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20 Massachusetts Ave., N.W., Rm. 3000
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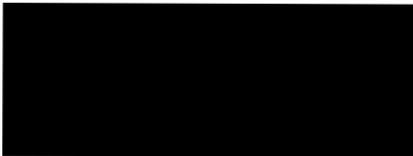
FILE: EAC 07 009 52727 Office: VERMONT SERVICE CENTER Date: FEB 22 2008

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)

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for further consideration and a new decision.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its general manager as an L-1B nonimmigrant intracompany transferee 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 Puerto Rico corporation, is a restaurant equipment supplier and maintenance services provider. The petitioner indicates that it was previously a subsidiary of Master Hotel Supply, C.A., located in Venezuela. The beneficiary was initially granted L-1A status in order to open a new office in the United States from April 30, 2003 until March 1, 2004. He was subsequently granted L-1B status for a two-year period commencing on October 7, 2004.¹ The petitioner now seeks to extend the beneficiary's L-1B status for two additional years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. The director did not acknowledge that the petitioner indicated on Form I-129 that it was seeking an extension of the beneficiary's L-1B status and did not address the statute or regulations governing the "specialized knowledge" classification.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the beneficiary qualifies for an extension of his L-1 status as a manager/executive or as an employee with specialized knowledge. Counsel submits a brief in support of the appeal.

To establish eligibility for the nonimmigrant L-1 visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. 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) 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.

¹ United States Citizenship and Immigration Services (USCIS) records reflect that the petitioner filed a petition requesting an extension the beneficiary's L-1A status on February 26, 2004 (EAC 04 103 53388). The petition was denied in April 2004 and the AAO dismissed the petitioner's subsequent appeal.

- (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 preliminary matter to be discussed is whether the petitioner represented that the beneficiary would be employed under the extended petition in a specialized knowledge capacity as defined at section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), or in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44).

The nonimmigrant petition was filed on October 2, 2006. The petitioner stated on Form I-129 that it was requesting L-1B classification, and noted that the petition is for a "continuation of previously approved petition without change." On the L Classification Supplement to Form I-129, the petitioner also indicated that the classification sought is L-1B. The beneficiary was in the United States in L-1B status at the time of filing. Based on this information, it is clear to the AAO that the petitioner was requesting that the beneficiary be granted an extension of his previously-accorded L-1B status.

The petition was, however, accompanied by a letter from counsel dated September 27, 2006, which did not clearly reference whether the petitioner was seeking L-1A or L-1B classification. The beneficiary's position was described in general terms that implied his employment as a manager or executive of the petitioning company, and made no reference to his claimed specialized knowledge.

Upon review of the petitioner's initial submission, the director issued a request for evidence on November 30, 2006, instructing the petitioner to submit additional evidence to establish "that the beneficiary has been and will be employed in a managerial/executive capacity in the United States firm."

The petitioner submitted the evidence requested by the director, but emphasized that "the instant case is an application for extension of L-1B status."

The director denied the petition on May 7, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

On appeal, counsel disputes the director's decision and asserts that the beneficiary qualifies as either a manager/executive, or as a specialized knowledge employee. Counsel briefly addresses the beneficiary's qualifications as a specialized knowledge employee, but is primarily concerned with overcoming the director's specific findings with respect to the beneficiary's employment in a managerial or executive capacity.

Upon review of the totality of the record, the AAO finds that the instant petition must be adjudicated on the basis of the petitioner's statement that it is seeking an extension of the beneficiary's L-1B status as a specialized knowledge employee. The requested classification was clearly stated on the Form I-129, and, while the AAO acknowledges that the letter submitted in support of the petition described the offered position in general managerial or executive terms, the director had no proper basis to effectively amend the petition and adjudicate it as a request for L-1A status. At a minimum, the director should have requested that the petitioner clarify the which L-1 classification was sought.

