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

U.S. Citizenship and Immigration Services

B7

[redacted]

File: SRC 06 069 50160 Office: TEXAS SERVICE CENTER Date: JUL 02 2007

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:

SELF-REPRESENTED

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 AAO will dismiss the appeal.

The petitioner, an individual who states that he is a U.S. citizen, filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with 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 U.S. entity, a Florida corporation, is described as a jewelry distributor. The petitioner states that the U.S. entity is an affiliate of the beneficiary's current employer, [redacted] located in Bogotá, Colombia. The petitioner seeks to employ the beneficiary in the position of emerald engraver.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the position offered to the beneficiary in the United States requires the services of an individual possessing specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, the petitioner asserts that the beneficiary's proposed duties "are of a specialize [sic] knowledge and unique because it was acquire [sic] through talent, disposition, school and experience." The petitioner emphasizes that emeralds are unique stones that cannot be handled by untrained personnel. The petitioner submits a letter in support of the appeal.

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)(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:

> 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 nonimmigrant petition was filed on December 29, 2005. In a letter dated December 1, 2005, the petitioner described the beneficiary's proposed position as follows:

> Our business report, for distributing our products in the U.S. had identified the need to bring to the U.S. one of our emerald cutter and engravers. The main reason is to handle the adjustments and repairs at the distribution center at Port St. Lucie, Flroida while other U.S. employees could be train [sic] to handle the product. The employee will have the following responsibilities while in the U.S.:
>
> a) To dismount and mount of emeralds (disassembling and assembling)
> b) To resize emeralds
> c) To do oil treatment on emeralds
> d) To repair and polish emeralds
> e) Train other workers on handling emeralds (cutting, sizing and treating emeralds)
>
> We expect that after one year of training other engravers and stone cutters our employee could be returning to his position in Colombia.

The petitioner provided the following explanation for its need to transfer the beneficiary to fill the proposed role of emerald cutter:

> Emeralds are fine and unique gems that require special handling to avoid unrepairable [sic] damage. This gem requires specialize [sic] knowledge and experience because unlike other gems emeralds cannot be cut by machine settings, but rather by following the patterns of natural light reflection which is a physical property of the emerald when it is form [sic] by nature. Because Colombia provide [sic] the highest quality emeralds of the world stone cutters are highly specialize [sic] by knowledge and experience. Our jewelry designs are manufactured by family members that have the expertise to handle the necessary adjustments and repairs in the U.S. [The beneficiary] is one of the best emerald cutters and engravers in our Colombian company. I am sure that he will be able to train other gem cutters in the U.S. to do the job in the future. [The beneficiary] had attended a technical government school in Colombia to obtain the credentials that support his work position in our company.

The petitioner submitted an organizational chart for the foreign entity indicating that the beneficiary is one of three engravers employed by the company who are responsible for "cutting, polishing, treatment, setting of gems." The petitioner also provided a certification from the foreign entity's chartered accountant confirming that the beneficiary has been employed by the foreign entity as an emerald cutter for three years.

In support of the petition, the petitioner provided copies of the following three certificates awarded to the beneficiary by "El Servicio Nacional de Aprendizaje Sena" (translated as "National Learning Services"), Department for Metals and Minerals, Center for Teaching: (1) Engraver and Faceted [sic] of Gems I (40 hours); (2) Engraver and Faceted [sic] of Gems II (40 hours); and (3) Engraver and Faceted [sic] of Gems III (70 hours). The certificates were all issued in July 2004.

The director issued a request for additional evidence on January 23, 2006, advising the petitioner that the evidence submitted was insufficient to establish that the knowledge possessed by the beneficiary is specialized. The director provided the regulatory definition of "specialized knowledge" and noted that the plain meaning of the term is "knowledge or expertise that is special, advanced, and/or unique among the petitioner's own similarly employed employees and/or within the industry." The director requested evidence that the beneficiary's knowledge is "special, advanced, and/or unique."

