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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 054 50260 Office: TEXAS SERVICE CENTER

Date: DEC 27 2006

IN RE: Petitioner:
Beneficiary:



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

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 appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of environmental educator/consultant 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 petitioner, a Florida limited liability company, is engaged in the business of environmental education and consulting. The petitioner claims to be an affiliate of the foreign company, [REDACTED] located in Venezuela. The petitioner seeks to employ the beneficiary for a period of one year to open a new office in the United States.

On April 7, 2005, the director denied the petition, concluding that the petitioner failed to establish that the position offered to the beneficiary requires someone with specialized knowledge or that the beneficiary has such knowledge.

The petitioner subsequently filed an appeal on May 10, 2005. On the Form I-290B Notice of Appeal, the petitioner asserts that the beneficiary has specialized knowledge since the petitioner established four aspects of his advanced knowledge. The petitioner's statement on the Form I-290B is verbatim from a letter dated March 18, 2005, previously submitted with the original petition in response to the director's request for additional evidence. In addition, the petitioner states the following in a letter dated June 8, 2005:

Certainly by his performance like general manager, we have chosen [the beneficiary] to initiate our operations in the United States. After a wide trajectory of work in the different areas from our company, [the beneficiary] developed an advanced knowledge of the processes and procedures of our business, which describes him like a worker with specialized knowledge, according to our humble opinion and the one of our lawyer.

We know that [the beneficiary] qualifies to obtain this visa in its category of L-1A, but our lawyer indicated us [sic] that being a new office; and not having employees we did not meet to the [sic] requirements to apply by the beneficiary of this visa in category L-1A, and we had to make the request for the L-1B.

We made an effort to understand in detail the meaning and the interpretation of this law and memorandum; perhaps, we did not have the capacity to explain it clearly.

The petitioner submits copies of previously submitted documents in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. The petitioner has neither acknowledged nor submitted evidence to overcome the specific deficiencies found by the director. 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)).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job 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.

Although the petitioner repeatedly asserts that the beneficiary's proposed U.S. position requires specialized knowledge, the petitioner has not adequately articulated sufficient basis to support this claim. The petitioner has provided a description of the beneficiary's proposed responsibilities as an environmental educator/consultant, however, the description does not mention the application of any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other environmental consultants employed by the petitioner or the environmental industry at large. Going on record without 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 petitioner focuses on the beneficiary's thirteen years experience with the foreign entity and states that the beneficiary has gained an advanced knowledge of the company's clients, the client's needs and the processes and procedures followed by the company. However, the petitioner has not explained how these processes and procedures differ from other companies that provide similar environmental consulting services. Based upon the lack of supporting evidence, the AAO cannot determine whether the U.S. position requires someone who possesses knowledge that rises to the level of specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

As noted by the director, the in-house training completed by the beneficiary appears to have consisted of a ten month "Field Technicians Training" program the beneficiary completed in 1991, and thirteen years of on the job practical experience. The training course does not appear to be training for a proprietary or specific application of the company that other peers in the industry could not learn. Although the beneficiary has several years of experience with the foreign company, the petitioner has not submitted sufficient evidence to indicate that this experience rises to the level of specialized knowledge and instead may be experience that is similar to any employee who has worked in a similar role in the industry for several years.

Furthermore, the petitioner repeatedly asserts throughout the record that the beneficiary has specialized knowledge since the beneficiary "knows the conditions and characteristics of the service that is provided on an annual basis to each client. Therefore, he knows the context of the operations of the client of [the

foreign company]: ecological characteristics, geographic location and socioeconomics aspects linked to his activities." Although this is true, it is unclear how the specific knowledge of the clients located in Venezuela will assist the beneficiary in the proposed position in the United States where his duties will consist of marketing the business, locating new clients and negotiating new contracts. Thus, it is not clear how the beneficiary's knowledge of the current clients of the company will assist him in performing the proposed duties in the United States. 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 AAO does not dispute the likelihood that the beneficiary is a skilled environmental educator/consultant who understands industrial environmental needs, and is able to apply his knowledge within the context of the foreign entity's specific project-oriented environment. However, it is 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*, 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." 18 I&N Dec. at 52. 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.

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*

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 remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification. The AAO supports its use of *Matter of Penner*, as well in offering guidance interpreting "specialized knowledge." Again, the Committee Report does not reject the interpretation of specialized knowledge offered in *Matter of Penner*.

General, “[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning.” 745 F. Supp. at 15. 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 the employee and the remainder of the petitioner’s workforce. While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). 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.” *Matter of Penner, 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)).

The legislative history of the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. See *1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, the director properly concluded that the beneficiary has not been employed abroad and would not be employed in the United States in a capacity involving specialized knowledge.

Beyond the decision of the director, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). According to the Form I-129, the petitioner indicated that the foreign entity and the U.S. entity are affiliates. The owners of the foreign entity are two individuals who own 50% each and the same two individuals own 40% each of the U.S. entity. In *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm. 1981), the court determined that a majority stock ownership in both companies is sufficient for the purposes of establishing a qualifying relationship. In the *Tessel* decision, the beneficiary solely owned 93% of the foreign corporation and 60% of the petitioning organization, thereby establishing a “high percentage of common ownership and common management” It was further determined that “[w]here there is a high percentage of ownership and common management between two companies, either directly or indirectly or through a third entity, those

companies are 'affiliated' within the meaning of that term as used in section 101(a)(15)(L) of the Act." *Id.* at 633. The facts in the present matter can be distinguished from *Matter of Tessel* because no one shareholder holds a majority interest in either corporation. Two individuals own 50% each of the foreign entity and the same two individuals own 40% each of the U.S. entity, which without further documentation do not appear to be majority ownership or control of the foreign entity and the U.S. entity. The record, therefore, fails to demonstrate that there is a high percentage of common ownership and common management between the two companies.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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).

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.