U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: LIN 02 196 50299 Office: NEBRASKA SERVICE CENTER Date: OCT 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:

[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, Nebraska Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion and affirm its previous decision.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, an Oregon corporation, states that it is engaged in the purchase and export of previously owned computers. The petitioner claims to be a subsidiary of Elis Computers Ltd., located in Russia. The petitioner seeks to employ the beneficiary as the export manager of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed by the petitioner in a capacity involving specialized knowledge or in a managerial capacity.

The AAO dismissed the petitioner's subsequent appeal, affirming the director's finding that the petitioner had not demonstrated that the beneficiary possesses specialized knowledge or that he would be employed in a position involving specialized knowledge. The AAO withdrew the director's comments addressing whether the beneficiary would be employed in a managerial capacity.

Counsel for the petitioner filed this timely motion to reconsider challenging the AAO's review of the record of proceeding, and its analysis and interpretation of the beneficiary's job duties and claimed specialized knowledge. Counsel submits a brief and documentary evidence in support of the motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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) 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 regulation at 8 C.F.R. § 214.2(l)(3)(vi) also provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

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 nonimmigrant visa petition was filed on May 28, 2002. In an appended letter dated May 24, 2002, the petitioner stated that the beneficiary will perform the following duties as the U.S. company's export manager:

> In this position he will be responsible for export of computers and notebooks to the parent company in Russia. He will communicate with the parent company and U.S. suppliers to coordinate and arrange the export sale of computers and notebooks to Russia. He will interact with sales personnel and distributors in Russia. He will represent the Company in contract negotiations, resolve problems with Russian customers, and arrive at mutual agreements. He will be responsible for sales forecasting, accounting, preparing and examining invoices, sales confirmations and shipping documents for export orders to Russia. Moreover, [the beneficiary] will be responsible for developing a market for these products in the United States.

The petitioner noted that the beneficiary had been employed by the foreign entity as a sales manager from January 1999 through August 2000, "during which time he has developed proprietary knowledge with regard to Company's products and the industry in which the Company operates." The petitioner described the beneficiary's previous position as follows:

> Responsibilities include managing all aspects of the company's business related to the importation of computers and notebooks from the U.S. to Russia. Manage all functions related to the importation of company's products. Oversee the shipment of products and overall business administration.

Finally, with respect to the beneficiary's specialized knowledge qualifications, the petitioner stated:

> [The beneficiary] is uniquely qualified to contribute to our Company his knowledge and expertise of Company's product line in the Russian market developed with our parent company. He possesses knowledge that can only be gained through extensive prior experience with the parent Company. The specialized knowledge gained in Russia is extremely valuable to our Company.
>
> [The beneficiary's] understanding of the Russian market and consumers demand, make him a unique candidate for this position. Without the advanced level of knowledge of the processes and procedures of the Company that [the beneficiary] developed as the Sales Manager, the position in question cannot be filled adequately.
>
> [The beneficiary] is amply qualified for the position of Export Manager. He has been working for the parent company for over 1 year. Moreover, he has received a Bachelor's degree in

> Accounting and Auditing from the State Academy of Economics and Law in Russia and a Post-Baccalaureate degree in Information Systems from Portland State University.

The petitioner submitted a "work certificate" from the foreign entity which states that the beneficiary was employed as its sales manager from January 15, 1999 through August 28, 2000. The petitioner provided a copy of the beneficiary's resume which indicates that he was employed as sales manager with the foreign entity from January 1999 through August 2000, where he was responsible for sales management, contractual negotiations with key customers and order processing. According to the beneficiary's resume, he was enrolled at the State Academy of Economics and Law in Russia from September 1995 through June 2000.

The petitioner did not submit any supporting documents to substantiate its claims that specialized knowledge is required to fulfill the duties of the proffered position, nor evidence to establish that the beneficiary possesses specialized knowledge.

In a request for evidence, dated August 5, 2002, the director instructed the petitioner to provide additional evidence to establish that the beneficiary possesses specialized knowledge of a 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 director also requested more detailed descriptions of the beneficiary's previous and proposed duties, and evidence to establish that the beneficiary has at least one continuous year of full-time employment abroad with the petitioner or with the petitioner's foreign parent, branch, affiliate or subsidiary within the three years immediately prior to the filing of this petition.

