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U.S. Citizenship  
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Services

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JUN 08 2005

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FILE: SRC 04 026 50466 Office: TEXAS SERVICE CENTER Date:

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

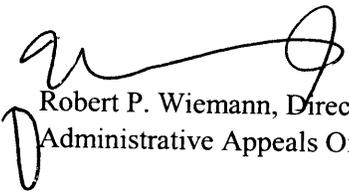
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[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, Director  
Administrative Appeals Office

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

According to the documentary evidence contained in the record the petitioner was established May 23, 2003, and claims to be engaged in property management and consulting services. The petitioner claims to be an affiliate of [REDACTED] Management Company, located in Monte-Carlo, Monaco. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its assistant manager for a period of two years. The beneficiary had been previously approved for L-1B status and is now petitioning for the second extension of specialized knowledge capacity.

The director determined that the petitioner had failed to establish that: (1) the beneficiary had been or would be employed primarily in a managerial or executive capacity; (2) the foreign entity has been doing business; and (3) the petitioner has secured sufficient physical premises to house its office.

On appeal, counsel disagrees with the director's decision and asserts that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary has been and will be employed primarily in a managerial or executive capacity; that the foreign entity has been doing business; and that the petitioner has secured sufficient physical premises to house its office.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

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 (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the foreign entity has been doing business.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

*Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

In the letter of support, dated October 23, 2003, the petitioner described the foreign entity as:

We have an affiliated office in Monaco/France ... from which [the beneficiary] was transferred in 2001. The business is done in the legal form of a sole proprietorship with [REDACTED] being the owner. Therefore, corporate formation documents are not available. The office of [REDACTED] in Monaco primarily provides services such as financial consulting, property management and administrative work. The clients are both legal entities and individuals. The business conducted in Monaco is quite similar to the business of [the U.S. entity].

In the request for evidence, dated November 18, 2003, the director requested that the petitioner submit: "banking records, employee rosters, evidence of business conducted, such as invoices, bills of sale, product brochures of goods sold or produced by the company." The director further requested, "If any foreign language documentary evidence is submitted, please also provide English translations."

In response to the director's request for evidence, the petitioner stated in part:

[The foreign entity] is formed as a sole proprietorship under the laws of Monaco/France and that the applicable laws do not require any formal registration. Therefore, it is not possible to provide court documents, stock certificates or similar documents evidencing the registration of the company and its sole ownership by [REDACTED]

The Monaco/France based sole proprietorship is also an ongoing business. The main purpose is to provide support services to the petitioner as well as to the petitioner's clients. Among others, the petitioner has an agreement with the foreign affiliate according to which the latter company is responsible for providing financial services to the petitioner (Exhibit U). The foreign affiliate currently employs 2 people (Exhibits X-Z).

As evidence of the foreign entity's doing business, the petitioner submitted copies of an affidavit from [REDACTED] an agreement between the petitioner and the foreign entity, a lease agreement for a studio apartment, and the company's payroll records. The petitioner also submitted documents evidencing the company's authority to hire employees, the company as a registered employer, the company's social security obligations, bank statements, and invoices.

The director determined that evidence demonstrating that [REDACTED] has a lease for a studio apartment in Monaco and employs two secretaries does not establish that the foreign entity is doing business.

On appeal, counsel argues that the evidence submitted with the petition and in response to the director's request for evidence is sufficient to establish that the foreign entity is doing business. Counsel also argues that the foreign entity is a real property and asset management company. The petitioner submits no new evidence on appeal.

The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(1)(1)(ii). In review of the record, the evidence submitted is insufficient to establish that the foreign entity is doing business. The record shows that [REDACTED] is a sole proprietor and operates his business out of a studio apartment. The majority of the business records submitted have not been translated although the directly specifically requested that translated copies of all business records be submitted. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the petitioner has submitted sufficient evidence to establish that the beneficiary was employed by the foreign entity in a managerial or executive capacity or in a specialized knowledge capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term “managerial capacity” means an assignment within an organization in which the employee primarily—

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term “executive capacity” means an assignment within an organization in which the employee primarily—

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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.

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 petitioner initially described the beneficiary's past and proposed duties as “property and asset management and other consulting services.” The petitioner submitted a copy of an employment agreement between the foreign entity and the beneficiary in which his job duties abroad were described as: “[The beneficiary] exercises the function of assistant to the manager according to the profile of the position and his functions are described separately.” The petitioner submitted a copy of the beneficiary’s resume in which his job duties abroad were described as: "Consulting, Management, Property management, and Private asset management."

In response to the director’s request for evidence on the subject, counsel described the beneficiary’s job duties abroad as: “property management + other management including private asset management,” “business consulting,” and “administration.” Counsel asserted that the beneficiary provided the core services of the foreign entity and supervised the business operations, including administrative matters. Counsel further asserted that the beneficiary was subject only to the directions of [REDACTED]. Counsel contended that the beneficiary’s duties abroad required detailed knowledge of property management services including: “maintain rent roll, understand/negotiate rental agreements, rent collection, disbursements, accounting, and book keeping.” Counsel also contended that the asset management services provided by the beneficiary to clients abroad required a full understanding of “their needs and goals, paired with the clients’ trust.” Counsel asserted that other workers in the industry did not commonly hold such characteristics, and that they were gained from years of gathering experience. Counsel argued that the foreign entity’s organizational chart demonstrated that the beneficiary had supervisory and managerial authority over the foreign entity’s other employees, namely two secretaries.

