U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FILE: WAC 01 256 60112 OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 10 2003

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)

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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 is an Indian vegetarian restaurant that seeks to employ the beneficiary temporarily in the United States, in a capacity involving specialized knowledge, as an executive chef of South Indian confectioneries. The director determined that the petitioner had not established that the beneficiary had been employed in a specialized knowledge capacity or would be coming to the United States to perform services involving specialized knowledge.

On appeal, counsel states the following:

> We believe that the Immigration & Naturalization Service's O.I. which expressly limits some job positions without merit to their individuality is at best contrary to the letter, spirit, philosophy and intention of Congress and applicable statutes. The Service also expressly misapplied sections of the statute as they apply to positions requiring specialized knowledge with regard to section 101(a)(15)(L) of the Immigration & Naturalization Act of 1990 (as amended). Counsel further argues that the nature of the job and the job duties of the job position should be controlling rather than a meritless blanket ban on any group of employees.

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(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.
>
> (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.

At issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

> 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 C.F.R. 214.2(l)(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 indicated that the duties and responsibilities of the beneficiary for the restaurant in India included:

> Provide high quality vegetarian sweets, snacks, savories and also prepare food and service to customers in all in-door and out-door catering services, requiring the peculiar preparations involved in South Indian food preparation as follows: Preparation of all South Indian snacks and masalas; Preparation of dough overnight for certain varieties of snacks; Grinding and powdering of masalas for preparation of other dishes; Preparation of all varieties of chutneys (curry's) for dishes and snacks; Deciding on the different combination of snacks for the day; Preparing flour, batter, stuffing ready for the preparation of dishes/snacks; Preparation of custom snacks per guest order; Prepare snacks either fried or steamed as tawa; Ensure proper planning per the day-to-day sales; Participate in planning menus; Mentor junior staff (chefs) for effective food preparation habits; Observe discipline and oversee food service with special attention given to the presentation, service, production and merchandising of food preparation; Maintain inventory for food, ingredients, supplies and equipment; Take responsibility for food, equipment and supply ordering, using seasoning products, new food trends and incorporating them into menu concept

> development, interact with customers and managers on special event planning and developing custom menus as required; Explore ways to lower cost of ingredients and thus food costs, inventory control and work within financial budgets as specified by the management; Responsible for the hands-on-production work as needed, staff training and ensuring the highest quality of food production, standards, presentation and techniques; Deliver food in a timely manner; Maintain the highest level of sanitation and cleanliness in all production areas. Maintain food quality and food presentation in banquets, as well as the productivity; man control; maintain effective communication with the kitchen, steward and services staff; Maintain proper storage, packing and rotation in food store and refrigerators; Catering work at client/customer's premises according to client/customer's requirements; Guard company proprietary and standardized recipes.

The duties of the offered position are described as follows:

> The job duties of this position are so peculiar and complex with respect to the restaurant business. The Chef contributes a major measure to our success in the industry. The Chef is the backbone of our restaurant business and an experienced Chef with knowledge of our proprietary recipes is the closest to indispensability as any job position can ever get.

The job duties are described identically as those duties described for the foreign entity.

The director determined that the type of knowledge and skills that the beneficiary has is typical of the knowledge that all employees who work in similar restaurants must have to perform their duties. The director concluded that the duties described by the petitioner did not constitute "specialized knowledge" as the term is defined in the regulation.

The petitioner has not articulated nor has counsel elaborated on any duty of the beneficiary that might be considered to require specialized knowledge. Counsel's assertions that the beneficiary holds some type of unique knowledge of the petitioner's cuisine is not supported in the record. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec.533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 BIA 1980). Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, counsel's assertions that the Service has misinterpreted the definitions of specialized knowledge are not persuasive. The courts have previously held that the legislative

history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In 1756, Inc. v. Attorney General, the court stated that, "[i]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to "key personnel" and executives." 745 F.Supp. 9, 16 (D.D.C. 1990). The record does not support a finding that the beneficiary in this case has specialized knowledge and also should be considered "key personnel." The beneficiary in this case appears to be a skilled Indian chef. The weight of the record indicates that the beneficiary in this case is skilled in making the petitioner's product, but not to the extent of meeting the definition of specialized knowledge.

On review of the record, the petitioner has not established that the beneficiary has been employed or will be employed in a position requiring specialized knowledge.

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.