

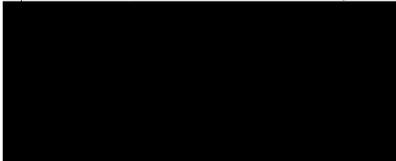


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 207 52164 Office: CALIFORNIA SERVICE CENTER

Date: AUG 16 2000

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)

Public Copy

IN BEHALF OF PETITIONER:



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prevent clear
invasion of privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner manufactures, imports and sells outdoor equipment, tents, backpacks, etc. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as its product manager-marketing. The director determined that the petitioner had not established that the beneficiary possessed specialized knowledge or had been employed in a capacity which requires specialized knowledge.

On appeal, counsel argues that the Service misinterpreted the regulations governing specialized knowledge and failed to maintain a consistent application of the law.

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.

8 C.F.R. 214.2(1)(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 (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.

Section 214(c)(2)(B) of the Act states:

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.

8 CFR 214.2(1)(1)(ii)(D) states:

Specialized knowledge means special 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 states that it was established in 1985 and that it is an affiliate of [REDACTED], located in Fujian, China. The petitioner declares 37 employees and a gross annual income of approximately \$60 million. It seeks authorization to employ the beneficiary for three years at an annual salary of \$54,800.

In the initial petition, the petitioner provided a "specialized knowledge statement" which described the beneficiary's position as follows:

Analyze marketing reports to develop appropriate sales and inventory forecasts.

Coordinate production and shipment deadlines.

Participate in overall product strategy, research and development requirements, analysis of market research, and manufacturing coordination for new and emerging products.

Coordinate technical product development, estimates of potential profits, and releases to production.

Conduct marketing analysis to develop product definitions.

Collaborate with a wide variety of functional areas, such as sales engineering, marketing, manufacturing, and operations, to develop and provide product definitions responsive to customer needs and market opportunities.

Coordinate marketing, sales engineering and financial plans for product line.

Provide financial and technical justification for product selection and definition.

Prepare product development objectives and schedules for

all phases of product development and introduction to market.

Review progress continually through product life cycle to ensure attainment of objectives.

Maintain communications and contacts to collect and analyze technical, financial, marketing, schedule, and sales information for product line.

In her decision, the director denied the petition and stated that the "evidence does not establish that the knowledge which the beneficiary possesses would be difficult to impart to another individual without significant economic inconvenience to the United States or foreign firm." The director concluded that the beneficiary did not possess the required specialized knowledge as defined by 8 C.R.R. 214.2(1)(1)(ii)(D).

On appeal, counsel argues against the Service's finding that the beneficiary's knowledge is not uncommon, but is rather generally known by practitioners in the field, noting that the beneficiary and other employees of the company who have submitted specialized knowledge petitions have been "part of a costly company program to give them knowledge both of the Korean head office's operations and of at least one factory in another country." Counsel further argues that this knowledge is expensive and that providing such knowledge to U.S. workers would "involve significant economic inconvenience to the firm."

Counsel further argues that the Service approved eight other petitions for the petitioner

With respect to counsel's argument that this petition should be approved in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The case cited has not been shown to have any precedential effect, as would a published decision. See: 8 C.F.R. 103.3(c).

The skills described for the beneficiary, such as possessing knowledge of the overall corporate organization, and managing the life cycles of products, are not unique skills that cannot be taught nor would they require a specialized knowledge that surpasses the ordinary or usual knowledge held commonly throughout the manufacture and sales of outdoor equipment. The record reflects that the beneficiary possesses a knowledge of how to perform her duties competently, but that knowledge cannot be considered to be an advanced level of knowledge of the processes and procedures of the foreign entity. The petitioner has not established that the beneficiary possesses specialized knowledge, or that she has been employed abroad in a capacity involving

specialized knowledge. For this reason, the petition may not be approved.

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.