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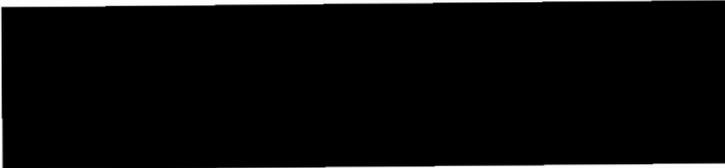
File: EAC-04-150-53618 Office: VERMONT SERVICE CENTER Date: **SEP 07 2006**

IN RE: Petitioner:
Beneficiary:



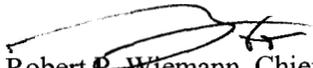
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont 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 a diamond assorter under the L-1B nonimmigrant, intracompany transferee program for 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 import, export, and distribute diamonds and jewelry, and states that it is a subsidiary of [REDACTED], in Mumbai, India. The petitioner was formed under the laws of the state of New York.

The director denied the petition concluding that the petitioner had not established that the beneficiary has been or will be employed in a specialized knowledge capacity.

The petitioner subsequently filed an appeal. On appeal, counsel for the petitioner asserts that the beneficiary does possess specialized knowledge and will be working in such a capacity. In support of this assertion, the petitioner submits a brief and supporting evidence, including several affidavits.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, 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 within the three years preceding the beneficiary's application for admission into the United States. 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.
- (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 issues to be discussed in the present matter are related but distinct, whether or not the beneficiary possesses specialized knowledge and whether the petitioner has established that the beneficiary's position in the United States will involve specialized knowledge as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii), and whether the beneficiary was employed abroad in a capacity that utilized specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(iv).

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 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 or procedures.

In an April 13, 2004 letter filed with the initial petition, the petitioner described the beneficiary's specialized knowledge job duties abroad as follows:

[The beneficiary's] focus in the overseas firm has been constantly striving towards providing our clients with the best quality of diamonds, and studded jewelry, international quality, and competitive prices.

The beneficiary's job duties in the U.S. were described as follows:

- Select, buy and sorts diamonds according to size for use in designer watches and jewelry using sieve, loupe, and precision measuring instruments;
- Coordinate with the [b]uyers and [j]ewelry [d]esigners for latest trends and reads work orders to determine sizes required to fit mountings;
- Measures diamonds and colored stones using gauge and loupe, and sort diamonds, using sieve of specified diameter, to segregate sizes required as per customer preferences;
- Grades and places diamonds of specified size in containers,
- Studies grade, quality, color (skin), and physical structure of rough or finished diamonds and sorts them according to quality and type, using magnifying class or loupe;
- Accurately rate and price small diamonds manufactured at [foreign organization] in India, for distribution to the U.S. buyers and jewelry designers;

- Determines buying budgets and discusses the same with the President for obtaining confirmation on buying and selling activities;

On June 1, 2004, the director sent the petitioner a request for additional evidence (RFE).

In response, counsel for petitioner submitted a three page letter but no additional evidence.

On September 16, 2004, the director denied the petition. The director determined that the beneficiary did not possess specialized knowledge and that the position abroad and the proffered position in the United States do not require a person with specialized knowledge.

The petitioner subsequently appealed. On appeal, counsel for the petitioner asserts that the beneficiary possesses specialized knowledge and the position in the United States requires such specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. 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 then 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. A specific occupation will not inherently qualify a beneficiary as possessing specialized knowledge. *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)).¹

In making a determination as to whether or not knowledge possessed by a beneficiary is special or advanced the AAO relies on the statute and regulations, prior precedent decisions, and legislative history. This yields a multiple pronged analysis to determine whether the petitioner has employed and will employ the beneficiary in a specialized knowledge capacity. In examining whether an alien has "special knowledge" of the petitioner's product and its application in international markets or an "advanced level" of knowledge of its processes and procedures, the AAO will consider whether the beneficiary: 1) is part of the petitioner's "key personnel" (*See generally*, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750); 2) is more than a specialist or a skilled employee (*Matter of Penner*, 18 I&N Dec. at 50); 3) has knowledge that qualifies as "special" under the plain meaning of the term; 4) performs a key process or function for the petitioner (*See Matter of Penner*,

¹ 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 regulation or precedent decisions 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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

id.); and 5) possesses certain characteristics that have been deemed to be illustrative of specialized knowledge (see Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., Immigration and Naturalization Serv., *Interpretation of Special Knowledge*, 1-2 (Mar. 9, 1994) (copy on file with *Am. Immig. Law. Assn.*)).

