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File: EAC 08 001 52662 Office: VERMONT SERVICE CENTER Date: OCT 02 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)

IN 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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of "packaged tour specialist" as an L-1B nonimmigrant intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation, is allegedly a travel agency. The petitioner seeks to employ the beneficiary for a period of three years.

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

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was 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 primary issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii).

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 petitioner describes its business and the beneficiary's claimed specialized knowledge and proposed job duties in a letter dated September 25, 2007 as follows:

[The petitioner] is a travel agency located in Dallas, Texas. It is involved in the traveling, ticketing, and touring business, with emphasis on Southeastern Asian (Pakistan and India) markets. We plan itinerary, book flights, schedule travel accommodations and plan packaged tours for customers, using knowledge of routes, types of carriers, local attractions, and travel regulations.

\* \* \*

[The foreign employer] intends to transfer [the beneficiary] to [the petitioner] to assume the position of Packaged Tour Specialist. She will be responsible for the design, setup, and implementation of tour packages for various destinations in India. The position requires her to perform the following job duties:

- Work in conjunction with [the foreign employer] to design, setup, and implement tour packages for various designations in India
- Responsible for the logistics for the packages using the knowledge of airline tickets, travel restrictions, accommodation, tour guide support, tour attractions, designations, and visa requirements
- Work closely with [the foreign employer] on logistics to ensure that all issues are handled in accordance with internal tour guidelines
- Resolve any contingency and customer support issues
- Work with company management to develop marketing strategies
- Assist company in marketing, advertising and other promotional activities in this region of the country

Packaged tour requires specialized knowledge in the area of traveling business. To qualify for the position of Packaged Tour Specialist, the person must have indepth knowledge of the travel business. He must not only have the knowledge of a travel agent (ticketing, accommodation, visa issues, etc.), but must know various tourist attractions and country condition[s]. In addition, he is required to handle the logistics of a tour business, able to coordinate and arrange services for transportation services, tour guides, and accommodation. He must also know the operation of our offices in India and work closely with various personnel in our India company.

In addition, our tour packages are consisted [sic] for special destination[s] in south India. Some of our packaged tours include Kerala Dashan – Hill "N" Valley (8 nights/9 days), Kerala Darshan – Malabar (5 nights/6 days), Kerala Darshan – Malabar (8 nights/9 days), Kochi – Appleppey Stop[o]ver Package (2 nights/3 days), etc. Those are specialized tourist attractions that only [an] individual who has the experience in those specific places is able to effectively introducing [sic] to our customers.

The petitioner also indicates in the September 25, 2007 letter that the beneficiary worked for the foreign employer from April 2006 until March 2007 and that "it will take at least one year" to train an inexperienced "package tour specialist" because of the petitioner's unique destinations in south India.

On December 14, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary has specialized knowledge.

In response, the petitioner submitted a letter dated February 3, 2008 in which it further explains that the beneficiary will be responsible for the "Ayurveada" part of the petitioner's packaged tours. The petitioner explains that "Ayurveada" is an "ancient system of health care that is native to Kerala, India." The petitioner also claims that the beneficiary will perform the following "Ayurveada" related duties:

- Design tour packages for Kerala to incorporate Ayurveada tour, either as the main attraction or as a side attraction.
- Explain to customers the various aspects of the Ayurveada tour, including destination, accomandation [sic], and general activities[.]
- Converse with customers to understand their specific health concerns[.]
- Coordinate with overseas facilities in Kerala to arrange living accommandation [sic] and specific treatments to cusomters [sic] health issues[.]
- Work closely with our overseas branches to plan logistcs [sic] of tours[.]
- Assist in customer support and resolve various complaints[.]

On March 20, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel for the petitioner asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity.

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

In examining the specialized knowledge capacity of the beneficiary, the AAO will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3). The petitioner must submit a detailed job description of the services performed sufficient to establish specialized knowledge. In this matter, the petitioner fails to establish that the proffered United States position requires an employee with specialized knowledge or that the beneficiary has specialized knowledge.

Although the petitioner asserts that the beneficiary will be employed in the United States in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated workers who arrange package tours to south Indian destinations employed by the petitioning organization or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990).

In this matter, the petitioner asserts that the beneficiary possesses specialized knowledge of the "traveling business," which is described to include ticketing, accommodation, visa issues, various south Indian tourist attractions, relevant country conditions, and the "Ayurveada" aspect to the petitioner's tour packages. However, despite this claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or in the travel industry at large. The record also does not establish why, exactly, this knowledge cannot be imparted to a similarly experienced and educated south India package tour worker. Finally, the record does not establish that this knowledge differs substantially from the knowledge possessed by any travel industry worker who concentrates on travel to south India, or why experience abroad with the petitioning organization is necessary for the proffered position. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)).