In a response dated February 6, 2006, the petitioner stated that the beneficiary is a "key worker" who "had developed good skill on cutting, treating and mounting high quality emeralds, which makes the most value on our hand made jewelry." As evidence of the beneficiary's "special knowledge and unique work" the petitioner submitted a letter from a "gemologist," who is identified on the previously submitted organizational chart as an employee of the foreign entity. The certification states the following:

> [The beneficiary] . . . has special skills needed to be in charge of the sectioning, cutting, treatment and setting (mounting) of emerald stones.
>
> The knowledge acquired by [the beneficiary] with regards to handling emerald stones is highly specialized considering the degree of difficulty and risk demanded by the physical properties of an emerald stone.

> Emerald is a precious stone requiring great experience and knowledge, since its sectioning and cutting is carried out by hand and only a highly qualified Cutter is able to spot its internal color and shining which gives the emerald its high value.
>
> Due to its low hardness (7.5 scale of Mohs), emeralds are susceptible to fractures, and besides, the Cutter takes responsibility for the mounting and dismounting, as well as the recutting when required.
>
> [The beneficiary] constitute [sic] a guarantee to us thanks to his experience and exclusivity in handling these stones.

The petitioner also submitted letters from two proposed U.S. customers, who express concern in handling emerald jewelry in certain circumstances, such as when disassembly, resizing, or remodeling is required. One customer requests that "some expert in this matter could be doing the handling of the emeralds in the U.S.A." The other customer requested that one of the petitioner's experts train its jewelry repairmen in mounting and treating the stones.

The director denied the petition on February 27, 2006, concluding that the petitioner had failed to establish that the beneficiary possesses specialized knowledge, or that he would be employed in a position requiring specialized knowledge.

The director observed that the beneficiary's stated duties as an emerald engraver do not appear to be significantly different or specialized compared to other similar employees working in the industry or for the petitioner, or that they warrant the expertise of someone possessing truly specialized knowledge. The director noted that a claim that the beneficiary is experienced, trained or familiar with the petitioner's product or service does not in itself meet the definition of specialized knowledge.

On appeal, the petitioner asserts that he beneficiary "has the specialized knowledge for working and given the high value to the emeralds and unique to our manufacture jewelry designs [sic]." The petitioner provides the following statement in a letter dated March 3, 2006:

> The duties that [the beneficiary] will do in the U.S. are of a specialize Knowledge and unique because it was acquire [sic] through talent, disposition, school and experience. It is in fact that he does help other teachers in the government school in Bogotá to teach the practical labs for cutting, lapidary and engraving emeralds. The main reason is that emeralds are unique stones that because [sic] their physical properties they can not be handle by machines or untrained personal [sic]. Because the value of the emeralds and the jewelry we made are so high neither the jewelers in the U.S. or I can take any changes in having an untrained person to make any adjustments. At this moment we are taking back to Bogotá all the products that need to be worked and [the beneficiary] is doing the work there, but it is very expensive and time consuming which could put us out of business.

On review, the petitioner has not demonstrated that the beneficiary has specialized knowledge or that the beneficiary is to perform duties requiring specialized knowledge in the proffered U.S. position. 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 job 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)).[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' operation.

Id. at 53. As discussed further below, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to produce a product or provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

The petitioner has neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that he possessed an advanced knowledge or expertise in the company's processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner has provided no description of the duties performed by the beneficiary with the foreign entity, other than indicating that he was one of three engravers responsible for "cutting, polishing, treatment, setting of gems." These are duties that would be performed by any jewelry engraver working for any jewelry manufacturer. This extremely limited information is simply insufficient to establish that the beneficiary was employed abroad in a position involving specialized knowledge. Going on record without supporting documentary evidence is not sufficient for

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

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)).

