

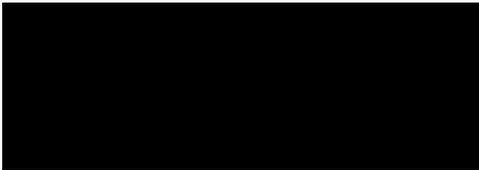
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U.S. Citizenship
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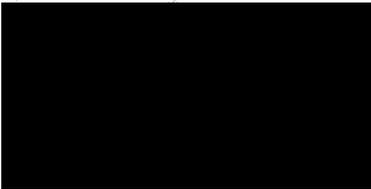
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FILE: EAC 03 077 50680 Office: VERMONT SERVICE CENTER Date: AUG 01 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

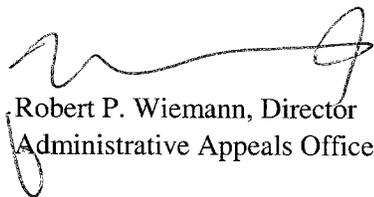
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

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

According to the evidence contained in the record, the petitioner was established in the United States in 2001 and claims to be an importer and distributor of leather goods. The petitioner claims to be a subsidiary of Fine Manufacturing Co., located in Sialkot, Pakistan. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its president for a period of three years, at a yearly salary of \$25,000.00. The director determined that the evidence submitted was insufficient to establish that the beneficiary had been or would be employed by the U.S. entity in a specialized knowledge capacity or that the position being offered to the beneficiary requires the services of an individual possessing specialized knowledge. The beneficiary was initially granted a one-year period of its stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

On appeal, counsel disagrees with the director's decision and states that the evidence is sufficient to establish that the beneficiary has been and will be employed in a specialized knowledge capacity.

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)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 (1)(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)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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 attached to the petition, the petitioner initially described the beneficiary’s job duties as: “specialized knowledge of production and export of leather goods from Pakistan to the U.S. and in other international markets, as well as an advanced level of knowledge of the processes and procedures of the company.”

In a request for evidence, dated February 12, 2003, the director requested that the petitioner provide evidence to support: (1) that the beneficiary’s knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the beneficiary’s field of endeavor, or that his/her advanced level of knowledge of the processes and procedures of the company distinguish him/her from those

with only elementary or basic knowledge; (2) that the beneficiary possesses knowledge that is valuable to the employer's competitiveness in the market place; (3) that the beneficiary is qualified to contribute to the United States employer's knowledge of foreign operating conditions as a result of special knowledge not generally found in the industry; (4) that the beneficiary has been utilized abroad in a capacity involving significant assignments which have enhanced the employer's productivity, competitiveness, image, or financial position; (5) that the beneficiary possesses knowledge, which normally can be gained only through prior experience with that employer; (6) that the beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual.

The director also requested that the petitioner submit evidence of the U.S. entity's staffing and personnel structure; evidence describing a typical work week for the beneficiary; evidence identifying the manner in which the beneficiary has gained his specialized knowledge including classroom and on-the-job training courses completed; and a statement discussing the type of training needed for an individual to be able to adequately perform the duties of the proposed position.

In response to the director's request for evidence on the subject, counsel stated in part:

[The beneficiary] possesses specialized knowledge which is not general knowledge held commonly throughout the industry. [The beneficiary] possesses specialized knowledge of the many different kinds of leather....Additionally, he possesses specialized knowledge of the use of different kinds of leather for making different products, such as jackets, belts and gloves. He possesses specialized knowledge of the different materials that go into making leather goods, and the percentage of leather in each different product, and the percentage of other materials, and the effect on price. Additionally, [the beneficiary] has specialized knowledge of the different freight mechanisms, and their effect on price.

Counsel asserted that the beneficiary gained his specialized knowledge while working in Pakistan for the foreign entity. Counsel also asserted that the beneficiary provides his employer with specifications of leather products personally ordered, and researches market trends and leather fashions in order to advise the company on the production of products in fashion. Counsel further asserted that the leather and garment manufacturing process is different in Pakistan than in other countries because it is labor intensive rather than mechanized, and thus has its own individual processes and procedures. Counsel inferred that the beneficiary, unlike any other worker in the United States, would be able to communicate with the overseas company because the personnel abroad spoke only Urdu.

Counsel contended that the beneficiary received on-the-job training, in that he was employed in the company's purchasing and marketing departments and was responsible for purchasing various kinds of leather to make leather goods and for marketing those goods. Counsel also contended that from July of 1995 to September of 1998 the beneficiary was a partner and marketing manager for Tahir Sports Trading Company where he was responsible for purchasing leather finishing and processing chemicals, supervising two employees, and importing and exporting sporting goods. Counsel asserted that in October of 1998 the beneficiary became managing partner of the foreign entity where he oversaw the work of the other four partners engaged in company exports, administration, production and manufacturing, and purchasing of raw materials. Counsel noted that it took approximately two years to learn the basics of leather manufacturing and processing, and five to seven years to work independently without supervision in the field.

