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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

File: WAC-01-256-60077 Office: California Service Center Date: JUN 19 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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a vegetarian restaurant, seeks authorization to employ the beneficiary temporarily in the United States as its executive chef. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a capacity involving specialized knowledge.

On appeal, counsel submits a brief in rebuttal of the director's findings.

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.

Regulations at 8 C.F.R. § 214.2(l)(3) state 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 performed.

The United States petitioner was established in 1999 and is a branch office of Hotel Saravana Bhavan, located in Chennai, India. The petitioner seeks to employ the beneficiary temporarily for a period of three years at an annual salary of $30,000.00.

The issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a capacity involving 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.

Regulations at 8 C.F.R. 214.2(l)(1)(ii)(D) state:

> *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 describing the beneficiary's duties for the past three years, the petitioner stated, in pertinent part, that:

> Provide high quality vegetarian sweets, snacks, savouries 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 variety of snacks; Grinding and powdering of masalas for preparation of other dishes; Preparation of all varieties of chutneys (currys) for dishes and snacks; deciding different combinations of snacks for the day; Preparing flour, batter, stuffing ready for the preparation of dishes/snacks; preparation of custom snacks per customer order; Prepare snacks either fried or steamed as tawa; Ensure proper planning per 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 presentation, service, production and merchandising of food prepared; Maintain inventory for food, ingredients, supplies, equipment; responsibility for food, equipment, and supply ordering, using seasoning products, new food trends and incorporating them into menu concept development [sic]; Interact with customers and managers on special event planning and developing custom menus as required; Explore ways to reduce cost of ingredients and thus food costs, inventory control and work within financial budgets as specified by the management; Responsible for hands-on production work as needed, staff training and development, assisting in hiring and supervising production staff; Interact with service managers on buffet set-ups and displays, ensuring

> the highest quality of food production, standards, presentation and techniques; Deliver food in a timely manner; Maintain the highest levels of sanitation and cleanliness in all production areas; Maintain food quality and food presentation in banquets, as well as the productivity; man control [sic]; Maintain effective communications with the kitchen, steward and service 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.

In describing the beneficiary's proposed duties in the United States, the petitioner restates the aforementioned criteria adding, in pertinent part, that:

> It is important to understand that [the] beneficiary's knowledge is different from the rest of the market because this knowledge is proprietary to our company. While in our employment in India, the beneficiary contributed to developing and working with these recipes. In this connection, the beneficiary and his team members became initially knowledgeable in every aspect of these unique recipes and the dishes that result from them and the new dishes we constantly introduce. Thus, the beneficiary is intimately informed and is very knowledgeable about these duties having utilized his special knowledge in our organization's products, techniques, services and in fact, management. WE have successfully applied them in international markets (8 CFR 214.2(i)(1)(ii)(D) and we believe that we will succeed in the United States given the opportunity.
>
> A project of this magnitude cannot be accomplished from a remote site nor can persons who have no knowledge of the specific dishes and ingredients accomplish it. If it were possible to hire U.S. employees who had the specialized knowledge and experience needed in the proprietary menus and dish/products, we would have no need to transfer the beneficiary. Besides, there is no possibility of training someone at the local level because the new recruit would have to be trained specifically in these specialized dishes followed by on-the-job training in order to acquire minimal skills before she/he can commence rendering services. That will result in egregious tying down of capital which will definitely be injurious to our nascent business. Our industry is very dynamic and as such, time and timing are critical to business success. We believe strongly that given the circumstances, no training program could

> adequately replicate the detail, knowledge, expertise with which the beneficiary works on our dishes. Clearly, therefore, the beneficiary's transfer is the only option open to us at this time.
>
> The employees we are deputing are extremely knowledgeable and are experienced. They will work for us in [the] United States for a temporary period, train the local employees in our manner of food preparation and presentation [emphasis added] and return to our headquarters in India.

In response to a Service request for additional evidence, the petitioner, through counsel, stated, in pertinent part, that:

> The beneficiary is a Production Executive. He has been a Production Manager with several valuable years of experience at the parent (foreign) company. He will be supervising Executive Chefs and other chefs and cooks. The beneficiary possesses knowledge that is valuable to the employer's competitiveness in the market place. [The] beneficiary is uniquely qualified to contribute immensely to the operations of the employer's business in the U.S. He has been utilized for [sic] key duties by the parent company and has performed significant duties which have contributed immensely to the growth and profitability of the company and has contributed immeasurably to the financial position of the foreign entity. The beneficiary possesses knowledge of the employer's products and services that he gained through more than fifteen (15) years of extensive experience with the parent (foreign entity) company which includes knowledge that is actually unique in the employers business and industry to him [sic] and a few other key personnel and which has become unique and proprietary to the petitioner. The knowledge of the employer's products, service and the entire business is a result of unique and special training that the beneficiary and other employees received from the employer and through the beneficiary's extensive prior experience with the employer. This training is not offered anywhere else in the industry or anywhere else in the world.
>
> The beneficiary will be a key employee in the petitioner's operations in the United States because if the employer is to be competitive, it will have to introduce its most valuable lines of products/offerings and services into a society that is very competitive and very dynamic.

On appeal, counsel states that the Service arbitrarily dismissed the petition without looking at the particulars of the instant petition and therefore, ignored the "positive equities" of the said petition. Counsel reaffirms the beneficiary's eligibility, stating, in pertinent part, that:

> The beneficiary has been in the employment of the petitioner for several years-more than eighteen years during which period he has undergone rigorous training on the concept and culture of the business of the parent company and has become a clear specialist in the business. He has actually created, innovated and diversified some dishes and spices/recipes for which he was recognized and appreciated by the parent company. Please see Appendix M. These inventions have become the rave menu items for all the branches of the parent company and have actually impacted the business of the parent company. Counsel concludes restating the beneficiary's duties described in the petitioner's response to the request for additional evidence.

It must be noted for the record that, "Appendix M", referred to by counsel, makes no mention of the beneficiary and is, in fact, an offer of employment to another named individual. Further, although copies of several other articles extolling the accomplishments of Hotel Saravana Bhavan chefs, none of these articles makes mention of the beneficiary. Therefore, the record remains devoid of any particulars relating to the "specialized knowledge" possessed by the beneficiary.

Counsel's allusion to the petition having been dismissed without the service first examining the evidence is contradicted by the director's decision, in which reference is made specifically to evidence submitted by the petitioner. As counsel's statement is not otherwise corroborated by any documentary evidence, his statement must be viewed as conjecture.

On review, the record is not persuasive in demonstrating that the beneficiary will be employed in a capacity involving special knowledge referred to by the petitioner as "most valuable lines of products/offerings and services." The beneficiary has worked for the foreign entity for eighteen years. The proposed duties with the petitioner, as simply stated, are essentially the same.

Counsel argues that the beneficiary is one of the employees which is essential to enhance the profitability of the foreign company. The record indicates that the proposed employment, as stated, Executive Chef (snacks) does not require an advanced level of knowledge or expertise. None of the beneficiary's summarily described duties either abroad or in the proposed position in the United States have been shown to require special or advanced

knowledge. Such duties as observing, maintaining discipline and overseeing food service with special attention given to presentation, service, production and merchandising of food prepared; maintaining inventory for food, ingredients, supplies, equipment; responsibility for food, equipment, and supply ordering, using seasoning products, new food trends and incorporating them into the menu; interacting with customers and managers on special event planning and developing custom menus as required; exploring ways to reduce cost of ingredients and thus food costs, exercising inventory control and work within financial budgets as specified by the management; being responsible for hands-on production work as needed, staff training and development, assisting in hiring and supervising production staff; interacting with service managers on buffet set-ups and displays, ensuring the highest quality of food production, standards, presentation and techniques; delivering food in a timely manner; maintaining the highest levels of sanitation and cleanliness in all production areas; maintaining food quality and food presentation for banquets, as well as the productivity; maintaining effective communications with the kitchen, steward and service staff; and, maintaining proper storage, packing and rotation in food store and refrigerators, cannot be viewed as activities requiring advanced or specialized knowledge. Accordingly, the record is not persuasive that the petitioner has established that the beneficiary has specialized knowledge, or that he would be employed in a capacity involving specialized knowledge. In fact, the beneficiary's knowledge of the company's products, or of the processes and procedure has not been shown to be substantially different from, or advanced in relation to, any other chef of any restaurant operation.

Counsel further contends that the director's decision does not consider statutory and regulatory definitions of "specialized knowledge." The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. Contrary to counsel's argument regarding the Service's "blanket" dismissal, the mere familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act.

Counsel also asserts that the director's decision was prejudiced against the petition for reasons relating to eligibility requirements for other non-immigrant benefits; however, counsel's assertions are not corroborated by the record, which as presently constituted, is not persuasive in demonstrating that the beneficiary possesses specialized knowledge or that he will be primarily employed in the United States 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.