In an October 24, 2002 letter, counsel for the petitioner stated that the beneficiary possesses specialized knowledge pursuant to section 214(c)(2)(B) of the Act because he "has a special knowledge of the company product and its application in international markets." Counsel further explained the beneficiary's qualifications as follows:

> The company's Export Manager position requires special knowledge of the intricacies of the Russian computer market. The Export manager is also expected to implement the parent company's business model and structure while setting up the foreign branch to facilitate the communication process and interrelation between companies. This involves a wide range of processes, criteria, specific strategies, cultural peculiarities, knowledge and skill, including: knowledge of the specifics of the Russian computer market, knowledge of the required product, quality control and strict set of quality criteria, knowledge of the working environment established in the parent company, managerial skills, price fluctuations on the Russian market, business strategy and growth expectations, existing contacts with Russian partners and suppliers, and fluency in Russian and English languages.

The petitioner also submitted an October 23, 2002 letter from the foreign entity's president, who stated that the beneficiary, in his position with the foreign entity, "received diversified training while performing the following duties: sales management, contractual negotiations with key customers and suppliers, customer service supervising, human resources management, assisting the chief accountant, researching various product and distribution issues, and wholesale division sales." The foreign entity's president further stated that the

beneficiary's proposed duties for the petitioner will include: branch operations management, outsourcing the product for the parent company, contractual negotiations, retail and wholesale sales management, shipping products to Russia, establishing an internet presence, hiring and training staff, and maintaining high quality customer service.

The director denied the petition on February 28, 2003, concluding that the beneficiary would not be employed in a specialized knowledge capacity. The AAO dismissed the petitioner's subsequent appeal on December 8, 2006. In its decision, the AAO noted that the beneficiary's proposed job duties are typical of those performed by any employee responsible for opening a new office. Although the petitioner asserted that the position requires knowledge of "processes, criteria, specific strategies," "the working environment established in the parent company," and familiarity with "Russian partners and suppliers," the AAO noted that the petitioner offered no explanation or documentary evidence related to these strategies, processes, criteria or environment. The AAO further noted that, while the petitioner referred to the beneficiary's proprietary knowledge of the foreign entity's "product line" and its application in international markets, both companies were engaged in purchasing and reselling previously owned computers manufactured by well-established companies and did not have a "product line." The AAO found that the knowledge of PC and notebook hardware and software configurations is widespread in the petitioner's industry, and the petitioner's claims that the beneficiary's knowledge was specific to the "intricacies of the Russian computer market," was, again, not supported by documentary evidence. The AAO also observed that the evidence submitted demonstrated that the U.S. company is purchasing computers in the United States and re-selling them to a primarily U.S.-based clientele, while exports to Russia did not appear to be the primary focus of the business.

In addition, the AAO found that the petitioner failed to substantiate its claim that the beneficiary was "specifically trained to open the U.S. branch utilizing the knowledge and skills gained during his employment and training with the parent company's products, processes and procedures," that he was given substantial assignments with the foreign entity, or that his claimed specialized knowledge could only be gained with the foreign entity. The AAO concluded that based on the lack of explanation and supporting evidence, it was impossible to determine exactly what "special" or "advanced" knowledge the beneficiary possesses or how he acquired it.

Finally, the AAO determined that the petitioner failed to establish that the beneficiary even possessed a full year of continuous full-time employment abroad with the foreign entity within the three years preceding the filing of the petition, based on: (1) the petitioner's failure to provide additional documentary evidence to establish the year of employment after the director found a one-sentence "Work Certificate" from the foreign entity to be insufficient; and (2) evidence in the record indicating that the beneficiary attended the State Academy of Economics and Law from September 1995 through June 2000. As the beneficiary's claimed period of employment abroad was from January 1999 through August 2000, the AAO questioned whether he was employed by the foreign entity on a full-time basis.

In support of the instant motion, filed on January 8, 2007, counsel for the petitioner submits a brief in which she challenges the AAO's findings on several grounds. Counsel first contends that the beneficiary meets the requirements of a specialized knowledge employee based on "over five years with the petitioner and its foreign affiliate," noting that this experience, "and the training he has received during that time, gives him an intimate and thorough understanding of the activities, products and procedures used by the petitioner."

