defined in the Act and the regulations. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

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.

Counsel described the proposed employment of the beneficiary in the petitioner's Filipino restaurant in a letter dated July 9, 2007 as follows:

The sauté department can no longer be handled by one person alone. Thus, [the current sous chef sauté/fry worker] needs the assistance of another well-experienced, Sous Chef for the Sauté and Fry Sections.

It will take more time and more expensive [sic] to hire locals because it will take much longer to familiarize the locals to Filipino cuisine and train them with the correct taste and quality. Cooking procedures, taste and ingredients are entirely different which makes recruiting and training all the more difficult. Although the restaurant needs six (6) sauté' [sic] cooks to be able to meet the demands of operations, they are only transferring another one of their experienced Sauté' [sic] Chefs to assist in the sauté operations and develop locals to acquire the necessary skill.

The petitioner described the beneficiary's duties abroad as a "head cook" in a document titled "Job Description" as follows:

1. Ensures that all food items produce [sic] by each section is according to standard recipes and procedures to maintain food quality.
2. Ensures that required inventory of raw materials is sufficient for the daily consumption of each section.
3. Supervises and monitors daily production and preparation of mis-en-place to ensure smooth dispatch of all orders. Supervises all line cooks of grill, sauté, fry and pantry sections in ensuring productivity and efficiency.

4. Ensures that quantity of daily production and preparation of mis-en-place is based on previous sales tally to minimize if not prevent spoilages and losses.
5. Coordinates closely with the Kitchen Manager for his daily market list requirements.
6. Closely coordinates with the Kitchen Manager regarding his section[']s daily staff schedule.
7. Conducts daily stock beginning and ending inventory.
8. Coordinates closely with the food dispatchers for accurate preparation of orders.
9. Checks deliveries of his sections requirements from supplier to ensure that quality and portion size adheres to the set company standards.
10. Maintains cleanliness of work area including exhaust hood filters on daily basis.
11. Performs administrative supervision over all personnel.
12. Performs other duties as directed from [time-]to[-]time.

The petitioner also described the beneficiary's proposed duties in the United States in a document titled "Job Description of Sous Chef" as follows:

1. Preparation and cooking of all specialty sauté product lines of the restaurant in Gerry's unique way in coordination and cooperation with [the petitioner's first sous chef];
2. Plans sequence and time of cooking operations relying on his extensive experience and judgment to ensure consistent high quality and to minimize food costs and exercises portion control over all dishes in his department;
3. Cooks and take charge of the actual production of sauces, stews, hot hor d'ouerves and all sauté' [sic] dishes that require skillful preparation;
4. Evaluates food products to ensure that quality standards are consistently attained and solves problems encountered such as substituting items on menus, re-using cooked food and reducing excess waste and spoilage;
5. Participates in the preparation of the necessary data for the budget in area of responsibility, projects annual food and labor costs and monitors actual financial results; takes coorrective action where necessary to help ensure that financial goals are met; all in cooperation and collaboration with the Executive Chef and [the first Sous chef;]
6. Ensures that high standards of sanitation and cleanliness are maintained throughout the kitchen areas at all times[;]
7. Manages the Kitchen operations in the absence of the Executive Chef and/or other Saute Sous chef.

On July 24, 2007, the director requested additional evidence. The director requested, *inter alia*, an explanation of how the beneficiary's duties are different from those of other workers; a description of the equipment, system, product, technique, or service of which the beneficiary has specialized knowledge; and an explanation of how the beneficiary's training or experience is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor.

In response, the petitioner submitted an undated letter in which the director of operations described the beneficiary's purported specialized knowledge as follows:

Because Filipino cuisine is not so popular in the U.S., with the exception of a few migrant Filipino cooks who are mostly into their own food business; local cooks have no knowledge about it. This makes cooking of Filipino dishes in the U.S. a special skill and that the talents are scarce. We learned this painful lesson when we opened our first branch in Union City[,] CA as earlier mentioned.

Neither counsel nor the petitioner further addressed whether the beneficiary had specialized knowledge of Filipino cooking in the Philippines.

On October 17, 2007, the director denied the petition. The director concluded that the record did not establish that the beneficiary has been or will be employed in a specialized knowledge capacity.

On appeal, the petitioner again asserts that the beneficiary has specialized knowledge of Filipino cooking techniques.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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). The petitioner must submit a detailed job description of the services that were and will be performed sufficient to establish that he has specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's position abroad and in the United States requires "specialized knowledge" and that the beneficiary had been and will be employed abroad in a "specialized knowledge" capacity, 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 chefs employed by the petitioning organization or 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).

The petitioner describes the beneficiary as having specialized knowledge of preparing Filipino dishes. However, the petitioner never explains what, exactly, distinguishes the preparation of Filipino dishes from those techniques employed by cooks in other restaurants, or, crucially, why the knowledge of the preparation of Filipino dishes is noteworthy, uncommon, or distinguished by some unusual quality that is not generally known by other experienced chefs in general. It appears that most, if not all, chefs must sauté or otherwise prepare and properly season dishes, and is unclear why the Filipino dishes would be of such complexity that this knowledge could not be imparted to a similarly experience restaurant chef. Furthermore, despite being specifically requested by the director, the petitioner failed to establish what kind of training a Filipino cuisine

sous chef must receive, or how long this training or practical experience must last, in order to impart the claimed specialized knowledge to a "generic" chef. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Once again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Finally, even if the petitioner could establish that the beneficiary's knowledge of preparing Filipino style dishes constitutes "specialized knowledge" in the United States, the petitioner has failed to establish that the beneficiary was employed in a specialized knowledge capacity in the Philippines. According to the petitioner, the Philippines is the source of the claimed specialized knowledge in preparing these dishes. It is simply not credible that a Filipino chef's knowledge of the preparation of authentic Filipino dishes would be specialized in the Philippines. Once 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced cook who has been, and would be, a valuable asset to the petitioning 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. at 52. 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*, 18 I&N 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 Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Executive 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 Executive 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