In this case the petitioner failed to respond to the director's RFE. The director specifically requested a detailed explanation of what qualified the beneficiary's knowledge as specialized, what training and experience led to the beneficiary's acquisition of such knowledge, and why the position in the United States required this specialized knowledge. The petitioner failed to provide any explanation in its response to the director, instead submitting only a three page letter from counsel. 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). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On appeal counsel for petitioner asserts that the beneficiary is a key employee, that the beneficiary's experience abroad provided the experience which constitutes the beneficiary's specialized knowledge, and that the beneficiary possesses various characteristics of a specialized knowledge. Counsel's arguments are not persuasive. First, counsel's arguments are not supported by the evidence presented. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although counsel has submitted letters from the various parties, these letters are not sufficiently objective or independent to demonstrate that the knowledge possessed by the beneficiary is *actually* specialized. In addition the letters do not contain any articulation of the beneficiary's specialized knowledge. For example, a vague assertion that an employee is able to differentiate diamonds is not sufficiently probative to illustrate why the beneficiary's knowledge is uncommon or noteworthy among the petitioner's employees and within this particular industry.²

The failure to provide a detailed description of the beneficiary's position and duties leaves the record without any evidence that the position requires specialized knowledge, or that the beneficiary has been and will

² Counsel's assertions in response to the RFE and on appeal regarding conflict diamonds are contrary to the common understanding of the term. Specifically, counsel states that the beneficiary's specialized knowledge includes the ability to differentiate between "real diamonds and conflict diamonds, which are created in [a] laboratory." Taking administrative notice, the AAO notes that conflict diamonds are "real" diamonds; what differentiates conflict diamonds is that they are mined in war zones, are being used to finance armed conflicts, and have been banned from commercial distribution by many countries. Wikipedia, *Conflict Diamond*, http://en.wikipedia.org/wiki/Conflict_diamonds (last updated August 30, 2006). Thus, absent a detailed explanation and supporting evidence to support his claim, counsel's assertion of the beneficiary's ability to differentiate diamonds which are not different in physical composition appears to be a fabrication, possibly intended to materially mislead the Citizenship and Immigration Service as to the eligibility of the beneficiary.

actually perform these specialized knowledge duties. Based on the petitioner's ambiguous description of the beneficiary's duties, and the failure to distinguish those duties among other employees with the foreign parent and within this particular industry, the AAO is unable to determine that that the beneficiary's position abroad and proffered position in the United States require specialized knowledge. Without a detailed description of the beneficiary's skill relative to the petitioners' other employees or to the market as a whole, the AAO can not determine whether the beneficiary possesses "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." See section 214(c)(2)(B) of the Act. In addition to a lack of probative evidence supporting counsel's assertions, the record as it is currently constituted does not establish that the knowledge possessed by the beneficiary meets the plain meaning of special, that the beneficiary is performing a key process or function, or that the beneficiary is more than merely a skilled employee.

From a practical point of view, the mere fact that a petitioner alleges that an alien's knowledge is somehow different does not, in and of itself, establish that the alien possesses specialized knowledge. The petitioner bears the burden of establishing through the submission of probative evidence that the alien's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the alien's field of endeavor. In this case that burden has not been met.

All companies are different, and it can generally be expected that no two companies will employ the same procedures. Standing alone, however, an alien's knowledge of minor variations in style or manner of operations cannot be considered specialized. Legacy INS memo, HQSCOPS, 70/6.1, "Interpretation of Specialized Knowledge" (December 20, 2002).

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. v. Attorney General*, *supra* at 16. Based on the evidence presented, it is concluded that the beneficiary was not employed abroad, and will not be employed in the future, in a specialized knowledge capacity. Nor has it been established that the knowledge possessed by the beneficiary of the petitioner's business procedures is advanced. For this reason the petition must be denied.

The petitioner failed to adequately and fully respond to the director's RFE, and for this reason the appeal will be denied. Moreover, the record as it is currently constituted does not demonstrate that the beneficiary possesses "specialized knowledge" as defined in section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D), nor has counsel demonstrated that the beneficiary has been or would be employed in a capacity utilizing any such specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii) and (iv).

In visa 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 denied.