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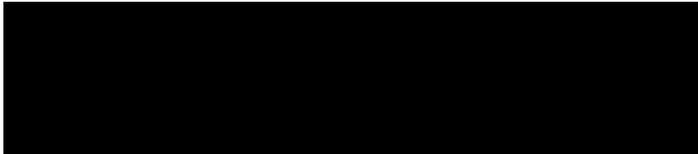
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FILE: SRC 04 032 50574 Office: TEXAS SERVICE CENTER Date: **DEC 01 2005**

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 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 dismissed.

The petitioner is engaged in the business of export and distribution of solar industry products. It seeks to extend the employment of the beneficiary as its president pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The director determined that the petitioner had not established that the beneficiary possesses the requisite specialized knowledge for the intended position.

Counsel for the petitioner filed an appeal, alleging that the director erred in her application of the definition of specialized knowledge in that she ignored the beneficiary's specialized knowledge as relating to international markets referred to in 8 C.F.R. § 214.2 (l)(1)(ii)(D).

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 primary issue in this matter is whether the beneficiary possesses 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.

On the L Supplement to Form I-129, the petitioner stated that the beneficiary has been employed by the foreign entity for twelve years before coming to the United States in 2001. The petitioner further clarified that the beneficiary entered the United States as an L-1A manager/executive in 2001 and was subsequently reclassified as an intracompany transferee with specialized knowledge in 2002. In a letter submitted with the petition dated November 6, 2003, the petitioner described the beneficiary's qualifications as follows:

[The beneficiary] possesses specialized knowledge of the companies [sic] products, services, equipment, and management. It is our company's intention that [the beneficiary] will utilize his knowledge and experience to continue to develop and implement strategies which are compatible with the needs of both companies. He will continue to utilize his specialized knowledge to analyze and meet the demands of the overseas market and will continue to cultivate relationships with vendors and clients. [The beneficiary] will merge the technical and business process of the products by continuing to keep abreast of the ever-changing solar power industry. He will continue to review relevant financial data and analyze the market in order to devise a plan to access the market and gain market share.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge. Consequently, a detailed request for evidence was issued on January 12, 2004, which specifically requested evidence that the beneficiary possesses specialized knowledge of the petitioner'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, and that such knowledge was not general knowledge held commonly through the industry. The director advised that the petitioner should submit the following: (1) evidence relating to the unique methodologies, tools, programs, and/or applications that the petitioner used; (2) an explanation with regard to the equipment, system, product, technique or service of which the beneficiary has specialized knowledge; (3) billing records establishing the length of time the beneficiary worked on specific projects abroad with supporting evidence or contracts from the clients; and (4) evidence establishing the amount of training required to fill the proffered position, as well as a record of the training the beneficiary had received abroad.

The petitioner submitted a detailed response to the director's request. In a letter dated February 19, 2004, the petitioner discussed the field of solar technology, and stated:

Those who possess knowledge of solar powered energy sources, inverters and resistive/inductive devices can not be compared to the normal electrician who works with Alternative Current sources provided by conventional/government sources.

Through his years of experience, the beneficiary has employed the specialized skills and knowledge more akin to that of a solar technology engineer. Installation required the specialized knowledge of separately required panel breakers, [bypassing] equipment which [is] not adaptable and thereby drain solar batteries and the knowledge of adaptable equipment.

Maintenance of systems involved the supervision of technician and engineers, the development and upgrading of preventative maintenance procedures for batteries, inverters and relating equipment, maintaining logs and manuals for testing.

The [t]esting and [r]epair of solar powered systems involves the application of unique methodologies, tools and programs. These include the use of NDT (non-destructive testing) devices such as the "oscilloscope" used to monitor the 3 different forms of electrical waves . . .square wave, modifying sign wave and pure sign wave. Other tests employ the use of the "AMP Meter" which controls the input/output amperage produced by the inverters. "DC power supply" and "Digital Volt" meters are employed to control the voltage. "Lead Welders" are used to fuse connections and "Inductive Motors" are utilized on devices that draw a high surge before stabilizing to normal wattage (required by such devices as water pumps and refrigerators).

Over the past twelve years, the beneficiary has attained specialized knowledge of those devices as aforementioned but more importantly the very special application and employment of these systems to a unique market such as Haiti, when conventional power sources have become even more reliable.

The petitioner also submitted the beneficiary's resume, which indicated that he had served since 1988 as the foreign entity's owner, technical supervisor, and general manager. It further indicated that the beneficiary possessed the equivalent of an Associate's degree in business administration and hotel management, in addition to pursuing several courses in political science and power plant technology. Finally, with regard to his special qualifications, the beneficiary's resume indicated that he had the "ability to install, reprogram, adapt and repair power systems: solar panels/stations, wind energy power systems, inverters, batteries, etc. with full understanding of systems performance and limitations."