Counsel claims that the beneficiary's knowledge of the petitioner's "processes, procedures, and equipment" is substantially different and advanced related to others in the field, due to his "experience and training," including "experience on the use of petitioner's business as applied in the U.S."

As noted in the previous AAO decision, the record contains no explanation or evidence related to any training received by the beneficiary, and no evidence related to the "processes and procedures" used by the petitioner or the related foreign entity. It is not sufficient for counsel to vaguely refer to processes and procedures without actually identifying what these procedures are and explaining their significance. Specifics are clearly an important indication of whether a beneficiary's duties encompass specialized knowledge; otherwise meeting the definition would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The record contains no documentary evidence or explanation regarding the beneficiary's training or experience, other than the foreign entity's statement that the beneficiary received "diversified training" and gained experience in the areas of sales, supplier negotiations, customer service, human resources, accounting, product research, and "distribution issues."

Counsel's claim that the beneficiary "has over five years with the petitioner and its foreign affiliate," is also not persuasive. The beneficiary's experience gained with the U.S. entity subsequent to the filing of the petition is not eligible for consideration in this matter and will not establish that the beneficiary's knowledge is "advanced" based on mere length of service. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The record indicates that the beneficiary's experience at the time of filing was limited to one year and eight months as a "sales manager" with the foreign entity, which operates retail computer stores and has a wholesale division. A detailed description of his duties with the foreign entity has not been provided, and the AAO notes that the position of "sales manager" does not even appear on the foreign entity's organizational chart submitted in response to the request for evidence. The company appears to employ retail store managers, senior salespeople, salespeople, and a wholesale department manager, and thus it is not clear what the beneficiary's exact role within the company might have been. The AAO cannot find that the beneficiary gained specialized knowledge as a result of his employment with the foreign entity without a clear description of what duties he performed, what experience he gained and what training he received.

As noted above, the AAO questioned whether the beneficiary possessed the one year of full-time employment with the foreign entity within the three years preceding the filing of the petition, based on the petitioner's failure to provide documentary evidence of his employment as requested by the director, as well as evidence in the record that the beneficiary was attending the State Academy of Economics and Law from September 1995 through June 2000. On appeal, counsel asserts that the beneficiary completed his degree while working full-time, and participated in a certificate program conducted in Russia by Portland State University from January 1999 through June 2000. The petitioner submits a transcript for this eleven-course program.

The AAO acknowledges that the beneficiary could have completed the certificate program while working full-time, but notes that the director specifically requested evidence of the beneficiary's qualifying year of full-time employment abroad. The letter from the foreign entity did not specify whether the beneficiary was employed in a full-time capacity, and the record contains no other documentary evidence, such as payroll

records, to establish that the beneficiary's employment was on a full-time basis. 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)).

Counsel next questions the AAO's determination that specialized knowledge is not required for the position because the petitioner is purchasing and selling used equipment in the U.S. market. Counsel asserts that the petitioner has "diversified" by selling in the U.S. market, but notes that the petitioner is primarily engaged in exporting U.S. computers to the Russian market. Counsel claims that the business requires "specialized knowledge of what the Russian market requires, exporting requirements, and exporting procedures." Counsel further asserts that "with contracts worth over $100,000, knowledge of the market and the customer's requirements and the exporting processes of the petitioner are essential." In addition, counsel asserts that the beneficiary performs "the key services and functions of the petitioner, namely procuring properly configured computers and notebooks in the U.S. and exporting them to Russia." In support of these assertions, counsel has submitted contracts and invoices for goods sold to Russian customers during the months of October through December 2003 for sales ranging between $55,000 and $115,000, as well as invoices for goods exported to Russia during the latter half of 2001 and early 2002, for sales transactions valued at less than $3,000.

The evidence submitted on motion shows a substantial increase in the value of sales transactions with Russian customers when compared to the evidence submitted at the time the petition was filed in May 2002. However, counsel has not persuaded the AAO that its determination was incorrect based on the evidence presented at the time of filing, which included purchase orders, invoices and shipping documents showing that the U.S. company was primarily engaged in purchasing used computers in the United States and re-selling them to a primarily U.S.-based clientele. Such a conclusion was supported by the petitioner's reference to its plans to establish an internet presence in the United States, as well as retail and wholesale operations. The petitioner does not object to the AAO's conclusion that knowledge of foreign operating conditions is not required to purchase and re-sell computers in the United States market.

