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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 262 50931 Office: VERMONT SERVICE CENTER Date: AUG 30 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 appeal will be dismissed.

According to the evidence contained in the record, the petitioner was established in 2001 and claims to be a seamless undergarment design and development firm. The petitioner claims to be a subsidiary of [redacted] located in Malwana, Sri Lanka. The petitioner claims five employees and $322,804.00 in gross annual income. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as an assistant technical engineer for a period of two years, at a yearly salary of $51,615.00. The director determined that the evidence submitted by the petitioner was not sufficient to establish that the beneficiary possessed specialized knowledge, and would be employed in a specialized knowledge capacity.

On appeal, counsel disagrees with the director's decision and asserts that the evidence submitted is sufficient to establish that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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:

> For purposes of section 101(a)(15)(L)[of the Act, 8 U.S.C. § 1101 (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":

> *Specialized knowledge* means special 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 July 31, 2002, the petitioner described the beneficiary's duties as:

> [The beneficiary] will continue to serve in the highly specialized position of Assistant Technical Engineer for SDC at its office in Paramus, New Jersey. His duties include trouble-shooting SDC's uniquely modified equipment's performance issues, implementing safety and interruption countermeasures to address mechanical equipment failure, installing new equipment, modifying existing equipment, and performing on-going maintenance on production equipment. [The beneficiary] will also be responsible for maintaining adequate inventory levels for machine tools and parts to ensure timely repair or modification to minimize possible interruptions in the production process.
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> . . .
>
> In addition, [the beneficiary] has invaluable experience working with Linea Intimo's and SDC's unique and proprietary textile production processes and methodologies. . . . He is responsible for managing the machine and equipment maintenance schedules, which involves [sic] installing, modifying and repairing the various textile knitting, dyeing, boarding, and various other specialized proprietary and uniquely modified textile production equipment. . . .

In a letter dated August 9, 2002, the petitioner stated that the beneficiary's duties include:

> [T]roubleshooting [the U.S. entity's] uniquely modified equipment performance issues; implementing safety and interruption countermeasures; installing new equipment; modifying existing equipment; and performing ongoing maintenance on production equipment.

The petitioner submitted a copy of the beneficiary's Bachelor of Science of Engineering degree from the University of Moratuwa, Sri Lanka and underlying transcripts.

In response to the director's request for evidence on the subject, counsel asserted that the beneficiary possessed a unique body of knowledge that distinguished him from other technical engineers in the knitting industry. Counsel also asserted that the beneficiary obtained an advanced and specialized knowledge

of the company's "Seamless Garment Manufacturing" (SGM) process while working for the foreign entity. Counsel further asserted that the beneficiary had been responsible for managing machine and equipment maintenance schedules; and installing, modifying, and repairing various knitting, dyeing, boarding, and other modified textile production equipment used during the SGM process. Counsel asserted the beneficiary was qualified to contribute to the U.S. entity's knowledge of foreign operating conditions in that he had obtained an in-depth knowledge of all production processes, ranging from product development initiation to delivery; and that he possessed knowledge of the foreign entity's technologies involving yarn, knitting, fabric, dyeing and finishing, pattern making, and sewing. Counsel further asserted that the foreign entity had used the beneficiary in assignments that enhanced the company's productivity, competitiveness, image, and financial position. Finally, counsel asserted that Citizenship and Immigration Services (CIS) acknowledged the beneficiary's specialized knowledge by previously approving his L-1B visa status.

The director determined that the beneficiary's duties did not appear to be significantly different from those of any other assistant technical engineer at an undergarment design and development firm. The director stated that the petitioner had failed to demonstrate how its textile production procedures were different from those methods used by companies similarly situated in the undergarment knitting industry. The director also found that the beneficiary's knowledge could be imparted to another individual without significant economic inconvenience to the United States or foreign firms.

On appeal, counsel argues that the beneficiary possesses specialized knowledge and will perform his duties at the U.S. entity in a specialized knowledge capacity. In a letter dated December 11, 2002, the petitioner contends that the beneficiary has been responsible for installing, modifying, and maintaining the Linea Intimo company's intricate knitting and production equipment, including the circular machines and their variants used during the SGM processes. The petitioner also asserts that the beneficiary installed, modified, and maintained Linea Intimo's proprietary production equipment at SDC. The petitioner further asserts that the beneficiary possesses specialized knowledge in that he is capable of maintaining and modifying SDC's production equipment and enhancing the SDC process routes employed by Linea Intimo.

The petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.* In the instant matter, the

petitioner has failed to submit sufficient evidence and or explanation to establish that the beneficiary possesses a special knowledge of the entity's product, service, research, equipment, techniques, management, or other interests and its application in international markets. Neither has the petitioner established that the beneficiary possesses an advanced level of knowledge or expertise in the organization's processes or procedures.

The record does not establish that the beneficiary has an advanced or special knowledge of the petitioning organization's product and its application in the United States and international markets. The beneficiary's employment experience with the foreign organization may have given him knowledge that is useful in performing his duties, but any useful skill is not considered to constitute special or advanced knowledge. The evidence demonstrates that the beneficiary has been trained to operate and maintain the company's stitching and knitting machines. The beneficiary's knowledge of manufacturing tools and textile production methods and processes does not constitute "specialized knowledge" as that term is used in these proceedings. The beneficiary's experience with managing machine and equipment maintenance schedules, garment repair, dyeing, and boarding does not equate to an advanced level of knowledge or expertise in the petitioner's processes and procedures. The beneficiary's duties as described by the petitioner are common to every garment enterprise engaged in the manufacturing, marketing, and sale of its product and services.

Counsel argues that the beneficiary's education, training, and experience have given him knowledge that is specialized because it is specific to the petitioning entity, and is not readily available in the United States. Job training and experience at any firm teaches the procedures of that organization. There is no evidence of record that distinguishes the beneficiary from other individuals working for similar manufacturing firms.

Counsel asserts that the beneficiary possesses "special knowledge" or an "advanced level of knowledge," however; the AAO must conclude that, while it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

Counsel's interpretation of the specialized knowledge provision is also objectionable, as it would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. 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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, was silent on the subject of specialized knowledge, but that during the course of the sub-committee 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*, supra at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)). Reviewing the congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker. The petitioner has not established that the beneficiary possesses specialized knowledge, will be employed in a specialized knowledge capacity, or that the position requires specialized knowledge. For this 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.