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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

A7

[redacted]

File: EAC 07 103 52133 Office: VERMONT SERVICE CENTER Date: JUL 03 2008

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 is described as a non-profit corporation operating a Bible study ministry. It claims to have a qualifying relationship with Precept Ministries International, located in Mexico. The petitioner seeks to employ the beneficiary in the position of Spanish computer technician for a two-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the position offered to the beneficiary in the United States requires the services of an individual possessing specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, the petitioner asserts that it failed to mention the beneficiary's extensive training and experience gained with the foreign entity, including 47 training courses that provided him with "a unique and special capability" to perform the proposed duties in the United States. The petitioner provides a summary of the beneficiary's training, experience and qualifications in support of the appeal.

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

The regulation at 8 C.F.R. § 214.2(l)(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.

This matter presents two related but distinct issues: (1) whether the beneficiary possesses specialized knowledge; 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:

> 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.

The nonimmigrant petition was filed on March 5, 2007. The petitioner indicated that the beneficiary would be employed as a Spanish computer technician and indicated that he would serve as "translation team coordinator," with responsibility for "final text proofing and formatting material for printers." The petitioner indicated that that the beneficiary currently performs duties as "National coordinator and training" for its Mexican operations, and also serves as a Spanish translator and material formatter. Where asked to describe the beneficiary's education and work experience, the petitioner indicated that the beneficiary speaks Spanish and English and that he is trained in the use of Quark and Adobe Indesign publishing software. The petitioner noted that the beneficiary has a bachelor's degree in music composition and publishing, and that he has worked for the petitioner's international organization since 1998.

In an attachment to the Form I-129, the petitioner further described the beneficiary's duties as follows:

- Applicant would be working a 40 hour work week on campus under the direction of the Director of Spanish ministries.
- He would coordinate the translation team, keeping track of who has what material and in what stage of translation and printing it is at.
- He would serve as editor and formatter of materials using "Quark" and "Adobe Indesign" publishing software.
- He would work intimately with Director of Spanish Ministries in formatting and final proof-reading of Spanish materials.
- He would be responsible for sending finished materials to the printer and working with printer to achieve a quality product.

The petitioner described the beneficiary's qualifications as an employee with specialized knowledge as follows:

> The applicant has worked full time for us in Mexico since Sept. 1998. He has been our Mexican National Coordinator and Trainer for the last three years and knows the Inductive Bible Study method which all our Bible study material is based on and an intimate knowledge of our Bible study Materials. He had been trained on "Quark" and "Adobe Indesign" publishing software to help us translate and format material preparing it for printing in Spanish. He is also bi-lingual speaking Spanish and English.

The petitioner explained that it requires the beneficiary's services in the United States for one or two years so that it can complete Spanish translations of its Bible study materials. The petitioner noted that the materials include charts and maps that have been difficult to format properly, and that having the applicant in the United States would allow faster completion of the project. The petitioner stated that the beneficiary will return to Mexico to continue carrying out training workshops and Bible study classes upon completion of his assignment. The petitioner did not submit any documentary evidence in support of its claim that the beneficiary possesses specialized knowledge or that he would be employed in a position requiring specialized knowledge.

The director issued a request for evidence on March 28, 2007. The director requested, *inter alia*, additional evidence to establish that the beneficiary's proposed job duties in the United States require specialized knowledge. The director advised the petitioner that the evidence must show that the knowledge possessed by the beneficiary is not general knowledge held commonly throughout the industry, but that it is truly special or advanced.

In response, the petitioner submitted a certificate indicating that the beneficiary completed a training course in "Quark Authorized QuarkXPress 6.5" given by Sterling Ledet & Associates, Inc. The length of the course was two days, from February 22, 2005 until February 23, 2005.

The director denied the petition on July 31, 2007, concluding that the petitioner did not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. In denying the petition, the director noted that the petitioner had not adequately described the beneficiary's proposed duties, and had therefore failed to establish that he would be employed in a qualifying position. The director acknowledged the petitioner's submission of the beneficiary's training certificate, but concluded that it appeared based on the evidence submitted that anyone who completed a two-day training course in Quark publishing would be qualified to perform the duties of the proffered job. The director therefore concluded that the beneficiary possesses only general knowledge.

On appeal, the petitioner acknowledges that it "failed to mention the extensive training and experience" the beneficiary completed with the foreign entity. The petitioner states that the beneficiary "has completed 47 of our courses thus giving him a unique and special capability to do the work we need him to do." The petitioner attaches a statement prepared by the beneficiary's supervisor and emphasizes that it requires the beneficiary's services to complete its projects in a timely manner.