Therefore, while the invoices submitted on appeal indicate that the U.S. company was regularly exporting substantial shipments of computers to Russia 18 to 20 months after the filing of the petition, the evidence is not probative of the petitioner's and beneficiary's eligibility as of the date of filing. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006)(citing *Matter of Cerna*, 20 I&N Dec. 399, 402 n.2. (BIA 1991). A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Counsel's final argument is that the AAO and the director improperly determined that the proposed position does not require specialized knowledge because the petitioner does not produce a product. Counsel explains as follows:

> The company has a product, the computers it exports to Russia. The company does buy computers from well-established U.S. companies, but that does not mean the computers are standard equipment. Computers may be configured and modified for individual users or markets. In a sense, the petitioner is producing a product, by ordering computers with configurations unique to the Russian market.
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> * * *
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> Further, the Immigration and Nationality Act and corresponding regulations do not exclude companies who do not produce a product from petitioning specialized knowledge employees. The regulations define specialized knowledge as "special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures." 8 C.F.R. § 214.2(l)(1)(ii)(D). Clearly, [the beneficiary] possesses advanced knowledge of the petitioner's processes and procedures, as well as special knowledge regarding the petitioner's product and its application in the international markets of the U.S. and Russia.

Counsel references a letter from one of the petitioner's suppliers, dated October 15, 2002, who states that the beneficiary "oftentimes. . . requests specific configurations that is [sic] applicable to the Russian domestic market," and who attests to the beneficiary's "unique and specialized knowledge of the Russian market."

Contrary to counsel's assertion the AAO did not dismiss the appeal in whole, or in part, because the petitioner does not produce a product. Rather, the AAO rejected the petitioner's specific claim that the beneficiary possesses specialized knowledge of a product line that is specific and proprietary to the petitioner and its parent company, and its claim that knowledge of such products could only be gained with the foreign entity. The AAO's analysis of this claim was as follows:

> Neither the foreign entity nor the U.S. entity produces a product. Both companies are in the business of purchasing and re-selling previously owned computers manufactured by well-established companies in the industry. Knowledge of common PC and notebook software and hardware configurations is clearly widespread throughout the computer re-sale market and is not specific to the petitioner's organization. The petitioner attempts to distinguish the beneficiary's knowledge as special by emphasizing the "intricacies of the Russian computer market," noting that the market demands "specific configurations," "peculiar" packaging requirements, and specific consignment documentation. The petitioner has not attempted to explain or document the claimed "intricacies" or "peculiarities" of the Russian market, nor explained how knowledge of the market would amount to specialized knowledge specific to the petitioning organization. Nor has the petitioner supported its implausible claim that knowledge of the Russian computer market can only be gained with the foreign entity. 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.

The arguments and evidence provided on motion do not address the AAO's specific reasons for rejecting the petitioner's claims. The petitioner's claim that the export of used computers to the Russian market requires a whole body of specialized knowledge related to technical configurations, documentation requirements, and special export, packaging and customs handling processes that are somehow specific to the petitioner and its parent company remains unsubstantiated. The petitioner still has not clarified or documented the particular "unique" configurations that are specific to the Russian market, or explained why anyone familiar with computer hardware and software could not request such configurations from suppliers. It seems reasonable that the Russian buyers would submit specific requests to the petitioner identifying their software, hardware and peripheral requirements. The record contains no explanation as to how specialized knowledge is required to ensure that the U.S. suppliers "configure and modify" equipment for the Russian market. 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary possesses specialized knowledge or that he would be employed by the U.S. company in a position requiring specialized knowledge.

Finally, the AAO notes for the record that a search of the Oregon Secretary of State's public Internet site (http://egov.sos.state.or.us) shows the petitioner's corporate status is "inactive" based on an administrative dissolution of the company on November 19, 2004. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer that is doing business. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*).

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 AAO's decision dated December 8, 2006 is affirmed.