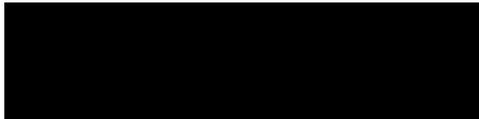


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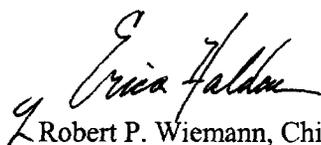
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 sole proprietorship registered in the State of California, claims to be an importer of Indian jewelry and handicrafts. It seeks to temporarily employ the beneficiary as its import specialist 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 beneficiary was initially granted a one-year period of stay in L-1B classification to work in the petitioner's new office and the petitioner now seeks to extend his status.

The director determined that the petitioner had not established that (1) the beneficiary had been employed abroad in a specialized knowledge position; or (2) the intended employment in the United States required specialized knowledge.

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 claims that the director abused his discretion by applying incorrect standards when reviewing the evidence of record.¹ In support of this contention counsel submits a two-page letter outlining his position.

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

¹ On the Form G-28 accompanying the appeal, counsel claims to file the motion on behalf of the beneficiary (as "applicant"). The regulations preclude the beneficiary as a party to the proceeding or as one entitled to representation. See 8 C.F.R. § 103.2(a)(3). The office notes, however, that a previously filed entry of appearance indicates that counsel is representing both the petitioner and the beneficiary. Since no withdrawal of counsel's appearance on behalf of the petitioner is in the record, the office will presume that counsel is still representing the interests of the petitioner in this matter, and will therefore forward notice of the decision on appeal to both counsel and the petitioner. See 8 C.F.R. § 292.5(a).

- (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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

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

This matter presents two related, but distinct, issues: (1) whether the beneficiary gained specialized knowledge during his employment 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 from the petitioner dated July 30, 2003, the petitioner advised that the beneficiary had been employed by the foreign entity as an Assistant Exports Manager since 1999, without interruption. The petitioner claimed that the beneficiary had been transferred to the United States to fill the position of Import Specialist, and that "the transfer was necessary to secure the establishment of a viable business in the U.S."

With regard to his duties abroad as an Assistant Exports Manager, the petitioner stated:

His duties included negotiating contracts with various jewelry and handicrafts artists, [and] domestic and foreign sales. [The beneficiary] has conducted bi-weekly meetings with the owner of [the foreign entity] to discuss the company's current business goals and their implementation. He also prepared monthly sales projection reports for a company's budget report. He was in charge of various marketing activity of the parent company. He regularly attended trade shows, met with key contacts of our distribution network to keep them updated on new trends and demands, and conducted marketing surveys by phone and mail.

With regard to his duties in the United States as an Import Specialist, the petitioner stated:

In his capacity as Import Specialist of the U.S. company, [the beneficiary] directs sales, solicit[s] and negotiate[s] orders from the U.S. retail stores, chain stores and wholesalers, arrange[s] shipping and customs clearance. He also attends trade shows to research market and trends. As Import Specialist of the U.S. company, [the beneficiary] presents the company's products, and follows up on customers' inquiries. Furthermore, [the beneficiary] coordinates with proper commissions and regulatory agencies in the U.S. to ensure compliance with U.S. commerce and disclosure standards. He investigates the methods and costs of distribution of [the] company's handmade jewelry and handicrafts and coordinates the advertising required to promote our products. [The beneficiary] advises our company of those fast changing trends so that the company can quickly adapt to new demands.

Regarding the beneficiary's education and background, the petitioner explained that "aside from his 3 years experience as Import Specialist in India, [the beneficiary] took various courses including achieving an MBA in International Business."

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 September 28, 2003, 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 what exactly the beneficiary possessed specialized knowledge, including a more detailed description of the beneficiary's special or advanced duties. The director also requested information pertaining to the petitioner's other employees, specifically those who occupied the same or similar positions to that of the beneficiary. Furthermore, the director requested information regarding the training the beneficiary has received, as well as a statement regarding the impact the beneficiary's services, of lack thereof, would have on the U.S. entity. Finally, the director requested certified copies of the petitioner's federal income tax returns for 2002.