Counsel described the beneficiary's position in the United States as:

...[The beneficiary] spends about 30% of his time meeting with clients, where he discusses the different materials, prices, and products, and showing samples. He spends about 20% of his time phoning potential and existing clients. He spends about 20% of his time surveying the market and watching for new fashion trends. He contacts the parent company in Pakistan at night, because of the time difference. He spends about 25% of his time in contacts [sic] with the parent company, explaining customer requests and manufacturing requirements. He spends about 10% of his time on warehouse and shipping, and about 15% of his time on other administrative duties.

The director determined that the beneficiary was the president and sole employee of the U.S. entity and therefore, performed all of the duties involved in running a small business. The director noted that the majority of duties performed in running the business were non-managerial in nature and did not require specialized knowledge. The director stated that the petitioner had failed to submit evidence to substantiate its claim that the beneficiary possessed specialized knowledge that is not general knowledge held commonly throughout the industry. The director further stated that the petitioner's contention that the beneficiary possessed knowledge of the different types of leather and other materials that go into the making of leather goods has no basis in fact because the petitioner had failed to show that the leather materials used or produced by the foreign entity were any different than those used throughout the industry. The director also determined that the petitioner has failed to demonstrate why specialized knowledge of these products and processes would be necessary to sell leather products. The director noted that the beneficiary did not design the leather products but simply sold the items once shipped to the United States. The director stated that the petitioner has not demonstrated that others employed in the leather industry could not acquire knowledge in a relatively short period of time sufficient to convey a customer's request for specialty leather items to the company. The director concluded that only a few of the beneficiary's duties described require knowledge of leather products beyond an elementary level; and that those that do require a familiarity with leather materials and manufacturing products do not require specialized knowledge.

On appeal, counsel argues that substantial evidence has been submitted to show that the beneficiary possesses special and advanced knowledge far greater than the general knowledge commonly held throughout the leather industry. Counsel argues that the prior L-1B approval is prima facie evidence of the requirements for such status having been met in the instant matter. Counsel refers to the 1994 James Puleo Memo and other precedent decisions to substantiate her claim.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. §214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.* In the present matter, although the petitioner has provided a description of the beneficiary's current and intended employment it has failed to sufficiently document how the beneficiary's performance of the current and proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary has noteworthy and in-depth knowledge of the production processes and import and export of leather goods. Counsel asserts that the beneficiary possesses specialized knowledge as a result of his five years of work experience abroad and three plus years experience working for the foreign entity, including a period in which he was responsible for all policies and practices of the company, including personnel, purchasing of raw materials for leather goods, manufacturing and quality control, export, budgeting and finance. Counsel however offers no explanation as to the educational or work qualifications necessary for a managing partner, or the detailed duties of the position. Nor does the petitioner

provide documentation that the beneficiary received training or work assignments focused specifically on the production, import and export of leather goods. While the petitioner and counsel assert that the beneficiary possesses an advanced level of knowledge of the processes and procedures involved in the manufacture and sale of leather goods by the petitioning entities, the lack of specificity pertaining to the beneficiary's work experience and training, particularly in comparison to others employed by the petitioner and in this industry, fails to distinguish the beneficiary's knowledge as specialized. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Further, based upon the invoices and company brochures submitted into evidence, the leather goods are manufactured elsewhere and shipped to the U.S. entity as a finished product, in bulk.

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' product or service, management operation, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981)(citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. The evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to sell a specialized product, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

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."

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.

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, counsel has indicated that the beneficiary possesses specialized knowledge in that he has "an expert understanding of the manufacturing processes involved in refining of leather as well as the production and sales of leather goods."

Counsel's expansive interpretation of the specialized knowledge provision would allow virtually any skilled or experienced employee to enter the United States as a specialized knowledge worker. 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). Although the definition of "specialized knowledge" in effect at the time of *Matter of Penner* was superseded by the 1990 Act to the extent that the former definition required a showing of "proprietary" knowledge, the reasoning behind *Matter of Penner* remains applicable to the current matter. The decision noted that the 1970 House Report, H.R. No. 91-851, 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*, supra at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)). Reviewing the congressional record, the Commissioner concluded that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. For the same reasoning, the AAO cannot accept the proposition that any skilled worker is necessarily a specialized knowledge worker.

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)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is

not warranted. The Commissioner emphasized that that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives." There has been no evidence submitted to demonstrate that the beneficiary possesses specialized knowledge or that the job in the United States requires the same.

Beyond the decision of the director, the petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied all of the enumerated evidentiary requirements. The petitioner has not submitted evidence to demonstrate that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G). The petitioner initially claimed in the petition that the U.S. entity was a subsidiary of the foreign entity in that "Fine Manufacturing Co. is the 100% shareholder of Force Trading, Inc." The petitioner submitted copies of the U.S. entity's Certificate of Incorporation, stock certificate number 01, dated August 22, 2001, and IRS Form 1120, U.S. Corporate Income Tax Return for 2001. The Certificate of Incorporation authorizes the issuance of a total of two hundred (200) common shares of U.S. entity company stock. Stock certificate number 01 indicates that 100 shares of common stock were issued to Fine Manufacturing Company. However, the U.S. entity's tax records for 2001 indicate at Schedule E, line 1 that "Hafiz S Iqbal" owns "100.0%" of the company stock, and at Schedule K, lines 5 through 7 it is indicated that no corporation or foreign person owns any of the company's stock. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For this additional reason, the petition may not 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.2nd 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.