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by south India travel agency workers generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's products, e.g., certain destinations or Ayurveada, does not alone establish that the beneficiary's knowledge is indeed uncommon, advanced, distinguished, or noteworthy. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced travel agency worker is not "specialized knowledge." Moreover, the unique qualities of the petitioner's products do not establish that any knowledge of these is "special" or "advanced." Rather, the petitioner must establish that qualities of

the products, in this case the destinations or subject matter of the travel, require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers outside of the petitioning organization may not have very specific knowledge regarding the petitioner's package tours, destinations, or subject matter is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced travel agency worker. The petitioner's claims to the contrary without supporting corroborating evidence are insufficient to meet the petitioner's burden of proof. In other words, it has not been established that a newly hired travel agency worker could not quickly learn all that he or she needs to know about arranging the petitioner's package tours shortly after being hired. Accordingly, it has not been established that the knowledge in question is special or advanced.

The AAO does not dispute the possibility that the beneficiary is a skilled and experienced employee who has been, and would be, a valuable asset to the petitioning organization. However, it is appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)). As stated by the Commissioner in *Matter of Penner*, when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." 18 I&N Dec. 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 firm's operation.

*Id.* at 53.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Attorney General*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. 9, 15 (D.D.C. 1990). The Congressional record specifically states that the L-1 category was intended for "key personnel." See generally, H.R. REP. NO. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." Webster's II New College Dictionary 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between the employee and the remainder of the petitioner's workforce.

While it may be correct to say that the beneficiary in the instant case is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of “key personnel.”

Moreover, in *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. REP. NO. 91-851, stated that the number of admissions under the L-1 classification “will not be large” and that “[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service.” *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the subcommittee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed “L” category. In response to the Chairman’s questions, various witnesses responded that they understood the legislation would allow “high-level people,” “experts,” individuals with “unique” skills, and that it would not include “lower categories” of workers or “skilled craft workers.” *Matter of Penner*, 18 I&N at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91<sup>st</sup> Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that the specialized knowledge worker classification was not intended for “all employees with any level of specialized knowledge.” *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, “[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees.” 18 I&N Dec. at 119. According to *Matter of Penner*, “[s]uch a conclusion would permit extremely large numbers of persons to qualify for the ‘L-1’ visa” rather than the “key personnel” that Congress specifically intended. 18 I&N Dec. at 53; *see also 1756, Inc. v. Attorney General*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend to all employees with specialized knowledge, but rather to “key personnel” and “executives.”)

As the petitioner has failed to document any materially unique qualities to the beneficiary's knowledge, the petitioner's claims are not persuasive in establishing that the beneficiary, while perhaps highly skilled, would be a "key" employee. There is no indication that the beneficiary has any knowledge that exceeds that of any other similarly experienced package tour arranger or that she has received special training in the company's products which would separate her from other workers employed with the petitioning organization or elsewhere. It is simply not reasonable to classify this employee as a key employee of crucial importance to the organization.

The legislative history of the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary will not be employed in the United States in a capacity involving specialized knowledge. For these reasons, the director's decision will be affirmed and the petition will be denied.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary was employed abroad in a position which required specialized knowledge for the requisite one-year period. 8 C.F.R. § 214.2(l)(3)(iv).

For similar reasons, the petitioner has failed establish that the beneficiary was employed abroad in a specialized knowledge capacity. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced and educated south India package tour arrangers employed by the petitioning organization. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Specifics are clearly an important indication of whether a beneficiary's duties involved specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103, *aff'd*, 905, F.2d 41. It is simply not credible that the beneficiary's knowledge of south Indian travel and tourism is "specialized" in south India.

Moreover, the petitioner claims in the Form I-129 that the beneficiary worked for the foreign employer from April 1, 2006 until March 30, 2007. This renders the beneficiary ineligible for the benefit sought for two reasons. First, this period of employment is one day shy of the requisite one-year period and, as such, the petition may not be approved for this reason. 8 C.F.R. § 214.2(l)(3)(iv). While the petitioner indicates elsewhere in the record that the beneficiary ceased working for the foreign employer on March 31, 2007, it is unclear which date is correct. 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).

Second, it is not credible that the beneficiary was employed abroad in a bona fide specialized knowledge capacity for at least one year if she was employed for only a one-year period. This would mean that the beneficiary had already acquired the necessary "specialized knowledge" on the day she began working for the foreign employer and, thus, she could not have acquired the knowledge through her experience working for the foreign employer as claimed by the petitioner. Accordingly, if prior experience working for the foreign employer is not necessary to impart the knowledge in question, it is most certainly not "specialized," and the petitioner is not eligible for the benefit sought.

Accordingly, the petitioner has failed to establish that the beneficiary was employed abroad in a position which required specialized knowledge for the requisite one-year period, and the petition may not be approved for this additional reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.