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File: SRC 05 096 51582 Office: TEXAS SERVICE CENTER Date: MAR 06 2007

IN RE: Petitioner:
Beneficiary:



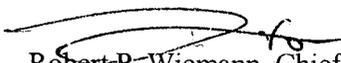
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF BENEFICIARY:



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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of Tronador claims specialist 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 corporation formed under the laws of the State of Florida, is an insurance provider and claims a qualifying relationship as the subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a capacity which involves specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of insurance claims and resolution procedures as well as of the use of "the complex software that enables the efficient prosecution of all claims and analyses – Tronador."

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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

¹Although the petitioner identifies itself as "[REDACTED]" in the petition, both the record and the corporate records of the State of Florida indicate that the name of the petitioner is actually "[REDACTED]"

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.

At issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity which involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

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 dated January 25, 2005 appended to the initial petition, the petitioner described the beneficiary's job duties and specialized knowledge as follows:

[The petitioner] wants to employ [the beneficiary] in specialized knowledge position as [REDACTED] Utilizing the [REDACTED], a computer software exclusively owned, designed and programmed for the management of [the foreign entity's] premium pricing, issuance of policies, drafting claims, accounting procedures and recording of premium payments among others.

[REDACTED] Soft (a subsidiary of [the foreign entity] dedicated to Information Systems) in Buenos Aires, Argentina. Its development and programming was completed by MAPFRE Soft in Madrid, Spain. After having invested close to four years in its development, and convinced of its efficiency, [the foreign entity] directed that "[REDACTED] become the software package to be used by all its subsidiaries and affiliates, including [the petitioner]. Also, [REDACTED] incorporates the philosophy and years of experience of [the foreign entity] in the insurance field.

* * *

[The beneficiary's] principal duties and responsibilities will include implementation of the whole operational process in the handling of Material Damage, Bodily Injury, and Property Claims in [the petitioner], preparation of technical manuals of the claims process, review

monthly claims reports generated by " [REDACTED] system and analyze it, increase the efficiency of the actual claim process, train other employees to use the [REDACTED] system and assist users to solve operating claim problems.

On March 2, 2005, the director requested additional evidence establishing that the beneficiary's knowledge is indeed specialized. Specifically, the director requested evidence distinguishing the beneficiary's knowledge of processes and procedures from the elementary or basic knowledge possessed by others. The director also requested evidence establishing that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and not generally known by practitioners in the field.

In response, the petitioner provided a letter dated April 21, 2005 reiterating that Tronador is proprietary and is not used by other companies in the United States. The petitioner also provided technical information regarding Tronador as follows:

[Tronador] is executed against operative system UNIX (HP-UX or AIX) with the database of ORACLE; its user interface (screens) has a focus on the Web, through JAVA components and its required development tools are PL/SQL an Oracle developer.

The petitioner also provided evidence that the beneficiary received training over a nine-month period from March 2004 until November 2004 in [REDACTED], apparently while she was employed in Puerto Rico. The petitioner provided copies of three certificates indicating that the beneficiary attended three courses in 2004: (1) Tronador Automobile Claims Training; (2) [REDACTED] and (3) [REDACTED]. Although the petitioner described this training as lasting eleven months in its letter dated January 25, 2005, the certificates presented account for only nine months of Tronador training. The beneficiary also received other training while employed abroad, although this training does not appear to directly involve Tronador.

On May 24, 2005, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a capacity which involves specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has specialized knowledge. Specifically, counsel asserts that the beneficiary has specialized knowledge of insurance claims and resolution procedures as well as the use of [REDACTED]. Counsel specifically refers to the beneficiary's training and experience in Tronador and the foreign entity's processes and procedures.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

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. In this case, while the beneficiary's job description adequately describes her duties as a claims specialist, the petitioner fails to establish that this position requires an employee with specialized knowledge or that the beneficiary has

specialized knowledge.

Although the petitioner repeatedly asserts that the beneficiary's proposed position in the United States requires "specialized knowledge," the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other claims specialists employed by the petitioner or in the 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. 158, 165 (Comm. 1998) (citing *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).

Counsel to the petitioner asserts on appeal that the beneficiary possesses specialized knowledge of insurance claims and resolution procedures and of the use of a proprietary software product, [REDACTED] which is used to process the insurance claims. In support of this assertion, the petitioner relies heavily on the uniqueness and complexity of [REDACTED] and the beneficiary's receipt of approximately nine months of training in the United States related to the software. However, as explained above, the record does not provide any evidence that the petitioner's insurance claims and resolution procedures are materially different from those of competing insurance companies. Therefore, the petitioner has not established that the beneficiary's knowledge of the petitioner's processes and procedures is specialized.

Likewise, the record does not provide any evidence that the beneficiary's knowledge of the use of [REDACTED] constitutes specialized knowledge. Although Tronador is apparently a proprietary software product unique to the petitioner and affiliated companies, the record is devoid of evidence that [REDACTED] differs materially from other claims processing software used by competing insurance companies. While the petitioner asserts repeatedly that the beneficiary gained her knowledge of [REDACTED] through experience and nine months of training, the record does not establish that the beneficiary's knowledge is different from the knowledge of computerized claims processing possessed by claims specialists generally throughout the industry, in the petitioner's workforce, or in the foreign entity's workforce. To the contrary, [REDACTED] appears to use a common operating system and tools. Absent such crucial evidence, it cannot be concluded that the beneficiary possesses specialized knowledge.

