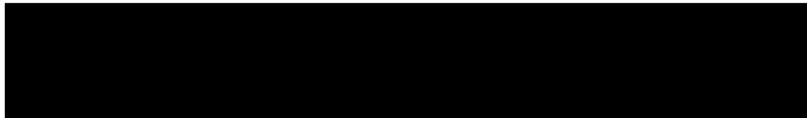




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FILE: SRC 04 097 53747 Office: TEXAS SERVICE CENTER Date: **SEP 11 2007**

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, Chief  
Administrative Appeals Office

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

The petitioner, a Florida corporation, claims to be a dance and cultural center. It seeks to temporarily employ the beneficiary as principal Indian dance instructor and director of cultural activities in its new office in the United States and filed a petition to classify the beneficiary as a 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 director denied the petition, determining that the petitioner had not established that the beneficiary possessed specialized knowledge as required by the regulations.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director failed to consider relevant evidence submitted and urges a reevaluation of the extensive evidence submitted prior to adjudication. In support of this position, a brief and additional evidence are submitted.

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 regulation at 8 C.F.R. § 214.2(l)(3)(vi) further provides that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and
- (C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

This matter presents two related, but distinct, issues: (1) whether the beneficiary gained specialized knowledge during her employment with the foreign entity abroad and was thus employed in a specialized knowledge position; and (2) whether the proposed employment is in a capacity that requires 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.

In a letter dated February 16, 2003, counsel for the petitioner advised that the beneficiary had been employed abroad by Shri Rajiv Gandhi College of Dental Sciences and Hospital, which is managed by [REDACTED] Education Trust, the foreign parent, since June 2000. The petitioner stated that during her employment abroad, she held the position of Director of Cultural Activities. In this capacity, her duties included teaching students and employees of the college traditional Indian dance and arranging cultural activities. The petitioner claimed that the beneficiary held a Bachelor's Degree in history but gained her specialized knowledge from being a leading Indian-style Traditional Dancer from 1975 to 1997. Regarding the beneficiary's U.S. position, the petitioner stated:

[The beneficiary's] title will be Principal Indian Dance Instructor and Director of Cultural Studies as an L-1B beneficiary with specialized knowledge. Her duties will be to initially teach all the Indian Dance Classes and hire additional dance instructors as needed. [The beneficiary] will also perform marketing activities on behalf of the Dance Company in order to recruit new dance students, publicize their new company by contacting local schools, cultural organizations and religious institutions, direct mail solicitations, newspaper, television, and radio advertisements, creation and distribution of brochures of company, etc. It is also anticipated that [the beneficiary] will be contacting various performing arts centers and nonprofit organizations in the immediate area which will also further publicize and market their company in a positive light.

The petitioner also submitted supporting documentation in the form of photographs, awards, and media articles pertaining to the beneficiary's accomplishments.

The director found the initial evidence submitted with the petition insufficient to warrant a finding that the beneficiary possessed the required specialized knowledge and would be employed in the United States in a position that required specialized knowledge. Consequently, a detailed request for evidence was issued on March 1, 2004, which requested evidence that the beneficiary possesses specialized knowledge that was uncommon, noteworthy or distinguished by some unusual quality and not generally known by practitioners in the field. Specifically, the director requested documentary evidence of the exact nature of the beneficiary's knowledge, including a statement regarding her role and contributions to the petitioner's services.

The petitioner, through counsel, responded in a letter dated March 26, 2004. In the letter, counsel explained that the beneficiary's knowledge was in a traditional form of Indian dance called *Bharatanatyam*, which is a popular dance form in South India and which has its roots in Indian tradition dating back over 3000 years. Counsel continued by stating that a student generally must study under an accomplished guru for ten to twelve years before facing her first public performance, referred to as *Arangetram*. Counsel explained that the beneficiary had her *Arangetram* in 1974, only four years after she began her studies. Essentially, counsel claimed that the beneficiary was a child prodigy in *Bharatanatyam* dancing.

To summarize the beneficiary's qualifications, the petitioner provided the following list:

- Beneficiary performed her *Arangetram* in four years instead of the usual 10-12 years.
- Beneficiary was awarded a four (4) year scholarship in *Bharatanatyam* dance classes.
- Beneficiary won First Prize three years in a row in *Bharatanatyam* Inter-School Dancing Competition.
- Beneficiary has performed in over 350 dance programs in India and throughout the world over a 20 year career and has been the subject of countless newspaper articles, reviews, pictorial displays, etc.
- Beneficiary has been a *Bharatanatyam* dance judge on several occasions over the years.
- Beneficiary's popularity is so renown that in a short period of time she was able to obtain three letters from leading nonprofit Indian organizations in South Florida attesting to her abilities and popularity and the fact that because she is who she is, they will send their children to her school.
- Beneficiary has also been a leading film and television actress in India from 1980-1998 who won Best Actress and Second Best Actress Awards as further testimony to her talents.