Accordingly, the director's determination that the beneficiary would not be employed in a primarily managerial or executive capacity was inappropriate, and the director's decision dated May 7, 2007 will be withdrawn.

The remaining issue in the present matter is whether the petitioner has established that the beneficiary has been employed by the foreign entity in a position that involved specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(iv).

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.

Counsel for the petitioner stated in her letter dated September 27, 2006 that the beneficiary is responsible for managing the operations of the U.S. company, establishing goals and company policy, hiring and firing employees, designing restaurant equipment installation projects, negotiating contracts, coordinating and supervising imported equipment delivery, and formulating marketing strategies.

Although the director requested additional evidence, the evidence requested was not relevant to the issue of the beneficiary's specialized knowledge qualifications pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(D). The record as presently constituted does not establish that the beneficiary possesses specialized knowledge 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.

However, due to the director's misclassification of the beneficiary's proposed employment capacity, the petitioner did not have notice of any deficiencies in the evidence and thus could not file a meaningful appeal on the issue of the beneficiary's specialized knowledge qualifications. Therefore, the petition will be remanded for a full adjudication of the beneficiary's eligibility for the benefit sought. The director is instructed to request additional evidence to establish that the beneficiary's U.S. employment would be in a capacity requiring specialized knowledge.

In examining the specialized knowledge capacity of the beneficiary, USCIS 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 description of the services to be performed sufficient to establish specialized knowledge. *Id.*

When analyzing whether a beneficiary's knowledge rises to the level of specialized, 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)).² 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. at 52. 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' operation.

Id. at 53.

It should also 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

² Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. As will be discussed, other than deleting the former requirement that specialized knowledge had to be "proprietary," the Immigration Act of 1990 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, that the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

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.

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. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to "key personnel" and "executives.")

In this matter, the petitioner has not adequately explained or documented the beneficiary's claimed specialized knowledge. The petitioner has provided only a vague description of the beneficiary's employment with the U.S. entity that fails to establish what exactly the beneficiary's specialized knowledge is or how he gained it. On appeal, counsel states that the beneficiary possesses specialized knowledge "based on the technical requirements of the products, services provided, complex equipment," and an advanced level of knowledge and expertise in the company's policies and procedures. None of counsel's statements regarding the beneficiary's claimed specialized knowledge are supported by documentary evidence. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

To cure these deficiencies, the petitioner should provide a comprehensive description of the beneficiary's position with an emphasis on the specific knowledge and skills applied. The petitioner should also describe all projects to which the beneficiary has been assigned and any special or advanced assignments that would help to establish that the beneficiary should be considered "key personnel," as discussed above.

The petitioner should submit additional documentation regarding its products, services, policies and procedures and explain how knowledge of its products, processes or technologies constitutes specialized knowledge as defined in the statute and regulations. Without additional explanation, the petitioner has not established that the knowledge required to perform the beneficiary's duties as a supervisor or manager of restaurant equipment installers and maintenance technicians would require the services of an employee with specialized knowledge specific to the petitioner's group of companies. The petitioner should explain how its technologies or processes differ from those used by other companies in its industry, and why knowledge needed to perform the duties of the U.S. company could not be performed by a similarly trained person with similar experience in the industry.

The AAO acknowledges that the petitioner submitted various training certificates for the beneficiary on appeal. He has completed technical training on the installation and repair of various brands of restaurant equipment; however, it is unclear how his training relates specifically to the petitioner's group of companies. Rather, all of the training certificates pre-date his employment with the foreign entity. While the beneficiary may be knowledgeable and skilled in the installation and repair of a variety of equipment, the petitioner must establish that his claimed specialized knowledge is particular to the petitioning company.