The attached statement includes the following information:

> [The beneficiary] meets [the petitioner's] requirements.
>
> He has been employed for more than 10 years, during that time has learned the Process of Inductive Bible training, and has matured in all phases of development.
>
> [The beneficiary] has been formatting in Spanish all our translated Materials. Besides Quark he knows other programs he has studied including Indesign which we presently use now. We are working on maps, charts and graphics for covers and courses but need to be together to do it correctly and speedily. We have tried by e-mail, Skype and phone but how do you tell him to move something to the right and down but not too far and get it correctly? We have a goal to finish all production of materials by 2010. We are behind now and only having a trained computer graphic designer who is also Precept trained and on campus will we come close to meeting our goal. It has to be someone who knows the expressions or vocabulary in both English and Spanish and we have no one but [the beneficiary] at this time. We saw the value of [the beneficiary] last year when we worked together to produce The Spanish Inductive Study Bible. Being together side by side accomplished us meet the printing deadline.[sic]

The petitioner provides a detailed summary of all training the beneficiary has undertaken with the petitioner's organization, as well as a summary of all courses and workshops he has conducted and led. All of the training courses relate to the study of the Bible or other religious or lifestyle topics.

On review, the petitioner has not demonstrated that the beneficiary has specialized knowledge or that the beneficiary is to perform a job requiring specialized knowledge in the proffered U.S. position. 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. *Id.*

The petitioner neither asserted nor provided evidence that the beneficiary has acquired specialized knowledge of the organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or that the beneficiary possesses an advanced knowledge or expertise in the company's processes and procedures. *See* 8 C.F.R. § 214.2(l)(1)(ii)(D). Rather, the petitioner describes an employee who will rely on his ability to use common publishing software such as Quark and Adobe Indesign to format and edit written materials for publication, and who will use his language skills to assist with the translation of documents from English to Spanish. The petitioner has not identified any aspect of the beneficiary's position that involves specialized knowledge specific to the petitioning organization and has therefore failed to satisfy the essential element of eligibility for this visa classification. The beneficiary's training in the use of standard editing and publishing software does not establish "specialized knowledge" as contemplated by the statute and regulations. Based on the information presented by the petitioner, any individual who is bilingual in the Spanish and English languages and has some familiarity with publishing

software would be able to perform the duties of a "Spanish computer technician" within the petitioning company.

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. *See 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)).[1] 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' operation.

Id. at 53. As discussed further below, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to produce a product or provide a service, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It is noted that the statutory definition requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. As observed in *1756, Inc. v. Attorney General*, 745 F. Supp. 9 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The term "specialized knowledge" is relative and cannot be plainly defined. As properly observed by the director, the petitioner has not explained how the knowledge and expertise required for the beneficiary's position would differentiate his knowledge from others with a similar educational and professional background. The petitioner has not established that prior experience within the organization is actually required in order to serve as a Spanish computer technician for the United States entity. Although the petitioner refers to the beneficiary's experience gained with the foreign entity, and his intimate knowledge of the organization's Bible study materials and instructional methods, the petitioner has not explained how this training relates to

[1] 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 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.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.

the proposed employment in the United States. Rather, it is evident that the knowledge and skills that would allow him to successfully perform his duties were likely gained through his university education and through completion of a short training course in Quark publishing software. While it is undoubtedly helpful that the beneficiary is familiar with the petitioner's and foreign entity's operations, and possible that the beneficiary's particular skill set is uncommon within the petitioner's international ministry, the petitioner has not established that prior experience with the organization is actually required in order to translate and edit materials for publication for the U.S. entity. Again, the beneficiary's claimed specialized knowledge must relate specifically to the petitioning organization.

The beneficiary may be highly qualified for the offered position. In the instant case the petitioner has demonstrated, at most, that the beneficiary is knowledgeable in translating Spanish and English, and that he has the ability to utilize certain common publishing software programs. However, the beneficiary's knowledge and expertise, while valuable to the petitioner, do not include the type of special or advanced knowledge of the petitioner's products, processes or other interests as required by the regulations. In *Matter of Penner*, 18 I&N Dec. 49 (Comm. 1982), the Commissioner held that "petitions may be approved for persons with specialized knowledge, not for skilled workers." The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties would involve knowledge or expertise beyond what is commonly held by others with a similar educational background. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he would be employed by the petitioner in a specialized knowledge capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the petitioner and the beneficiary's foreign employer have a qualifying relationship, as required by 8 C.F.R. § 214.2(l)(3)(i). 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. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

At the time of filing the petitioner indicated that the beneficiary's foreign employer is "Precept Ministries International." The petitioner in this matter is also Precept Ministries International. Where asked to indicate the address of the beneficiary's employer abroad, the petitioner indicated "stateside supported from Chattanooga, TN." The petitioner indicated that the U.S. company serves as a parent to the entity that employs the beneficiary in Mexico, and where asked to indicate the stock ownership and managerial control of each company stated "Non Profit Ministry 501(c)(3)."

