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U.S. Citizenship and Immigration Services

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FILE: SRC 05 109 50535 Office: TEXAS SERVICE CENTER Date: SEP 08 2006

IN RE: Petitioner:
Beneficiary: [redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the technology of converting gases to liquids. It seeks to temporarily employ the beneficiary as an international business analyst in the United States and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had not established that the beneficiary possessed the requisite specialized knowledge nor that the intended employment required specialized knowledge, and specifically noted that the beneficiary did not hold a position as "key personnel" within the organization.

The petitioner subsequently filed an appeal. On appeal, counsel submits a brief and asserts that the denial was erroneous because (1) the director did not properly analyze the evidence pertaining to the beneficiary's duties and his specialized knowledge; (2) the director misapplied the current standard for establishing specialized knowledge; and (3) the documentary evidence submitted was more than sufficient to accord the beneficiary L-1B status.

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.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and (2) whether the proposed employment is in a capacity that requires specialized knowledge.

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 beneficiary's resume, submitted with the petition, indicated that he obtained a Bachelor of Arts in Political Science and a Bachelor of Science in Business Administration from Pepperdine University in 1990. A letter of support from the petitioner, dated November 2, 2004, indicated that the beneficiary began working for the foreign entity on October 1, 2003. Another letter from the petitioner, dated March 4, 2005, indicated that the beneficiary began working as a consultant for the petitioner on February 2, 2004. With regard to the beneficiary's qualifications, the petitioner's letters directed attention to the assessment of Dr. [redacted] Executive Director of the Meinders Business Research and Consulting Center and Associate Dean of the Meinders School of Business located in Oklahoma City, Oklahoma.

In a letter dated March 2, 2005, Dr. [redacted] stated that he reviewed various documents presented to him by the petitioner, and as a result, he made the following conclusions:

> [Beneficiary] Possesses Knowledge That is Valuable to [the Petitioner's] Competitiveness in the Marketplace.
>
> [The petitioner] seeks to penetrate the natural gas markets in Central and South America, Africa, the Middle East, Asia and Australia, Europe and the Commonwealth of Independent States, and North America. A large percentage of these markets are government controlled requiring uncommon and unusual knowledge, expertise, experience, and contacts in order to successfully enter the markets and to sustain a competitive advantage. [The beneficiary's] work experience and family-owned business acumen, particularly in the Middle East and Asia, provide the specialized knowledge necessary not only for [the petitioner] to penetrate the markets, but also to successfully compete therein.
>
> [Beneficiary] is Qualified to Contribute to [the Petitioner's] Knowledge of Foreign Operating Conditions as a Result of Specialized Knowledge not Generally Found in the Oil and Gas Industry.
>
> [The beneficiary's] uncommon and noteworthy qualifications to contribute to [the petitioner's] knowledge are three-fold. First, as a Greek citizen, he understands the social and business cultures of European countries targeted by [the petitioner]. This understanding is mandatory for marketing and operating success as discovered over the last several years by numerous United States-based companies. Secondly, [the beneficiary] is trained in both business and administration (B.S., Pepperdine University) and political science (B.A., Pepperdine). While neither degree is unusual, uncommon, or special, the combined degrees are. [The beneficiary's] training in both political science and business prepares him well to contribute

> to the geo-political knowledge, management knowledge, and corporate culture of [the petitioner], thus enhancing the corporation's ability to overcome political and cultural barriers to market entry. Furthermore, as previously noted, [the beneficiary's] work experience and family-business experience provide knowledge of foreign business methods, ethics, and morays not generally found in American oil and gas companies.
>
> [Beneficiary] Has Worked Abroad in Capacities Involving Significant Assignments Which Enhance [the Petitioner's] Competitiveness, Image, and Ultimately, Their Financial Position.
>
> Virtually all of [the beneficiary's] work assignments have involved overseas marketing and sales, many of which were focused on government agencies. As such, he knows his way around global businesses and foreign governments. This experience, expertise, and knowledge substantially enhances the ability of [the petitioner] to compete. Furthermore, his global knowledge and global-business maturity will improve the image of [the petitioner] relative to its competitors who do not have the specialized ability to relate to global business persons and global business partners.
>
> [Beneficiary] Possess[es] Knowledge of Products, Services, and Processes Which Cannot Be Easily Transferred or Taught to Another Individual.
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> [The beneficiary] is an expert in wholesaling, retailing, shipping, and marketing of oil products; new oil and gas ventures; pollution-fighting technology; oil-cleaning materials and equipment; oil field construction and maintenance; undersea pipelines; construction and maintenance of oil pipelines and terminals; geometrics; strategic trade alliances in the global oil and gas industry; oil and gas investments and venture capital; and industrial construction. It would be virtually impossible to find another person possessing all these expertises [sic]. Furthermore, since [the beneficiary] spent nearly 20 years in seven different positions developing these expertises [sic], it would be unreasonable to expect [the beneficiary] or anyone else to train another individual or other individuals in all of these areas of expertise within the short term.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on March 15, 2005, which requested more detailed evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. Furthermore, the director requested a specific explanation as to why the beneficiary's knowledge was so uniquely different from other similarly trained analysts in the industry, and also asked for a definite statement explaining why the beneficiary's knowledge was so much more advanced than others.

Counsel responded on March 17, 2005. In response to the director's request, another letter from Dr. [redacted] dated March 17, 2005, was submitted, in addition to other statements from the petitioner. Upon closer review, however, it is noted these documents submitted in response to the request for additional evidence were the exact same documents initially submitted in support of the petition. No new information or documentation to address the director's specific queries were provided.

