identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D 7

File: WAC 04 060 52937 Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2009

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intra-company 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 is a branch office of Tulip Travel Ltd., a Kenyan entity authorized to do business in California. The beneficiary was previously granted L-1B status to serve as a safari specialist in the petitioner's new office in the United States and the petitioner now seeks to extend her employment in this position for three additional years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary possesses specialized knowledge or that she has been or would be employed in a capacity requiring specialized knowledge.

The petitioner filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

> 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 decision of the director will be affirmed. Upon review, the director's decision properly applied the law to the present case. The record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge position or that the beneficiary is to perform a job requiring specialized knowledge in the proffered position. Although the petitioner asserts that the beneficiary's position as a travel consultant requires specialized knowledge, the petitioner has not articulated any basis to the claim that the beneficiary is employed in a capacity requiring specialized knowledge. Other than submitting a general description of the beneficiary's job duties, the beneficiary has not identified any aspect of the beneficiary's position which involves special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The petitioner has not submitted any evidence of the knowledge and expertise required for the beneficiary's position that would differentiate her employment from the position of travel consultants at other employers within the industry.

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). 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).

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 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 skilled employee.

Upon review of the petitioner's claims, the AAO must conclude that, while it may be correct to say that the beneficiary is a skilled employee, these skills do not constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and section 214(c)(2)(B) of the Act.

With respect to counsel's claim that the petition must be approved based on USCIS policy to give deference to prior approvals, that policy does not apply to the present case. First, it must be noted that prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Further, the petitioner's prior petition to which counsel refers was a petition to allow the beneficiary to enter the United States to open a new office. That petition was governed by the regulations pertaining to new offices. *See* 8 C.F.R. § 214.2(l)(3)(vi). The present petition is a request for an extension of the beneficiary's status after completing a one-year period to open a new office. Thus, the present petition is governed by a different set of regulations pertaining specifically to new office extensions. *See* 8 C.F.R. § 214.2(l)(14)(ii). As different law and evidentiary requirements apply to the present petition, the director has a duty to carefully review the petitioner's representations and documentation to determine if eligibility has been established.

Contrary to counsel's suggestion, the fact that a prior petition was approved on behalf of the beneficiary does not serve as *prima facie* evidence that eligibility has been established in the present proceeding. Counsel's reliance on the April 23, 2004 William Yates memorandum, titled "The Significance of a Prior CIS Approval," is misplaced as the memorandum clearly states that the policy of deferring to previous CIS approvals is not applicable to L-1 new office extension petitions. *See* Yates memo at p. 2, fn 1.

Finally, it is also noted that, according to California State corporate records, the petitioner's corporate status in California has been "forfeited." *See* http://keppler.ss.ca.gov/corpdata (last accessed May 11, 2009). Therefore, the petitioner can no longer be considered a valid legal entity in the United States. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*).

The forfeiture of the U.S. company's corporate status clearly and unequivocally renders the beneficiary ineligible for the requested classification. While the petitioner has not withdrawn the appeal in this proceeding, it would appear that the U.S. petitioner no longer exists as a valid employer for the purpose of this visa classification, thus the issues in this proceeding are moot.

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