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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 220 50431 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
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 petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 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 in the State of California that imports and purchases Turkish rugs. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Cemberlitas, Istanbul. The petitioner now seeks to employ the beneficiary for one year as its director of imports and exports.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity.

On appeal, counsel claims that the director's decision "is contrary to established law on the definition of 'specialized knowledge'." Counsel contends that the beneficiary's work experience with the foreign company and his knowledge of the petitioner's "confidential" customer lists demonstrates that the beneficiary has specialized knowledge not generally known in the United States. Counsel submits a brief in support of the 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) 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.
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> (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.

Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(vi), if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

The issue in the present proceeding is whether the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity.

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.

The petitioner noted on the nonimmigrant petition, filed June 27, 2002, that the beneficiary, as director of imports and exports, would be responsible for developing its United States market and client base, for selecting merchandise, and for marketing the petitioner's products. In a June 19, 2002 letter from the beneficiary's foreign employer submitted with the petition, the employer stated:

> It is [the beneficiary's] responsibility to develop export markets and advise the company in the purchasing of rugs from outside of Turkey. [The beneficiary's] college background in business, finance and marketing has been meaningful in his analysis of this market.
>
> His family is in this business for three generations. [The beneficiary] is very knowledgeable in Turkish and Oriental [r]ugs. He is capable of categorizing, classifying, pricing and appraising these fine hand and machine made rugs. He is [sic] also acted in the development of export marketing to Austria and New Zealand. He has made several visits on behalf of our company to clients worldwide. It is for this reason that he has been offered the position of developing a permanent office for [the foreign entity] in the United States.

Counsel submitted the beneficiary's diploma reflecting his completion of a bachelor's degree in accounting and finance at Marmara University in Turkey.

The director issued a comprehensive request for evidence on August 7, 2002. The director provided characteristics of an employee who possesses specialized knowledge, and asked that the petitioner submit the

following documentation: (1) organizational charts for both the foreign and U.S. entities identifying the current or proposed number of employees in each entity and the levels of supervision; (2) an explanation as to whether any employees in the U.S. entity hold the same or similar position as the beneficiary's proffered position; (3) a statement explaining how the beneficiary's duties abroad and in the United States are different from those performed by other workers employed by the petitioner or from workers employed by other employers; (4) an explanation as to how the beneficiary's training is significantly unique in comparison to the training received by the petitioner's other employees in this position; (5) a description of the impact on the petitioner's business if unable to employ the beneficiary; and (6) a detailed statement addressing whether the beneficiary will provide training to the petitioner's employees in his area of specialized knowledge.

In a response dated October 24, 2002, counsel stated that the beneficiary was employed in a non-supervisory position in the foreign entity with the responsibility of managing the foreign entity's imports and exports. Counsel further stated that the beneficiary's proposed job duties would be to enhance the productivity and image of the U.S. company and increase its market share. Counsel explained that the beneficiary, having been recognized as an expert by the Turkish Chamber of Commerce, is "significantly qualified" to contribute to the success of the U.S. entity.[1]

Counsel submitted a letter from the beneficiary's foreign employer in which the employer explained that the beneficiary's appointment as director of imports and exports in the U.S. entity is due to his "special knowledge" of the industry, the product and the international market. The beneficiary's foreign employer further stated that the beneficiary's knowledge of the foreign operating conditions related to the rug industry will enhance the petitioner's productivity, competitiveness, image and financial position.

Counsel also submitted three letters from university instructors in Turkey, in which each states that the beneficiary has completed rug-making courses, and is competent and qualified to market Turkish rugs. Counsel also provided letters from what appear to be local business in Istanbul, in which each states that the beneficiary is known to be an expert in rugs made in Turkey, India, China and Iran.

In a decision dated April 7, 2003, the director acknowledged the family tradition of creating hand-made Turkish rugs, yet noted that the beneficiary would be responsible for the import and export of the rugs, not in the particular rug-making process. The director stated that "[t]he fact that the beneficiary may be a skilled Import/Export Director with the petitioner's particular services is not in question." The director concluded that the beneficiary's experience and familiarity with the foreign and U.S. companies do not constitute special knowledge of the company product and its application in international markets as required in the regulations. The director stated that the petitioner had not established that the beneficiary possessed specialized knowledge or demonstrated that the beneficiary would be employed by the U.S. entity in a specialized knowledge capacity. Accordingly, the director denied the petition.