The director determined that the record neither established that the beneficiary possesses specialized knowledge nor that the intended position in the U.S. is one that requires specialized knowledge, and concluded that the beneficiary was not "key personnel." The director specifically noted that the petitioner had failed to show that the beneficiary's duties and training were significantly different from other similarly-qualified analysts. The director concluded that the evidence submitted did not establish that the beneficiary's knowledge was uncommon or distinct and distinguished from other practitioners in the field, and consequently denied the petition.

On appeal, counsel for the petitioner submits a brief in support of its assertions that the beneficiary possesses specialized knowledge. In addition, three new opinions/evaluations of the beneficiary's credentials were submitted in support of counsel's assertions.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge nor that the intended position requires an employee with specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his intended employment in the U.S. entity, and his responsibilities as a business analyst. Despite specific requests by the director, namely, what specifically set apart the beneficiary's knowledge from other similarly trained analysts in the field, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly relies on the same evidence prior to adjudication in support of the petition. Despite the director's finding that the initial evidence submitted was insufficient, the petitioner failed to supplement the record as requested and merely resubmitted the previously filed documents that had been deemed unacceptable by the director as evidence of the beneficiary's qualifications for the benefit sought. Although specifically requested by the director, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon and more advanced than similarly trained professionals in the field. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work in the industry. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). In this case, the petitioner relies on the AAO to accept its uncorroborated assertions that the beneficiary possesses specialized knowledge, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. Going on record without supporting 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)).

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. *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] 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 firm's operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility.

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 that employee and the remainder of the petitioner's workforce.

Here, the petitioner's only contention that the beneficiary's knowledge is more advanced than other analysts in the field is its assertion that the beneficiary's experience and abilities in the "global marketplace" have

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[1] Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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.

allowed him to gain an expertise in his field. Again, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary, an international business analyst, as compared to the daily duties of other international business analysts. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees. The petitioner, through the opinion of Dr. [redacted] claims that three factors, namely, (1) the fact that the beneficiary is a Greek citizen, (2) who holds a degree in both business administration and political science, and (3) who has gained experience in the industry by way of his family oriented business, have equipped the beneficiary with specialized knowledge. The AAO disagrees. Other than the expert opinion of Dr. [redacted] who incidentally is not an authorized representative of the petitioner, there is no independent evidence corroborating the claims of the petitioner. The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of gas to liquid technology as advanced and precludes a finding that the beneficiary's role is of crucial importance to the organization. As previously stated, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The claim that the beneficiary has specialized knowledge, without submitting any documentation of the training he received or the manner in which the beneficiary, who holds degrees in business administration and political science, essentially became an expert in the petitioner's technologies. In fact, no discussion of the petitioner's products or services is submitted, thereby precluding the AAO from clearly understanding the actual role of the beneficiary in the petitioner's organization. While the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

On appeal, counsel for the petitioner alleges that the denial was erroneous, and in support of his contentions, counsel submits three new expert opinions from the following persons: (1) [redacted] Ph.D., Director, University of Oklahoma, Institute for Energy Economics and Policy; (2 [redacted] Credential Evaluation Specialist, [redacted] Credential Evaluation; and (3) [redacted], Professor of Operations Management and Chair, Director of Finance, Economics, and Decision Sciences in the College of Business at Texas A&M University. These documents, however, will not be considered.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Specifically, the director requested definite evidence demonstrating the manner in which the beneficiary's knowledge was uncommon and advanced when compared to similarly qualified analysts in the industry. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted opinions with regard to the beneficiary's credentials and qualifications to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Counsel's appeal brief once again emphasizes the points made in Dr. [redacted] letter, noting that the beneficiary's understanding of "social and business culture" of European countries is essential to the petitioner's business, and thus qualifies the beneficiary as an intracompany transferee with specialized knowledge. Once again, counsel and the petitioner overlook the fact that the beneficiary is undoubtedly one

of many international business analysts in the workforce today. It is fair to conclude that most people employed in this line of work must also have an understanding of the social and business culture of Europe. The petitioner seems to focus on this aspect of the beneficiary's background as the key element of the beneficiary's qualifications. The petitioner does not, however, offer any evidence that the beneficiary has uncommon, advanced, or proprietary knowledge of the petitioner's unique processes or procedures.[2] Instead, the argument is that the beneficiary's general knowledge of the business world, particularly European and Asian markets, gives him specialized knowledge.

D[redacted] claimed that the beneficiary's Greek citizenship, his bachelor's degrees, and his work experience in a family oriented business result in an abundance of specialized knowledge. No attempt has been made, however, despite requests from the director, to distinguish the beneficiary from other European citizens who hold advanced degrees and have general experience in the petitioner's field. 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). Merely claiming that the beneficiary has specialized knowledge without distinguishing the beneficiary from other analysts in the field is insufficient for satisfying the burden of proof in this matter. It appears that at best, the beneficiary is akin to a professional or skilled worker as opposed to an employee possessing specialized knowledge.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. 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 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." *Id.* 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 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 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

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[2] Although the fact that a beneficiary has experience with a proprietary product or procedure does not serve as prima facie evidence that the beneficiary possesses specialized knowledge, when such a claim is made, Citizenship and Immigration Services (CIS) must carefully evaluate the claimed knowledge and the depth of the beneficiary's experience in order to determine whether it rises to the level of specialized knowledge as contemplated by 8 C.F.R. § 214.2(l)(1)(ii)(D). Thus, while a beneficiary is no longer required to possess knowledge of proprietary products or processes in order to be deemed to have specialized knowledge, such knowledge can still be a basis for this determination.

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.*, 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.").

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.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

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.