The lack of detail and absence of supporting documentary evidence in the record as presently constituted makes it impossible to classify the beneficiary's knowledge of the petitioner's technology and processes as advanced, and precludes a finding that the beneficiary's role is "of crucial importance" to the organization. Although the knowledge need not be narrowly held within an organization in order to be specialized knowledge, the L-1B visa category was not created in order to allow the transfer of employees with any degree of knowledge of a company's products. As the petitioner did not have sufficient notice of the deficiencies in its evidence, the petition will be remanded, and the petitioner shall be given the opportunity to submit additional evidence in order to establish the beneficiary's specialized knowledge qualifications.

Another issue not addressed by the director is whether the petitioner maintains a qualifying relationship with the beneficiary's previous foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The regulations at 8 C.F.R. § 214.2(l)(3)(i) require the petitioner to submit 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. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G) "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) 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 record shows that the beneficiary's last foreign employer was Master Hotel Supply, C.A., located in Venezuela. The petitioner indicated that the U.S. company is a subsidiary of the foreign entity, but noted on the L Classification Supplement to Form I-129 that the two companies do not have the same qualifying relationship as they did during the one-year period of the beneficiary's employment with the company abroad. In an attached statement, the petitioner explained as follows:

[The petitioner] acquired majority of the shares owned by Master Hotel Supply, C.A., and now operations in the United States independently of the foreign operations of Master Hotel Supply, C.A.

Matter of Chartier (BIA) Interim Decision #2602 states in pertinent part that section 101(a)(15)(L) of the Act, does not expressly require the employer to have a subsidiary or other legal entity abroad. Therefore, an alien may be admitted into the United States as intracompany transferee under section 101(a)(15)(L) of the Act even though the petitioning employer has no subsidiary or other legal entity abroad.

The petitioner submitted copies of the U.S. company's stock certificates numbers one, two and three, which show that the foreign entity was originally the owner of 12 of the company's shares at the time it was established in August 2002, while the beneficiary and another individual each owned five shares. The reverse side of stock certificate number one indicates that the foreign entity's shares were transferred to the beneficiary on September 25, 2005. The other shareholder has also transferred his shares to the beneficiary, who is currently the sole owner of the U.S. company. Based on the evidence submitted, the beneficiary does not have any ownership interest in the foreign entity, so there is no longer any qualifying relationship between the two companies.

In order for the beneficiary to maintain his L-1 status, the petitioner must show that it continues to operate an office outside the United States, either directly or through a parent, branch, affiliate, or subsidiary, to which the beneficiary may be transferred after his temporary stay in the U.S. concludes. While there is no requirement that the beneficiary be transferred back to the same foreign entity where he worked previously, there must be a qualifying organization outside the United States. If there is no qualifying organization abroad, the petition cannot be approved.

Counsel's reliance on *Matter of Chartier*, 16 I &N Dec. 284 (BIA 1977) is misplaced. The beneficiary in *Chartier* had been employed directly by the United States petitioner in Canada and had a position abroad to which he could be transferred after his temporary assignment in the United States. The petitioner also had a qualifying affiliate company in Belgium and therefore was doing business in the United States and in at least one other country. The petitioner in that matter would meet the current regulatory definition of a qualifying organization, although the case itself pre-dates the current regulations defining that term.

The petitioner in this matter, based on the evidence of record, does not have a qualifying relationship with any foreign entity, nor is it doing business either directly or through a branch, parent, affiliate or subsidiary outside of the United States. There is no precedent that would allow a company with no ties to a foreign qualifying organization to petition for an L-1 visa, as such circumstances would be contrary to the statute. The statute specifically requires that 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. The beneficiary in this matter is no longer rendering his services to the same employer.

If the petitioner is unable to establish that it continues to have a qualifying relationship with a foreign organization, the petition cannot be approved. Moreover, the beneficiary's most recent L-1 extension would be subject to review for possible revocation, as the qualifying relationship was terminated approximately one year prior to the filing of the instant petition.

The director is instructed to issue a request for evidence addressing the issues discussed above, and any other evidence he deems necessary.

ORDER: The decision of the director dated May 7, 2007 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.