Although the petitioner emphasizes the beneficiary's training in his field as an indicator of his specialized knowledge, he appears to have completed an approximately one-month-long course of study with a government-run training facility in Colombia, rather than completing any extensive training that is specific to the foreign entity. While such training might have provided him with the skills needed to perform his job duties, the petitioner has not established that the beneficiary's training instilled specialized knowledge relative to the foreign entity's products, services, research, equipment, techniques or other interests, as required by the regulatory definition of "specialized knowledge." The claimed specialized knowledge must be specific to the petitioning organization.

Similarly, the petitioner has provided no evidence that the beneficiary will be employed in the United States in a position involving specialized knowledge. The petitioner indicates that the beneficiary will dismount and mount, resize, treat, repair and polish emeralds and train "other workers" on handling emeralds. The knowledge required to perform these duties cannot be considered knowledge that is specific to the petitioner or foreign entity. Any jewelry business that produces emerald jewelry or finished emeralds would reasonably employ engravers and stone cutters with the same skills and knowledge. The fact that emeralds may require special handling compared to other gems because of the "unique" physical properties of the gemstone is insufficient to establish that the beneficiary possesses specialized knowledge. If the AAO followed the petitioner's argument to its logical conclusion, all emerald gem cutters working for multinational organizations would qualify for the L-1B specialized knowledge classification. As noted by the director, specialized knowledge must be different and advanced from that generally held within the industry.

The petitioner emphasizes that the beneficiary will be transferred to the U.S., in part, to train U.S. workers in the handling of emeralds. The AAO accepts the petitioner's assertion that the U.S. company does not currently employ anyone with the beneficiary's specific experience with emerald cutting and engraving. However, the statute and regulations require the petitioner to demonstrate that the beneficiary possesses, and that the proposed employment requires, special knowledge of the *petitioning organization's* product, service, research, equipment, techniques, management, or other interests, or an advanced level of knowledge or expertise *in the petitioning organization's* processes and procedures. Again, the knowledge required to handle emeralds is not uncommon in the petitioner's industry, and is certainly not specific to the petitioner's organization.

On appeal the petitioner claims that the beneficiary's knowledge is "unique to our manufacture jewelry designs." However, the petitioner provides neither further explanation nor supporting documentation in support of its claim that its jewelry designs are "unique" or that the offered position would require an experienced employee from the foreign entity, as opposed to any experienced emerald cutter. The petitioner has failed to establish that the beneficiary's knowledge or the knowledge required for the position is distinct from that possessed by any other emerald cutter or engraver. Again, 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. at 165.

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. As properly observed by the director, the petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background. While it is undoubtedly helpful that the beneficiary is familiar with the foreign entity's business, the petitioner has not established that prior experience with the foreign entity is actually required in order to serve as an engraver for the United States company. This conclusion is supported by the petitioner's assertions that the beneficiary's claimed "specialized knowledge" was gained through formal studies. The beneficiary's claimed specialized knowledge must relate specifically to the petitioning company.

The beneficiary may be highly qualified for the offered position. However, the beneficiary's knowledge and expertise, while valuable to the petitioner, do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations. In *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. 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. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he would be employed by the petitioner in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that he is a qualifying organization for the purpose of this visa classification. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as a "firm, corporation, or other legal entity." Although it appears that a corporation has been established in the State of Florida for the purpose of distributing the foreign entity's products, the petitioner identified on the Form I-129 is an individual, [redacted]. [redacted] states that he is a U.S. citizen who owns more than 50 percent of the U.S. and foreign entities. While it does appear that there is a U.S. corporation that could serve as the beneficiary's employer, this company is not the petitioner in this matter. It must be emphasized that a corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The petitioner in this matter, the U.S. company's claimed individual shareholder, is not a "qualifying organization" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G).

Further, even if the petitioner were the U.S. corporation and not its shareholder, the record does not contain sufficient evidence to establish the claimed qualifying relationship between the U.S. company and the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms

"affiliate" and "subsidiary"). The petitioner has not submitted documentary evidence of the ownership of the U.S. company. For these additional reasons, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.