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U.S. Citizenship and Immigration Services

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FILE: LIN 05 222 51724 Office: NEBRASKA SERVICE CENTER Date: JUN 05 2007

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: 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, Nebraska 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 an import company organized in the State of Indiana and claims to be engaged in the import business. It seeks to temporarily employ the beneficiary as a quality manager as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had not established that (1) the beneficiary had been employed abroad in a specialized knowledge position; (2) the intended employment in the United States required specialized knowledge; or (3) that the U.S. petitioner was doing business as required by the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner seeks to clarify conflicting evidence in the record, and submits a brief in support of its position.

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.

The first issue in this matter presents two related, but distinct, issues: (1) whether the beneficiary gained specialized knowledge during his employment abroad and was employed in a specialized knowledge position; 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.

In a letter dated July 12, 2005, the petitioner explained that the purpose of the beneficiary's transfer to the United States was to serve in the position of quality manager, which included the job of sales engineer. With regard to the beneficiary's qualifications, the petitioner stated that he had obtained a Bachelor of Commerce from Yokohama College of Commerce in March 1998. It further stated that after graduation, the beneficiary began his employment with the foreign entity, and since 2004, he had served in the position of assistant manager of the petitioner's quality assurance section. His duties in this position included:

1. Have meetings with customers as to the critical point of the products.
2. Prepare the documents concerned with products quality[.]
3. Various Testing to supply suitable products to meet customers' standard and requirements and specifications[.]
4. Take measures at the time of having nonconforming product[s].
5. Demonstrate and explain product to customer representatives, such as quality managers, engineers and other professionals.

* * *

6. Review customer documents to develop and prepare cost estimates or projected production increases from use of proposed equipment.

With regard to his proposed duties in the United States, the petitioner stated that they would include the following:

1. Provide support and knowledge regarding quality to the [petitioner's] marketing efforts in the [United States].
2. Have meetings with customers as to the critical point of the products.

* * *

3. Prepare the document concerned with quality assurance.

* * *

4. Testing to supply suitable products to meet customers' requirements and specifications.
5. Take measures at the time of having nonconforming product.

* * *

6. Provide technical services to clients relating to quality, use, and maintenance of our products.
7. Demonstrate and explain product to customer representatives, such as managers and executives, engineers, and quality professionals.
8. Review customer's blueprint and documents to develop and prepare cost estimates.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge or that the beneficiary would be employed in a qualifying specialized knowledge position. Consequently, a detailed request for evidence was issued on September 1, 2005, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field.

The petitioner responded on September 20, 2005. In response to the director's request, the petitioner provided a lengthy but vague explanation of the petitioner's need for a "quality specialist" and provided the following additional details with regard to the duties of such a specialist:

1. Meeting with client at the time of quotation submission.

* * *

2. Meeting with client at the time of submission of the first product.

* * *

3. Assure quality after starting production and mass production.

* * *

4. Regular meeting with Manufacturing Department and Quality Assurance Department of [foreign entity].

* * *

5. Take care of issue relating to design/engineer change.

* * *

6. Other skill[s, including m]easurement technique of product [and] quality improvement technique[.]
7. Skill relating to sales[.]

The petitioner further clarified that 80% of the beneficiary's time would be devoted to quality and sales engineer duties, whereas the remaining 20% would be devoted to financial management and general affairs.

On October 7, 2005, the director denied the petition. The director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the proposed position required specialized knowledge. Specifically, the director noted that the beneficiary's duties appeared to more akin to those of a salesperson than those of a person possessing specialized knowledge. The director also noted a discrepancy between the petitioner's claim that the beneficiary is a quality manager, versus the organizational chart that lists him as an assistant manager. On appeal, the petitioner claims that the beneficiary's services are critical to the petitioner's continued business expansion.

On review, the record does not contain sufficient evidence to establish that the beneficiary was employed abroad in a specialized knowledge capacity.

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) and (iv). As required in the regulations, the petitioner must submit a detailed description of the services performed and to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner provided a vague description of the beneficiary's employment in the foreign office and his responsibilities as a manager in the quality assurance department. Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained managers or sales engineers in the field, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. Despite the petitioner's detailed discussion of the beneficiary's role in the foreign entity and his proposed role in the United States, the record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon, special, and/or more advanced than similarly trained professionals in the field.

For example, in response to the director's request for evidence, the petitioner re-submitted general statements regarding the beneficiary's duties, but did not discuss what specific skills, training, or qualities set the beneficiary apart from other employees of the petitioner. There is no claim that the beneficiary possesses specialized knowledge of the petitioner's processes, procedures, or applications. Furthermore, the petitioner provides no evidence or discussion of any training received by the beneficiary. More importantly, however, is the fact that no specific information regarding the manner in which the beneficiary allegedly obtained specialized knowledge was provided.