Counsel for the petitioner responded on December 9, 2003. In a two-page letter, counsel addressed the director's questions regarding the beneficiary's specialized knowledge, and stated the following:

The duties the alien performed for his company in India as Assistant Manager/Exports included negotiating contracts with various jewelry and handicrafts artists and conducting various marketing such as attending trade shows and conducting marketing surveys. The unique knowledge that he gained regarding this product line that his company exports to the U.S. would not be available to most other workers employed in the U.S. in this type of position unless they regularly dealt with these products and suppliers in India.

This knowledge is specialized in that it assists the U.S. company in gaining a competitive advantage in the marketplace. The competitive advantage is based on the petitioner's ability to accurately price their product for resale, gain a valuable source of supply in India, and have an accurate and updated sense of new trends and demands for the product.

If the petitioner were unable to obtain the alien's services, they would not be able to effectively market their products in the U.S. and assure their U.S. customers of a stable and quality source of supply. They would have to resort to traveling to the U.S. on a short-term visa to attend trade shows, visit customers, negotiate contracts, arrange shipping, custom clearance, and coordinate advertising. This would not be a feasible alternative for the company to do business in the U.S. and attempt to expand their operation.

In addition to this statement, counsel submitted a copy of a transcript for a individual tax return filed by Sumesh K. Jain for the tax year ending 12/31/2002. This return showed business income in the amount of \$2,597.

On January 24, 2004, the director denied the petition. The director determined that the record failed to establish that the beneficiary possesses specialized knowledge or that the position of import specialist required an employee with specialized knowledge as defined by the regulations. The director specifically noted that while the beneficiary's knowledge of Indian handicrafts was helpful in the petitioner's business, this knowledge was not indispensable, and the record contained no evidence that other similarly-trained professionals in the industry could not perform the same duties. The director concluded that the petitioner had failed to show that the beneficiary possessed specialized or advanced knowledge of a product, process or procedure specific to the petitioner, nor that the beneficiary's knowledge gained as a result of his employment abroad was uncommon or noteworthy in comparison.

On appeal, counsel for the petitioner requests reconsideration of the beneficiary's qualifications, and relies on the contention that since the beneficiary possesses knowledge that is valuable to the petitioner's competitive position in the marketplace, the petitioner has satisfied its burden. Counsel relies on a 1988 legacy Immigration and Naturalization Services (INS) memorandum from then Associate Commissioner James Norton in support of these claims. Counsel further asserts that there is no requirement that the beneficiary's knowledge be "indispensable." Counsel also asserts that the beneficiary is a "key employee" who possesses knowledge of overseas suppliers that is not generally found in the industry.

The AAO disagrees. 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) and (iv). 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 a very vague description of the beneficiary's duties, and concludes that his knowledge of Indian handicraft by virtue of his experience abroad as an Assistant Export Manager instilled him with specialized knowledge which was carried over into his position as Import Specialist in the United States.² Specifically, the petitioner relies on the fact that the beneficiary's attendance and trade shows and experience in the general industry distinguishes the beneficiary as an employee that is more than merely skilled.

Despite specific requests by the director, namely, what exactly set apart the beneficiary's knowledge from other similarly trained persons in the field and what training he had received from the foreign entity to set him apart from other similarly qualified individuals in the industry, no concrete evidence was submitted. The petitioner has not sufficiently documented how the beneficiary's performance of his daily duties distinguishes his knowledge as specialized. Despite counsel's vague explanations in response to the request for evidence, most of which merely repeat the statements deemed insufficient from the initial petition, these claims do nothing to distinguish the beneficiary from any other similarly-trained and educated person who imports and sells jewelry and handicrafts.³ The record contains no definitive evidence supporting the contention that the beneficiary's knowledge is uncommon or more advanced compared to similarly trained professionals in the field. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

While working in India for three years prior to arriving in the United States certainly gives the beneficiary an advantage in the field of Indian handicraft, this fact alone does not establish that the beneficiary has developed specialized knowledge under the regulatory definitions. For example, there is no evidence in the record that the beneficiary received any specialized training in a specific product unique to the petitioner, or a specific marketing process or procedure implemented exclusively by the foreign entity and its American counterpart. There is no claim in the record that a specialized method or approach is offered by the petitioner which would preclude other persons training in the field of jewelry import and export, which lack experience working for the petitioner, from performing the same or similar duties to those of the beneficiary. The petitioner further claims that the beneficiary's three years of experience with the foreign entity, in addition to

² The AAO notes that in the July 30, 2003 letter from the petitioner, the petitioner claims that the beneficiary's specialized knowledge was gained from his three years of experience as an Import Specialist in India, but simultaneously claims that he was employed abroad as an Assistant Exports Manager since 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