On July 13, 2004, the director denied the petition. The director noted that a review of the evidence submitted with the initial petition and in response to the request for evidence did not offset the beneficiary's qualifications from those of any other solar engineer. The director further noted that although the petitioner claimed that the beneficiary had specialized knowledge of NDT (non-destructive testing) devices as well as the ability to perform tests using the AMP meter and controlling voltage with DC power supply and digital volt meters, there was no evidence to show exactly how uncommon this knowledge was.

On appeal, counsel asserts that the director erred in the application of the definition of specialized knowledge. More specifically, counsel asserts that the director ignored the beneficiary's specialized

knowledge as it related to international markets. Although counsel indicated that she would forward a brief to the AAO within thirty days of the filing of the appeal, counsel declined to submit any additional evidence as set forth in her letter dated September 9, 2004.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge.

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, the petitioner provided an abbreviated description of the beneficiary's employment in the foreign entity, his employment in the U.S. entity, and his responsibilities as president of the U.S. entity as well as of a solar engineer. Despite specific requests by the director, namely, whether the beneficiary had worked abroad on specific projects through which he obtained specialized knowledge of the company's methodologies, tools, programs, and/or applications, the petitioner failed to provide such information. The petitioner has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary's knowledge is specialized and cites a number of job duties, the nature of which are not fully understood by CIS. The petitioner further asserts that the beneficiary possesses specialized knowledge as a result of his more than twelve years of experience as the owner and president of the foreign entity and that such knowledge is far beyond that commonly found throughout the industry.

The director's request for evidence was extremely specific in requesting clarification that the beneficiary's claimed specialized knowledge was not merely general knowledge held commonly through the industry. The director afforded the petitioner all available measures to supplement the record with additional evidence. However, although specifically requested by the director, the record contains no evidence of the beneficiary's training, experience, daily duties, or level of expertise. 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 refused to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his training and work experience with the petitioner. 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 seems to expect that the AAO will accept its uncorroborated assertions that the beneficiary possesses specialized knowledge. 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 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 an employee 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 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." 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.

Additionally, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49. The decision noted that the 1970 House Report, H.R. Rep. 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

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.

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." *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 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. at 119. 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.").

Here, the petitioner's main contention is that the beneficiary's knowledge of solar powered energy sources, inverters, and resistive/inductive devices "can not be compared to the normal electrician," and claims that it is more akin to the knowledge of a solar engineer. Specifically, the petitioner alleges that the beneficiary's twelve years of experience with the foreign entity and his work with Xantrex, its client who specializes in renewable power systems, has solidified his specialized knowledge of solar and related devices. However, the petitioner has not provided any information pertaining to the duties and training of the beneficiary or of the other similarly qualified persons employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from those of other employees.

The lack of tangible evidence in the record makes it impossible to classify the beneficiary's knowledge of the devices used by Xantrex systems as advanced or special and precludes a finding that the beneficiary's role is of crucial importance to the organization. The director specifically requested evidence in the form of contracts with clients such as Xantrex, payroll records establishing the amount of time the beneficiary spent working with particular clients and/or projects, and specific evidence of the training the beneficiary received. The petitioner, however, ignored this request. As previously stated, simply 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 claim that the beneficiary has been employed by the petitioner for almost twelve years and that most of this period was devoted primarily to work with Xantrex and its systems and devices does little to establish that the beneficiary is equipped with specialized knowledge, for the petitioner has provided no independent evidence that sets the beneficiary apart from all other employees who have gained a similar "expertise" after working for the petitioner for a similar period.

Instead of providing additional assertions or new evidence on appeal, counsel for the petitioner declined to submit a brief and claims that "review by the AAO of the documents and arguments provided with the initial petition and followed up by the request on January 12, 2004 will support the petitioner's position that the denial was in error." The petitioner's burden was to establish that the beneficiary possessed the requisite specialized knowledge, and the petitioner was given ample opportunity to furnish supporting evidence in support of its contentions. Counsel makes no attempt to overcome the reasons for the director's stated grounds for denial. The petition was denied because the record of proceeding did not contain sufficient evidence to meet that burden. As previously stated, failure to submit evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The legislative history for 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.*, 745 F. Supp. at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge; nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that a qualifying relationship exists between the U.S. petitioner and a foreign entity. Although the petitioner claims that the U.S. petitioner is an affiliate of the foreign entity in this matter, insufficient evidence has been submitted to establish this relationship. Although the petitioner submits a corporate document (similar to a ledger) that indicates that the beneficiary and his wife own 100 shares of the petitioner as tenants by the entirety, this document does not establish that Amalgame Trading, the foreign entity, has an interest in the petitioner. Although the Form I-129 indicates that the beneficiary and his wife also own the foreign entity, no evidence of their ownership and control of that entity has been submitted. Furthermore, the corporate document submitted in response to the request for evidence is insufficient by itself to establish the ownership of the U.S. entity.

The petitioner failed to submit evidence which clearly establishes the ownership structure of the U.S. and the foreign entity and which corroborates the petitioner's claims. 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. A petitioner must establish ownership and control in order to show a qualifying relationship exists. Stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In addition, the petitioner indicates that the beneficiary owns a significant portion of both companies. If this fact is established, it remains to be determined that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(1)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services

are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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.