There are two main problems with the evidence. First, the petitioner provides a description of the beneficiary's duties which suggests he is more akin to a salesperson than a specialized knowledge worker. Despite being afforded a chance to supplement the record in response to the request for evidence, the petitioner provides no documentation of any training or hands-on experience the beneficiary has had in sales engineering or quality assurance, which would render this knowledge as specialized and uncommon. Second, and most importantly, the petitioner's focus is on the sales engineering functions and customer

interaction and makes no mention or connection of why the beneficiary's knowledge of the petitioner's quality assurance department would distinguish the beneficiary from other similarly employed persons with the petitioner or in the industry. Although the beneficiary has worked for the petitioner since 1998, there is no evidence to show that his training or knowledge differs from any other sales engineer with the same amount of experience.

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 failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his work with the petitioner abroad and that this knowledge was uncommon and distinctive from the knowledge and training of his colleagues. No documentation was submitted that distinguishes the beneficiary from other quality assurance managers or sales engineers in the industry. Also, the petitioner failed to submit any evidence of what other similarly-trained persons under its employ do on a daily basis. Finally, no evidence of training exclusively offered to the beneficiary and other key personnel was provided, thereby rendering it unlikely that the beneficiary is one of only a few employees that is capable of working as a quality manager in the United States.

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, both prior to adjudication and again on appeal, that the beneficiary possessed specialized knowledge at the time of filing and thus was employed in a qualifying capacity abroad. 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

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

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 a salesperson, 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 an educated and/or 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. What remains unclear is why the beneficiary's knowledge is so specialized and unique, as alleged by the petitioner, despite the fact that there is no evidence that the beneficiary received any unique training or experience that his colleagues and fellow employees did not. It is not unreasonable, therefore, to conclude that other similarly trained persons, with a Bachelor in Commerce, would have achieved or would achieve the same level of knowledge as the beneficiary by simply working for the petitioner for an undetermined period of time.

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 main argument that the beneficiary's knowledge is more advanced than other engineers in the field is based on the beneficiary's experience, specifically his seven years working for the petitioner. Again, the petitioner has not provided any information pertaining to the exact day-to-day duties of the beneficiary as compared to the daily duties of other similarly-employed persons, both working for the petitioner and in the industry in general. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of its other employees. Moreover, there is no independent evidence corroborating the claims of the petitioner. There is no evidence in the record to suggest that a similarly-educated person with experience working for the petitioner or a similar company could not perform the position offered to the beneficiary. This lack of tangible evidence makes it impossible to classify the beneficiary's knowledge as special or 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.

In addition, although a limited discussion of the petitioner's products and services is submitted, the description provided is inadequate, 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 and thus cannot be employed in the United States in a specialized knowledge position.

The second issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

In this matter, the petitioner claims that it imports and sells products manufactured by the foreign entity. According to the record, it currently employs only one person. With the petition, the petitioner submitted a "Warehousing Agreement" which indicates that the petitioner, on behalf of Sanyo Laser Products, will store, handle, and ship goods as necessary.

In the request for evidence issued on July 12, 2005, the director requested evidence to show that the petitioner was engaged in the regular, systematic, and continuous provision of goods and services. In response, the petitioner claimed it was selling parts for automobiles and submitted what it claimed were purchase orders and invoices. The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business.

On review of the evidence submitted, the AAO concludes that the petitioner failed to demonstrate that it was doing business. Although the petitioner claims that it submitted documentary evidence establishing its business operations, the documents submitted appear to be shipping records, in which the petitioner is responsible for transporting goods between third parties. Based on this limited information, it cannot be concluded that the petitioner was doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

In general terms, the petitioner claims to be an import company which will sell the products of its foreign parent. In the course of examining whether a petitioning company has been doing business as an import and export firm, it is reasonable to request that the company produce copies of documents that are required in the daily operation of the enterprise due to routine regulatory oversight. Upon the importation of goods into the United States, the Customs Form 7501, Entry Summary, serves to classify the goods under the Harmonized Tariff Schedules of the United States and to ascertain customs duties and taxes.

The Customs Form 301, Customs Bond, serves to secure the payment of import duties and taxes upon entry of the goods into the United States. According to 19 C.F.R. § 144.12, the Customs Form 7501 shall show the value, classification, and rate of duty for the imported goods as approved by the port director at the time the entry summary is filed. The regulation at 19 C.F.R. § 144.13 states that the Customs Form 301 will be filed in the amount required by the port director to support the entry documentation. Although customs brokers or agents are frequently utilized in the import process, the ultimate consignee should have access to these forms since they are liable for all import duties and taxes. Any company that is doing business through the regular, systematic, and continuous provision of goods through importation may reasonably be expected to submit copies of these forms to show that they are doing business as an import firm.

In this matter, no such documents have been submitted. Furthermore, based on this lack of evidence, it appears that the petitioner is merely an agent for the foreign entity, and is not doing business on its own as required by the regulations. For this additional reason, the petition may not be approved.

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.