³ The petitioner, in the July 30, 2003 letter, also claims that the beneficiary achieved an MBA in International Business, in addition to taking various other courses. However, no evidence of his attainment of this degree or attendance of said courses, such as university transcripts, has been provided. 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)).

his alleged Master's Degree in International Business, have qualified him for the proffered position. However, the petitioner provides no evidence of the beneficiary's foreign employment, such as payroll records or pay stubs, and failed to acknowledge the director's specific request for information regarding training received by the beneficiary which instilled him with the claimed specialized knowledge. As previously stated, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

By failing to acknowledge the director's specific requests in the request for evidence, such as evidence of training received or how the beneficiary's experience with the foreign entity would distinguish him from other similarly-trained persons in the industry, the petitioner has failed to show that his period of employment abroad resulted in specialized knowledge of the petitioner's products, processes or other interests which other similarly-trained persons could not have gained from working in the industry in general.

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 failed to provide documentary evidence to support its claims that the beneficiary obtained a specialized level of knowledge through his experience with the petitioner abroad, and that this knowledge was uncommon and distinctive from the knowledge and training of the foreign entity's other 25 employees or his colleagues in the industry in general. No documentation was submitted that distinguishes the beneficiary from other import, export, or marketing employees in the jewelry industry, and no evidence of training exclusively offered to the beneficiary was provided. Mere familiarity with the petitioner's Indian suppliers does not rise to specialized knowledge specific to the petitioning organization.

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 relies on the AAO to accept its uncorroborated assertions that the beneficiary possessed specialized knowledge at the time of filing and thus was employed for one year in a qualifying capacity abroad, both prior to adjudication and again on appeal. However, these assertions do not constitute evidence. Again, 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 petitioner's failure to provide sufficient evidence of the beneficiary's training and experience renders it impossible to conclude that the beneficiary's employment abroad or in the United States requires specialized knowledge.

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)).⁴ As stated by the Commissioner in

⁴ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," and counsel raises that very argument with regard to the director's reliance on *Matter of Penner* in support of the denial, 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.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section

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 is minimal and severely restricts the AAO from drawing any reasonable conclusions about the beneficiary's qualifications. However, absent evidence to the contrary, it appears that at best, the beneficiary is more akin to an employee whose skills and experience enable him to provide a specialized service, based on his first-hand exposure to the Indian marketplace, rather than an employee who has unusual duties, skills, or knowledge beyond that of an educated and/or skilled worker. Moreover, the petitioner's failure to submit a more detailed discussion of the beneficiary's day-to-day duties or the nature of the training he received creates a presumption of ineligibility. It is reasonable to conclude that the import of Indian handicraft to the United States is not restricted to the petitioner's fledgling business, and thus other similarly trained persons are present in the United States and undoubtedly have received the same training. Again, since the petitioner has failed to demonstrate a specific methodology or process unique to the petitioner of which the beneficiary has obtained specialized knowledge, it is reasonable to conclude that other similarly trained persons could achieve the same level of knowledge as the beneficiary by attaining the same education and simply working in the industry for three years.

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). As discussed above, counsel's main argument is that the beneficiary's skills, and specifically his knowledge of Indian handicraft, are extremely important to the petitioner, since they enable the petitioner to compete effectively in the marketplace. While this is one important factor in determining specialized knowledge, this factor alone cannot serve as the basis for the petitioner's claim. Despite the director's request for evidence, which listed six additional characteristics of a specialized knowledge employee, counsel failed and/or refused to acknowledge these issues and their pertinence to the question at hand. Merely asserting on appeal that the beneficiary is valuable to the petitioner's competitiveness in the industry, without discussing any other characteristics or training unique to the beneficiary to set him apart from similarly trained persons in the petitioner's industry is insufficient to satisfy the petitioner's burden of proof. Without documentary evidence to support the claim, the unsupported

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.

assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Contrary to counsel's arguments, all employees, in general, 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.

The claim that the beneficiary has specialized knowledge remains unsupported due to the failure to submit any documentation that the alleged on-the-job experience he received in three years made abroad rendered him uniquely skilled in the area claimed. Furthermore, the record lacks evidence that the beneficiary even possesses a higher education. Therefore, while the beneficiary's skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge. While the beneficiary's contribution to the success of the company 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 or 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 the United States in a capacity requiring specialized knowledge. For this reason, 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.