The AAO does not dispute the likelihood that the beneficiary is a skilled and experienced claims specialist who has been, and would be, a valuable asset to the petitioner. 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)). 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. 49, 52 (Comm. 1982). 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.

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 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. 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 that the House Report was silent on the subject of specialized knowledge, but that during the course of the subcommittee 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 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. v. Attorney General*, 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.”)

A 1994 Immigration and Naturalization Service (now Citizenship and Immigration Services (CIS)) memorandum written by the then Acting Associate Commissioner also directs CIS to compare the beneficiary’s knowledge to the general United States labor market and the petitioner’s workforce in order to distinguish between specialized and general knowledge. The Associate Commissioner notes in the memorandum that “officers adjudicating petitions involving specialized knowledge must ensure that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry but that it is truly specialized.” Memorandum from James A. Puleo, Acting Associate Commissioner, Immigration and Naturalization Service, *Interpretation of Specialized Knowledge*, CO 214L-P (March 9, 1994). A comparison of the beneficiary’s knowledge to the knowledge possessed by others in the field is therefore necessary in order to determine the level of the beneficiary’s skills and knowledge and to ascertain whether the beneficiary’s knowledge is advanced. In other words, absent an outside group to which to compare the beneficiary’s knowledge, CIS would not be able to “ensure that the knowledge possessed by the beneficiary is truly specialized.” *Id.* The analysis for specialized knowledge therefore requires a test of the knowledge possessed by the United States labor market, but does not consider whether workers are available in the United States to perform the beneficiary’s job duties.

As explained above, the record does not distinguish the beneficiary’s knowledge as more advanced than the knowledge possessed by other claims specialists. As the petitioner has failed to document any materially unique qualities to [REDACTED] or the petitioner’s processes and procedures, the petitioner’s claims are not persuasive in establishing that the beneficiary, while highly skilled, would be a “key” employee. There is no indication that the beneficiary has knowledge that exceeds that of any claims specialists who processes claims using software, or that she has received special training in the company’s methodologies or processes which would separate her from any other claims specialists employed with the petitioner, in the industry at large, or with the foreign entity.

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, it is concluded that the beneficiary and would not be employed in the United States in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, a related matter is whether the petitioner has established that the beneficiary’s prior year of employment abroad involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(iv).

As explained above, the petitioner has failed to establish that the beneficiary’s knowledge is specialized as defined by the statute and regulations or that the beneficiary will be employed in the United States in a

specialized knowledge capacity. Likewise, the petitioner has failed to establish that the beneficiary has been employed abroad in a specialized knowledge capacity. The petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other claims specialists employed by the foreign entity or in the 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 (Comm. 1998). The petitioner has not established that the beneficiary's knowledge as applied abroad was noteworthy, uncommon, or advanced.

Moreover, even if the knowledge in question was "specialized," the petitioner has not established that the beneficiary had been employed abroad for at least one year in a specialized knowledge capacity. In support of its assertion that the beneficiary has specialized knowledge of Tronador, the petitioner has provided evidence that the beneficiary received approximately nine months of [REDACTED] training in Puerto Rico in 2004, presumably in H-3 visa status. As this training was completed approximately three months prior to the filing of the instant petition, which also seeks to change the beneficiary's status from H-3 to L-1, it is not possible for the beneficiary to have been employed abroad for one year in a position that involved this claimed specialized knowledge prior to the filing of the petition. Even if the beneficiary's knowledge is specialized, she would have had less than one year of work experience using this specialized knowledge and, equally important, her acquisition and use of this specialized knowledge would have been in Puerto Rico, a self-governing commonwealth in association with the United States, and not overseas. See section 101(a)(38) of the Act, 8 U.S.C. § 1101(a)(38). Therefore, the petitioner has not established that the beneficiary's prior year of employment abroad involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(iv), and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner did not establish that it has a qualifying relationship with the foreign entity, [REDACTED].

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a 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.

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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." A "subsidiary" is defined, in part, as a legal entity which "a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or

indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the initial petition, the petitioner asserts that it is 100% owned by the foreign entity. In support of this assertion, the petitioner provides an excerpt from [REDACTED] (2003) and a Consolidated Management Report.

On March 2, 2005, the director requested additional evidence regarding ownership and control of the petitioner including stock certificates, bylaws, and annual reports.

In response, the petitioner provided two "secretarial certificates" averring that the petitioner is 100% owned by [REDACTED], a Florida corporation, which, in turn, is 100% owned by [REDACTED] of Spain. The petitioner also provided its 2004 Florida Annual Statement. The petitioner, however, did not provide copies of any stock certificates or bylaws.

Upon review, the petitioner has not established that it has a qualifying relationship with the foreign employer. The petitioner has not provided any objective evidence establishing its ownership and control despite the request by the director for this evidence. Therefore, as the petitioner did not establish that it has a qualifying relationship with the foreign entity, the petition may not be approved for this additional reason.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.