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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 160 52207 Office: VERMONT SERVICE CENTER Date: AUG 01 2005

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

According to the evidence contained in the record, the petitioner claims to have been established in 1994 as a mail order logistics and consulting firm. The petitioner claims to be a subsidiary of [redacted] located throughout Europe. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as operations manager for a period of two years, at a yearly salary of $60,000.00. The director denied the petition concluding that the petitioner had not submitted sufficient evidence to establish that the position being offered to the beneficiary requires the services of an individual possessing specialized knowledge or that the beneficiary possesses specialized knowledge.

On appeal, counsel for the petitioner asserts that the director improperly applied the relevant statute to the evidence previously submitted in support of the beneficiary's specialized knowledge capacity claim.

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.

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.

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 January 24, 2002, the petitioner described the beneficiary's duties as:

> . . . [The beneficiary] will continue his employment in the position of Operations Manager in the United States. In this position, [the beneficiary] will continue to utilize his proprietary knowledge of the foreign entity's policies and procedures to fulfill all responsibilities and oversee the development of the joint venture operations between [the foreign entity] and [the U.S. entity]. This includes managing and directing promotional activities related to the acquisition of US logistics outsourcing expertise. He will continue to be responsible for the development of company operations to enable [the foreign entity] to acquire a maximum level of knowledge of United States business practices, which will facilitate the promotion and acquisition of business contracts and clientele from United States companies seeking to establish an operations base in Europe. Among his duties will be establishing and coordinating the analysis of database applications for mail order statistics. This entails utilizing his knowledge of [the foreign entity's] operating procedures to coordinate and organize computer equipment and networks, as well as to create tools to improve and control mail order processes . . . . He will also continue to coordinate the establishment of operations budgets for the joint venture operations, including monitoring performances, budgets, and operations forecasts.

In response to the director's request for evidence on the subject, the petitioner stated that the beneficiary possessed an advanced level of knowledge of the company's products, processes, and procedures in that he has primarily been responsible for the creation, implementation and management of the U.S. entity's software product, OrderMotion. The petitioner also asserted that the beneficiary possessed knowledge that is valuable to the U.S. entity in that he has and will continue to be responsible for managing and directing activities related to the acquisition of the company's logistics outsourcing expertise. The petitioner stated that the beneficiary has established and coordinated the analysis of database applications for mail order statistics, and that he has utilized his knowledge of the foreign entity's operating procedures to coordinate and organize computer equipment and networks. The petitioner further stated that the beneficiary has created tools to improve and control mail order processes; has documented standard operating processes; monitored mail order software databases; and implemented database-marketing techniques. The petitioner stated that the beneficiary has also coordinated and established operation budgets including: monitoring performances, budgets, and operations forecasts. The petitioner also stated that the beneficiary's specialized knowledge of the petitioner's product and processes and services could not be easily transferred or taught to another individual. The petitioner contended that it would take a minimum of 12 to 18 months to train another person to assume the beneficiary's position.

The director determined that the beneficiary's job duties as described were not significantly different from those of other operations managers in similarly situated consulting firms, and that the job at the U.S. entity did not require someone possessing specialized knowledge. The director also stated that the petitioner had not demonstrated that the company's software (OrderMotion) is significantly different from software generally used in similar companies. The director further stated that the petitioner had failed to demonstrate how an understanding of OrderMotion constitutes specialized knowledge. The director stated that an in-depth knowledge of the functions and systems of the organization does not appear to be unusual for an individual employed as operations manager to possess, and is not considered to be indicative of the beneficiary's claimed advanced expertise. The director concluded by stating that the petitioner had failed to document how the beneficiary's knowledge of the processes and procedures of the petitioning organization are advanced or substantially different from the knowledge possessed by other individuals similarly employed, or that such knowledge would be difficult to impart to another individual without significant economic inconvenience to the U.S. or foreign entities.

On appeal, counsel argues that the beneficiary possesses specialized knowledge of the petitioner's OrderMotion software application processes and procedures in that he has been given assignments that have enhanced the company's productivity, competitiveness, image, and financial position. Counsel further argues that the beneficiary is uniquely qualified to contribute to the U.S. entity's knowledge of foreign operations, and that he possesses knowledge that can only be gained through extensive prior experience with the company. Counsel contends that the beneficiary's knowledge of the petitioner's OrderMotion software application processes and procedures would be difficult to impart to another individual without inconvenience to the petitioner. Counsel also contends that the knowledge possessed by the beneficiary is not commonly known throughout the software industry.

On review of the record, the petitioner has not established that the beneficiary possesses specialized knowledge or that he will be employed in a specialized knowledge capacity as required by 8 C.F.R. § 214.2(l)(3)(ii). Counsel infers that the specialized knowledge issue was not contested when the initial L-1B petition was approved, and therefore, all things being the same, the current petition should also be approved. Contrary to counsel's contentions, each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In addition, the record of proceeding does not contain detailed copies of the visa petition claimed to have been previously approved. If, however, the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute clear and gross error on the part of CIS. As established in numerous decisions, CIS is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals which may have been erroneous. *See Sussex Engg. Ltd. V. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied*, 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (BIA 1988). The Administrative Appeals Office is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800,803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). In addition, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

On appeal, the petitioner submitted copies of its executive summary; and copies of OrderMotion marketing documents, flow charts, service agreements, operations manual, and user reports. This evidence is insufficient to demonstrate that the beneficiary possesses specialized knowledge or that the job in the United States requires

specialized knowledge. It appears from the record of proceedings that the data pertaining to the OrderMotion software applications and techniques is readily available and can be easily learned by other operations managers in the field. The evidence submitted on appeal is insufficient to substantiate the petitioner's claim that the beneficiary possesses an advanced level of knowledge of processes and procedures unique to its company. The petitioner has failed to submit sufficient evidence to establish that the knowledge possessed by the beneficiary of its organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets constitutes special knowledge.