In the request for evidence, the director requested, *inter alia,* additional evidence to establish that there is a qualifying relationship between the U.S. entity and the beneficiary's foreign employer. The director noted that such evidence should demonstrate the ownership and control of each company, and may include, but is not limited to, copies of stock certificates, stock ledgers, articles of incorporation, and/or joint venture agreements.

In response, the petitioner submitted a document entitled "Memorandum of Understanding, Agreement for Precept Ministries Office," dated February 15, 1995, between Precept Ministries of Reach Out, Inc. and Precept Ministries Mexico, which "sets for the terms and conditions of facilitation and operation of a Ministry in Mexico."
The agreement gives Precept Ministries Mexico "permission and a limited license to establish a Ministry in Mexico as an extension of Precept and to use the name 'Precept Ministries." The agreement is contingent upon Precept Ministries Mexico adhering to "the doctrinal positions and philosophy of the ministry of Precept." In the event of a conflict that cannot be resolved, the Board of Precept would mediate the disagreement, and, should mediation fail, the rights and privileges granted by the agreement would be terminated upon 30 days written notice to Precept Ministries Mexico.

The agreement also grants Precept Ministries Mexico a limited license to translate Precept materials with the review and approval by Precept. The agreement would be terminated if Precept Ministries Mexico prints, duplicates or distributes any materials without Precept's prior approval. Pursuant to the terms of the agreement, it is expected that Precept Ministries Mexico would become "financially self-sustaining but not autonomous." Precept may provide some measure of support at its sole discretion, but is not obligated to do so. Precept Ministries Mexico may purchase materials from Precept at no more than cost plus 25%, and is responsible for all costs associated with taxes, distribution, warehousing and storage. Precept Ministries Mexico is required to provide Precept quarterly and annual accounting reports and an annual inventory report.

Finally, Precept Ministries Mexico is required to appoint to its board of directors or similarly constituted governing body two members from Precept's Chattanooga, Tennessee office, and such members are expected to attempt to attend at least one board meeting annually. The agreement indicates that "Precept Ministries Mexico shall operate with all reasonable freedom in order that ministry may be accomplished as local leadership deems best." The agreement between the parties "may be terminated by either party at any time upon 60 days written notice to the other party."

Upon review, the submitted memorandum of understanding is insufficient to establish that the petitioner and the beneficiary's foreign employer have a qualifying relationship. 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.

While the AAO acknowledges that certain documentation, such as stock certificates for the petitioning entity, may not be available for a non-profit religious organization, the petitioner provided no evidence to fully explain the scope and extent of the control the U.S. entity exercises over the foreign entity. Based on the memorandum of understanding, alone, the relationship appears to be more akin to a franchisor-franchisee relationship than a parent-subsidiary relationship. An association between a foreign and U.S. entity based on a

franchise agreement is usually insufficient to establish a qualifying relationship. A franchise, like a license, typically requires that the franchising organization comply with the franchisor's restrictions, without actual ownership and control of the franchise organization. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). Here the contractual agreement between the U.S. petitioner and the foreign entity can be terminated as opposed to one in which the foreign organization and a domestic organization are permanently tied together. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

In addition, the director specifically requested that the petitioner submit articles of incorporation for both the petitioner and the foreign entity. The memorandum of understanding submitted by the petitioner refers to "Precept Ministries of Reach Out, Inc.," but this is not the name utilized by the petitioner on Form I-129. 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). The petitioner has submitted no documentation for the foreign entity apart from the memorandum of understanding, which refers to the establishment of an "office" in Mexico. The petitioner has not provided an address for this office or any other evidence that there is in fact a qualifying branch, affiliate or subsidiary in Mexico that is doing business in a regular, systematic and continuous manner.

Absent evidence of the existence of the Mexican entity, and evidence that clearly establishes that the U.S. entity possesses the requisite control over the foreign entity, it cannot be concluded that the relationship between the companies can be considered that of affiliates, parent-subsidiary, or branches of the same organization. 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. For this additional reason, the appeal will be dismissed.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.