Upon review of the evidence submitted, the director determined that the record failed to establish that the beneficiary possesses specialized knowledge. The director specifically noted that the petitioner had failed to show that the beneficiary's knowledge was so advanced or specialized that only a few employees could perform the same duties in the industry. On appeal, counsel for the petitioner contends that in light of the extensive evidence submitted, the director's decision was clearly erroneous. Counsel submits additional documentary evidence including an explanation by the beneficiary in her own words regarding her specialty.

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the proposed employment would be in a specialized knowledge capacity.

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.* A specific occupation will not inherently qualify a beneficiary as possessing specialized knowledge. *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)).<sup>1</sup>

In the present matter, the petitioner provided a lengthy description of the beneficiary's employment in a branch of the foreign entity as director of cultural affairs. However, despite this detailed overview, the petitioner failed to provide evidence regarding what exactly set the beneficiary's knowledge apart from other similarly trained persons in the field and what training she had received to set her apart from other similarly qualified individuals in the petitioner's organization. While the basis for the petition falls upon a claim that the beneficiary was a child prodigy and world renowned for her dancing, the petitioner has not sufficiently documented how the beneficiary's performance of her daily duties distinguishes her knowledge as specialized. In fact, the overview of duties suggests that the beneficiary occupies an administrative position, and provides no additional information as to why another similarly trained or qualified individual could not perform the same duties. The beneficiary's claimed specialized knowledge was gained during her career as a dancer, not as an employee of the foreign entity. For the purposes of this visa classification, the beneficiary's specialized knowledge must relate specifically to the petitioner's organization.

Furthermore, the record indicates that the beneficiary was employed in one of five facilities overseen by the foreign entity's educational trust. Since four of these facilities were colleges and one was a hospital, it appears that the beneficiary's dance instruction and direction of cultural affairs was an ancillary activity to the primary purpose of the foreign entity's organizations. The beneficiary was employed by Shri Rajiv Gandhi College of Dental Sciences and Hospital. It is evident, therefore, that dance instruction at such a facility is not the primary purpose of the foreign organization; instead, one would agree that the primary purpose would be dentistry and hospital services as the name of the business suggests. This assumption is further supported by the petitioner's submission of brochures which clearly highlight dentistry as the organization's primary purpose. Furthermore, it is clear based on the petitioner's letter of support that a primary function of the beneficiary's duties was to organize cultural activities and provide dance lessons to children of the college's employees. As a result, it does not appear that the beneficiary was regarded as key personnel of the foreign organization, since the AAO is not persuaded that a dance instructor was considered key personnel of a hospital of dentistry.

In addition, although the beneficiary has worked for the foreign entity since June of 2000, there is no evidence to show that this period of employment with the petitioner has resulted in specialized knowledge of something

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<sup>1</sup> 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 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.

unique to the petitioner which other similarly-trained persons could not have gained from working in the industry in general. Rather, the focus of the petition is the beneficiary's reputation in the industry, which, based on the evidence submitted, is indeed impressive. However, there is nothing in the record to suggest that another similarly-trained person with the standard 10-12 years of study in *Bharatanatyam* under an accomplished guru could not perform the duties of the beneficiary as cultural director abroad and dance instructor in the United States. The beneficiary's reputation as a dancer and successful movie actress may contribute to the success of the petitioning company, but these attributes do not equate to specialized knowledge as defined in the regulations and statute.

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. at 120 (citing *Matter of Raulin*, 13 I&N Dec. 618 and *Matter of LeBlanc*, 13 I&N Dec. 816). 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 her to provide a specialized service, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. The foreign entity is a college of dentistry. The beneficiary provides ancillary services in the form of dance instruction and arranging cultural tours primarily for the children of college employees. The beneficiary's position, therefore, is not one that requires knowledge of a specific methodology or process unique to the petitioner. Instead, it is a position that is not of crucial importance to the foreign organization and therefore does not appear to have contributed to the financial success of the organization. Specifically, the beneficiary and her position with the foreign entity are not even discussed in the brochures promoting the foreign entity's business. Thus, it is reasonable to conclude that other similarly trained persons in the industry could perform the beneficiary's duties.

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.

Moreover, while it appears that the U.S. business and the beneficiary's proposed position therein is focused solely on dance instruction, there is still insufficient evidence to show that the beneficiary's knowledge is so advanced or specialized that a similarly-trained dance instructor could not perform the duties of the proposed position. The evidence in the record confirms that all dancers trained in *Bharatanatyam* must complete a 10-12 year training period under an accomplished guru. Although the beneficiary's talent allowed her to give her first performance in significantly less time than generally expected, the fact that she is an extremely talented dancer does not automatically bestow specialized knowledge upon her. Again, while her reputation and renown may generate more interest in her classes and certainly increase business in the United States, this factor, by itself, does not constitute the possession of specialized knowledge. Therefore, while the beneficiary's contribution to the economic success of the petitioner may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the *organization's* process and procedures or a "special knowledge" of the *petitioner's* product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). Mere skill and knowledge in the sector in general does not constitute specialized knowledge for purposes of this matter. As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

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, was not employed abroad in a position involving specialized knowledge, and would not be employed in a capacity requiring specialized knowledge. For these reasons, the appeal will be dismissed.

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.