In an appeal filed April 28, 2003, counsel contends that the director's decision is contrary to the law defining specialized knowledge. Counsel explains the process of dividing Turkish rugs into three classifications according to the manufacturing processes available to a company. Counsel claims that only a person with

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[1] Counsel submitted several letters from university instructors and directors attesting to the beneficiary's knowledge of Turkish rugs. However, the record does not contain a certificate or letter from the Chamber of Commerce in Turkey identifying the beneficiary as an "expert." Therefore, it is unclear from counsel's statement in what area the beneficiary has been named an expert.

previous work experience in the foreign company could effectively perform this job of classifying the rugs, as that individual would know the foreign company's machinery capabilities. Counsel states that the letters from the beneficiary's foreign employer "indicate that the beneficiary has knowledge that is expertise [sic] in nature of both the rug business in its highly specialized manner and that he has special knowledge of the workings of the company that he represents." Counsel further notes that the beneficiary possesses knowledge of the petitioner's "confidential" customer lists, which are the "single most source of business." Counsel contends that the beneficiary's "expertise" in Turkish rugs as well as his knowledge of the petitioner's manufacturing abilities, methods and customers demonstrates that the beneficiary possesses specialized knowledge.

On review, counsel's assertions are not persuasive. 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 description of the services to be performed sufficient to establish specialized knowledge. *Id.* 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. *See 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)).[2] As stated by the Commissioner in *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' operation.

Id. at 53.

In the instant matter, the petitioner has not provided a detailed description of the daily job duties to be performed by the beneficiary that would amount to his employment in a specialized knowledge capacity or employment beyond that of a skilled worker. Other than submitting a brief statement that the beneficiary would use his "special knowledge" of the industry and the petitioner's products to market Turkish rugs in the

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[2] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," 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.

United States, the petitioner has not identified any aspect of the beneficiary's position that involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. Counsel's additional statement that the beneficiary's prior work experience with the foreign company makes him qualified to enhance the petitioner's productivity, image and market share is also insufficient. The limited descriptions do not specifically identify the beneficiary's job duties, nor do they demonstrate advanced knowledge or skills possessed by beneficiary. The petitioner is obligated to clearly define the beneficiary's unusual duties, skills, or knowledge. Going on record without supporting 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 (Reg. Comm. 1972).

The AAO acknowledges the letters submitted by the petitioner from both university instructors and local businesses affirming the beneficiary's knowledge of rug making process. However, the claims that the beneficiary is "an expert" in Turkish, Indian, Chinese and Iranian rugs do not establish that the beneficiary would be employed in a position involving specialized knowledge. As noted by the director in his decision, the beneficiary will be employed as a director of imports and exports. The beneficiary will not be involved in the rug weaving process. The beneficiary's knowledge of the different varieties of rugs, and specifically, his ability to classify the rugs according to manufacturing capabilities, will likely contribute to both his success in the proposed position and the petitioner's overall profitability. The beneficiary's knowledge in these particular areas, however, does not appear to exceed that of a skilled worker. Although requested by the director, counsel has not provided any evidence that the beneficiary completed special training beyond that received by the foreign entity's other employees. Moreover, there is no evidence in the record that the local business owners are qualified to make assertions that the beneficiary possesses "expert knowledge" of the handmade rugs. The 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). Absent additional documentation, the record does not support a finding that the beneficiary "[would be] employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation." *Matter of Penner*, 18 I&N Dec. at 53.

Additionally, the petitioner has not submitted documentation explaining how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others employed in a similar position by the foreign entity or other employers in the industry. It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. 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* at 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 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. Here, counsel has indicated that the beneficiary possesses specialized knowledge as a result of his work experience with the foreign company and his knowledge of both the foreign entity's rug classifications and the petitioner's

confidential customer lists. As counsel indicates that anyone with work experience at the foreign company and knowledge of its products and customer lists possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is an experienced or educated employee in the petitioner's products and business, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.