The director determined that the beneficiary’s education and prior professional experience enabled him to fulfill his duties and therefore, was a clear indicator that the position held by him abroad did not involve specialized knowledge. The director also determined that knowledge of real property and asset management services were common to the industry and therefore not specialized. The director noted that the beneficiary’s job duties, as described, did not meet the regulatory requirement for specialized knowledge. The director also noted that although the evidence demonstrated that the foreign entity consisted of [REDACTED] the beneficiary, and two secretaries, this was insufficient to establish that the beneficiary functioned in a managerial or executive capacity.

On appeal, counsel argues that the beneficiary was employed by the foreign entity in a specialized knowledge capacity and as a manager/supervisor. Counsel describes the beneficiary’s job duties abroad as:

- Provide company's real property and other consulting services to company's clients such as client correspondence/communication, rent/lease negotiations, coordinate and supervise maintenance/repair/service work, rent collections, bookkeeping and accounting;
- Provide other asset management services such as investing/supervising clients funds, bank negotiations/communication;
- Supervise and direct all other activities including administrative work such as correspondence/communication with clients or other third parties, marketing, staff matters and payroll; [and]
- Coordinate all activities with Mr. Kann.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed by the foreign entity in a specialized knowledge capacity. Although the petitioner asserts that the beneficiary's position requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the petitioner has not identified any aspect of the beneficiary's position which involves special knowledge of the foreign entity's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate that employment from the position of any other real property and asset management manager at other employers within the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions 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).

In addition, although the petitioner asserts that the beneficiary managed a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Because the beneficiary primarily supervised a staff of non-professional employees, the beneficiary cannot be deemed to be primarily acting in a managerial capacity. Counsel argues that the beneficiary provided the core services of the foreign entity and supervised its' business operations, however, there is nothing in the record to substantiate this claim. 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 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). Further, there is nothing in the record that demonstrates that the beneficiary establishes goals and policies or exercises a wide latitude in discretionary decision-making. For these reasons, the petition may not be approved.

The petitioner initially described the beneficiary's proposed duties as: "continue managing company under owner's supervision with primary focus on property management services (e.g., correspondence/communication with tenants, lease negotiations, rental receipt management, supervise maintenance, repair and tenant improvement work. In addition, he will continue to handle administrative matters."

In the letter of support, dated October 23, 2003, the petitioner described the beneficiary's duties as:

The assistant manager's duties will primarily continue to include property management services. This includes communication and correspondence with existing and prospective tenants, lease negotiations, supervising building maintenance, repair work and tenant improvements, supervising rental income receipts and other tenant accounts such as cost and expense items. Further, under the supervision of [REDACTED] the assistant manager will manage the business of our company on a daily basis which includes administrative matters.

In response to the director's request for evidence, the petitioner stated that the beneficiary's job duties in the United States consisted of: "daily operations, customer relations, banking + accounting." The petitioner submitted a copy of the U.S. entity's organizational chart that depicted the beneficiary as assistant manager with a secretary, operating manager, and two parking attendants under his direction.

The director noted that knowledge of property and other asset management services is common to the industry and therefore, the beneficiary's duties will not be specialized in nature. The director also noted that the ability of the beneficiary to understand the company's client's needs and goals and to gain their trust is not uncommon to the industry and therefore not considered specialized knowledge. The director concluded by stating that the beneficiary does not possess specialized knowledge of the company's service or product, and that the knowledge is not noteworthy or uncommon.

On appeal, counsel argues that the evidence establishes that the beneficiary is working in a position requiring specialized knowledge. Counsel further argues that the beneficiary, in his capacity as assistant manager, provides the core services of the company, that he is subject only to the direction of the owner, and that he supervises other employees of the petitioner. Counsel reiterates the beneficiary's job duties, arguing that he not only provides property management and consulting services but also financial management services.

Contrary to counsel's assertions, there is insufficient evidence in the record to establish that the beneficiary will be managing the U.S. organization or a department or function of the organization, supervising professional employees, or exercising discretion over the day-to-day operations of the entity. 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 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).

Further, the record does not establish that the proposed position with the U.S. entity requires specialized knowledge or that the beneficiary will be employed in a specialized knowledge capacity. The proposed duties as described are insufficient to establish that the beneficiary possesses special knowledge of the petitioner's product or processes, which could not be easily imparted to another team leader or programmer within the petitioning company or within the industry.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." Webster's II New College Dictionary 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce. Here, the petitioner has indicated that the beneficiary qualifies in a specialized knowledge capacity based upon his; educational background and work experience. As the petitioner infers that anyone with the beneficiary's training and experience possesses "special knowledge" or an "advanced level of knowledge," the AAO must conclude that, while it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

The petitioner's interpretation of the specialized knowledge provision is also objectionable, as it 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. Accordingly, there has been insufficient evidence submitted to establish that the beneficiary has been or will be employed in a specialized knowledge capacity and that the U.S. entity's position requires specialized knowledge. For this additional reason, the petition may not be approved.

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