

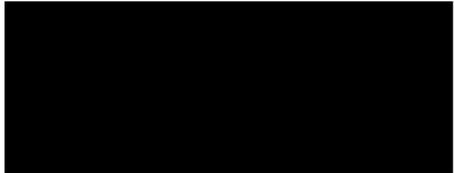
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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D. C. 20536



File: WAC-01-221-52585 Office: California Service Center Date:

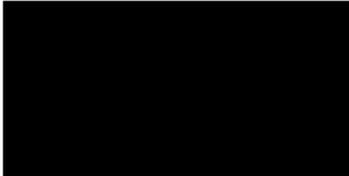
JUL 31 2003

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 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.

  
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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as a "shipping container resale" business. It seeks authorization to extend the beneficiary's temporary employment in the United States in a capacity involving specialized knowledge, as its international container manager. The director determined that the petitioner had not established that the beneficiary had been or would be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to establish the beneficiary's eligibility.

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.

The United States petitioner was incorporated in 1989 and states that it is a subsidiary of Container Providers International Holding ApS located in Denmark. The petitioner declares four employees in the United States. The petitioner seeks to extend the beneficiary's period of employment by three years.

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.

In support of the petition, the petitioner simply stated that the beneficiary's position in the United States utilizes "specialized knowledge of the foreign company's policies and procedures for the selling, leasing, obtaining, and delivery of new and used shipping containers."

In response to a Request for Evidence dated July 30, 2001, the petitioner stated that the beneficiary would be responsible for the following duties:

- (1) negotiating costs for the new and used containers
- (2) quotations to customers
- (3) arranging delivery of the containers to the freight forwarders specified address
- (4) general follow-up with the freight forwarders to secure deals
- (5) maintain contact with the various shipping lines in regards to the company's leasing fleet and sending information to the shipping lines and containers depots
- (6) coordinating the termination of the containers throughout North America

The director concluded that the petitioner had not established that the beneficiary had specialized knowledge or that he would be employed in a capacity involving specialized knowledge and denied the petition on October 19, 2001.

On appeal, counsel asserts that a previous petition for this beneficiary had been approved and that the present petition "included the same documentation that was presented to the INS" with the previous petition. Counsel concluded that the denial of the current petition "flies in the face of the intent of Congress as well as memorandum issued by the INS on this issue."

On review, the record is not persuasive that the beneficiary has been or will be employed in a capacity involving specialized knowledge of the petitioner's service and its application in international markets.

The petitioner noted that a previous petition had been approved for the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. The record of proceeding does not contain a copy of the visa petition that is claimed to have been previously approved. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute clear and gross error on the part of the Service. The Service is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that the Service or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988).

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 involve knowledge or expertise beyond what is commonly held in his field. The petitioner has not specifically identified the specialized knowledge that the beneficiary purportedly possesses nor articulated how this knowledge is advanced or otherwise "special." The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. 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.