Counsel argues that the beneficiary possesses specialized knowledge of the organization's products, processes, and procedures. Counsel also argues that the beneficiary acquired the specialized knowledge through the beneficiary's experience being employed by the foreign entity. Although there may be evidence to show that the beneficiary has acquired experience while working for a foreign entity, this experience does not constitute specialized 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).

While the petitioner claims that the beneficiary's experience with the organization includes intimate familiarity with the U.S. entity's mail order logistics and OrderMotion software platform procedures and proprietary products and intimate familiarity with the foreign entity's development projects, mere familiarity with an organization's product, process or service does not constitute special knowledge under section 214(c)(2)(B) of the Act. In addition, although the petitioner contends that the beneficiary will be integral as a chief technology officer, application designer, lead programmer and developer, this claim is insufficient to establish that the beneficiary possesses specialized knowledge or will be performing tasks that require specialized knowledge. The record does not demonstrate that the tasks described are not common to all operations managers in the computer software application and development field. Further, the petitioner contends that the beneficiary's duties will consist of managing and directing promotional activities, developing company operations, establishing and coordinating the analysis of database applications for mail order statistics, and coordinating the establishment of operations budgets. There has been no evidence submitted to establish that the tasks described require specialized knowledge. It appears that the description given is common to all computer firms in the software development business and does not differentiate the beneficiary from that of any other person employed as an operations manager.

The petitioner has demonstrated that the beneficiary is skilled and familiar with OrderMotion's software applications and techniques that are undoubtedly beneficial to the organization. However, the plain meaning of the term "special" knowledge is knowledge or expertise beyond the ordinary in a particular field, process, or function. *See* section 214(c)(2)(B) of the Act. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. In addition, the record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's product, procedures, or its application in U.S. and international markets. Although the petitioner's software application product may be unique and proprietary in name, there has been no evidence submitted to establish that its interface processes and functional capabilities are exclusive to the U.S. and foreign entities. Counsel contends that the beneficiary's knowledge of "OrderMotion" qualifies as "specialized knowledge." Contrary to counsel's contention, any operations manager would necessarily possess knowledge of its company's proprietary products in order to function efficiently. While the beneficiary's employment experience with the foreign organization may have given him knowledge that is useful in performing his duties as an operations manager, it cannot be the case that any useful skill is to be considered to constitute special or advanced knowledge. Without supporting documentation, the assertions of counsel do not constitute evidence.

Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. *See* section 214(c)(2)(B) of the Act. Here, the evidence demonstrates that the beneficiary possesses the skill required to work as an operations manager dealing with various software interface applications, not a special knowledge of the petitioner's processes and procedures.

Counsel infers that similar extension of new office petitions have been granted by the AAO, and cites to unpublished decisions in support of his contentions. However, while 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. An unpublished decision carries no precedential weight. *See Chan v. Reno*, 113 F.2d 1068, 1073 (9th Cir. 1997) (citing 8 C.F.R. § 3.1(g)). As the Ninth Circuit says, "unpublished precedent is a dubious basis for demonstrating the type of inconsistency which would warrant rejection of deference." *Id.* (citing *De Osorio v. INS*, 10 F.3d 1034, 1042 (4th Cir. 1993)).

Counsel refers to an unpublished AAO decision in which it was held that the beneficiary met the requirements of serving in a managerial and executive capacity even though he was the sole employee of the petitioning organization. Counsel has furnished no evidence to establish that the facts of the instant petition are in any way analogous to those in the cited case. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California, supra.*

On appeal, counsel also refers to a 1994 INS memorandum as a guide for interpreting the statutory definition of specialized knowledge. However, based upon the evidence of record, the beneficiary's ability to execute software development and maintenance processes does not by itself establish that his knowledge is different from that generally found in the industry. In *Matter of Penner*, the Commissioner emphasized that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." 18 I&N Dec. 49 (Comm. 1982). 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 just the "key" personnel that Congress specifically intended. With regard to counsel's reliance on the 1988 Associate Commissioner's memorandum, the memorandum was intended as a guide for employees and will not supercede the plain language of the statute or the regulations. Therefore, counsel's assertion is insufficient to establish that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known in his field of endeavor.

While the AAO acknowledges that the specialized knowledge classification is not solely for those "relatively rare employees with unusual knowledge," the legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), the court upheld the denial of an L-1 petition for a chef, where the petitioner claimed that the chef possessed specialized knowledge. The court noted that the legislative history demonstrated a concern that the L-1 category would become too large: "The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service." *Id.* at 16 (citing H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815). The court stated, "in light of Congress' intent that the L-1 category should be limited, it was

reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to 'key personnel' and executives." *1756, Inc.*, 745 F. Supp. at 16.

Beyond the decision of the director, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). According to the evidence submitted, the petitioner was incorporated in 1994 as a mail order logistics and consulting firm, and claims to be a subsidiary of [redacted], Europe. The petitioner claims that the beneficiary's former employer abroad was [redacted], Austria. The petitioner further claims that the U.S. entity and [redacted] formed a joint venture in the United States in 1999 to promote [redacted] acquisition of U.S. logistics outsourcing expertise through the management of Transaction Smartware's operations. There has been no evidence submitted to show that [redacted] ever employed the beneficiary or that that company has any type of business relationship with [redacted] Austria. In addition, there has been no evidence submitted to substantiate the petitioner's joint venture claim. The record of proceedings does not contain a joint venture agreement, the terms and obligations of such agreement, or the rights and duties under such agreement. The petitioner has not demonstrated that a qualifying relationship exists with a foreign entity. For this additional reason, the petition may not be approved.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed