U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30682218

Date: APR. 4, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as a senior software engineer at a salary of $90,000 per year under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding the Petitioner did not establish, as required, that the Beneficiary: (1) possesses specialized knowledge; (2) was employed abroad in a qualifying capacity; and (3) will be employed in a specialized knowledge capacity in the United States. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering their services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id*. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D).

Special knowledge concerns knowledge of the petitioning organization's products or services and their application in international markets. To establish that a beneficiary has special knowledge, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.[1]

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity may meet its burden through evidence that the beneficiary has knowledge of or an expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.[2]

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. We cannot make a factual determination regarding a given beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also describe how such knowledge is typically gained within the organization and explain how and when the individual beneficiary gained such knowledge.

The Petitioner filed the petition in February 2023. The Petitioner described itself as "a software development company that specializes in Big Data Analytics," which "involves the use of computer systems to mine and process massive amounts of data for the purpose of identifying patterns, correlations, market trends, client preferences, and other information that . . . allows companies to make more informed and strategic business decisions." The Petitioner "develops and integrates software for medium and large corporations that manages, mines, processes, and analyzes those corporations' data." One of the Petitioner's proprietary tools, a "cloud accelerator" called [redacted] helps customers to migrate large volumes of data.

The Beneficiary began working for the Petitioner's foreign subsidiary as a senior software engineer in 2019. The Petitioner stated: "Since March 2020, [the Beneficiary] has been assigned to the Finance Analytics to Google Cloud Platform ('GCP') Project for our corporate client, [redacted] on a project "to migrate the [redacted] legacy application to GCP." The Petitioner asserted: "The project requires specialized knowledge in [redacted] software, which is used for analysis and design, data transformation, optimization, and validation. Knowledge of the [redacted] legacy product is required for understanding of the original Oracle database that is being migrated." The Petitioner further stated: "Training a new resource on this [redacted] application would be a time consuming and costly process. . . . Further, it would be especially difficult to find this replacement because this knowledge is not commonly held by software developers outside of our company." If granted L-1B status, the Beneficiary would continue to work on the same project for [redacted] that he has been pursuing abroad.

[1] *See generally* 2 *USCIS Policy Manual* L.4(B)(1), https://www.uscis.gov/policy-manual.
[2] *See id.*

The Director denied the petition in September 2023, citing several factors and asserting that "the job duties for the U.S. and foreign positions are identical" and therefore need not be discussed separately. On appeal, the Petitioner argues that factual errors in the denial notice indicate that the Director did not sufficiently consider the evidence of record. We agree.

The Petitioner observes on appeal that the foreign and U.S. job descriptions, while similar in many respects, are not identical. This is confirmed by comparing the job descriptions for the Beneficiary's foreign and intended U.S. positions, beginning on pages 23 and 28 of the Petitioner's initial statement.

The record shows more serious errors in the Director's decision. The Petitioner asserted that its [redacted] software is not . . . available for sale on the market for business or personal use." The Director disputed this claim, noting that the company offers a free trial version on its website. The Director also cited an "online video" by the director of data engineering for a commercial airline, who stated that the airline was using [redacted] and other tools provided by the Petitioner.

If the Director intends to deny a petition based, in whole or in part, on derogatory information from outside the record, the Director must advise the Petitioner of that information before issuing the decision. *See* 8 C.F.R. § 103.2(b)(16)(i). The Director did not provide such notice here. As the Petitioner observes on appeal, the Director referred to "a search of [redacted] software" and an "online video," but did not provide web addresses or otherwise identify specific sources of the information newly cited in the denial notice.

Also, on appeal, the Petitioner persuasively asserts that the Director misinterpreted the online information, and that the information does not show that the Petitioner offers [redacted] for sale. Rather, the trial version serves to illustrate [redacted] capabilities, but if a potential customer seeks to fully implement the system, then it must be installed and maintained by the Petitioner's engineers. The cited video describes how [redacted] was useful for the airline, but does not indicate that the airline purchased the software outright or that its own staff implemented it. Rather, the video indicates that the petitioning company used [redacted] in its project for the airline.

The Director acknowledged evidence that the Beneficiary undertook 475 hours of training, but concluded that "475 hours equates to approximately 20 days," which the Director concluded was a minimal amount of training. We agree with the Petitioner's observation on appeal that the Director's calculation assumes continuous training, 24 hours a day. Given a 40-hour work week, the training would have occupied at least 12 weeks, assuming the training filled each workday.

The Director's erroneous conclusions appear to have heavily influenced the outcome of the decision. We will therefore withdraw that decision and remand the matter for a new decision that fully considers the evidence of record. If the Director discovers derogatory information outside the record, and intends to rely on that information in a new decision, then the Director must first notify the Petitioner of that information and allow the Petitioner an opportunity to respond as required by 8 C.F.R. § 103.2(b)(16)(i).

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.