U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-M- INC.

DATE: APR. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an "IT/Distribution" company, seeks to temporarily employ the Beneficiary as a senior web applications developer under the L-1B nonimmigrant classification for intracompany transferees. *See* 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 that the record did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in a position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision relies on irrelevant factors and fails to address the Petitioner's primary claims regarding the Beneficiary's specialized knowledge. The Petitioner emphasizes that it established by a preponderance of the evidence that the Beneficiary possesses specialized knowledge as defined in the statute, regulations, and a 2015 U.S. Citizenship and Immigration Services (USCIS) policy memorandum.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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 his or her 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 him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

Under the statute, a beneficiary is considered to have specialized knowledge if he or she has: (1) a "special" knowledge of the company product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the company. Section 214(c)(2)(B) of the Act. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge.

Specialized knowledge is also defined as 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. 8 C.F.R. § 214.2(l)(1)(ii)(D).

II. BACKGROUND

The Petitioner is self-described as "the world's largest technology distributor and leading technology sales, marketing, and logistics company." It states that it has 30,000 employees and $46.4 billion in sales. The Beneficiary has been employed by the Petitioner's Philippines subsidiary since 2015[1] as a senior application developer, and the Petitioner seeks to transfer him to its California headquarters to serve in the position of senior web applications developer.[2] The Beneficiary has bachelor's degrees in secondary education and in computer science.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director acknowledged the Petitioner's claim that the Beneficiary acquired expertise and knowledge of the company's [redacted] by attending training in the United States. The Director found that the Petitioner did not adequately explain or document how his training resulted in the acquisition of knowledge that is either special or advanced. Moreover, the Director found that the Beneficiary's duties abroad and proposed duties in the United States appear to be similar to that of a senior web developer as described in the Department of Labor's Occupational Outlook Handbook (OOH). Finally, the Director found that the Petitioner did not explain with sufficient specificity how the Beneficiary's familiarity with the company's products and processes equates to specialized knowledge, and had not shown how the Beneficiary's current and proposed positions require him to possess knowledge that is truly different and uncommon compared to that possessed by similarly employed workers in the industry.

On appeal, the Petitioner asserts that the Director's decision improperly relied on information found in the OOH and lacked a detailed analysis of the specific facts of the case, including the "most critical fact – that the beneficiary was the lead developer, trainer, and deployment specialist of the [redacted]." The Petitioner emphasizes that the Beneficiary possesses

[1] The Petitioner has identified his start date as either January 2015 or March 2015.

[2] The Petitioner submitted a U.S. organizational chart which shows the Beneficiary's proposed title as "application software engineer."

both special and advanced knowledge of the company's warehouse system, and notes that, because the system was developed in the Philippines, the knowledge cannot be found in the United States and cannot be easily transferred to another employee.

The Petitioner argues that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. Specifically, the Petitioner contends that the Beneficiary has been employed abroad in a capacity involving assignments that enhanced the company's productivity and competitiveness, possesses knowledge that is particularly beneficial to the company's competitive position in the marketplace, and that he possesses unique and proprietary knowledge. The Petitioner concludes by stating that it would be "impossible to impart this proprietary expertise to another individual."

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that he possesses specialized knowledge, then we cannot conclude that he has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity. Here, the Petitioner claims that the Beneficiary has both special and advanced knowledge.

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.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, a 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. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.

Here, the Petitioner asserts that the Beneficiary gained special knowledge of the company's web-based system as "one of only three senior programmers of the pioneering team asked to develop" the system. The Petitioner explained that its group of companies has previously used a

LAN-based warehouse management system, and sought to convert it to the web-based system around the time it hired the Beneficiary in early 2015.

The Petitioner emphasized that the Beneficiary, when hired, already had advanced skills in web-based applications and multiple "computer languages tools and development expertise," including Lotus Notes C#.Net, VB.Net, DB2, MSSQL, Javascript (JQuery, Angular JS), HTML, CSS, and Bootstrap. The Petitioner noted that "the combination of all of these skills and utilization of them in the development of web applications is especially unique." The Petitioner did not offer any support for its claim that this represents a "unique" combination of skills in third-party technologies in comparison to other IT professionals who work on business systems and applications development. Further, the record contains no evidence related to the Beneficiary's prior professional experience in this field. The Petitioner provided evidence that he has a degree in secondary education and a degree in computer science, earned in 2012. Given its claim that the Beneficiary is one of the most advanced and experienced developers employed by the foreign entity and possesses a "rare" skillset with respect to web applications, it is reasonable to expect the Petitioner to explain the nature and scope of his industry experience in support of its claim that he brought an uncommon or highly advanced skillset to the development of

Nevertheless, the Petitioner acknowledges that the Beneficiary's skills in third-party technologies "do not necessarily evidence specialized knowledge," but emphasizes that his knowledge is special because he used these technologies in conjunction with his knowledge of the company's internal warehouse and logistics processes to create the system, and to see it through conceptualization, development, and successful roll-out. Therefore, the Petitioner claims that the Beneficiary's gained his special knowledge, in large part, from his role in the development of the system.

The Petitioner indicates that in March 2015, soon after the Philippines subsidiary hired him, the Beneficiary "participated in extensive training of developers hired to the team" which took place in California. It explained that this training included an overview of the Petitioner's warehouse operations in creating an initial concept and goals for the system's design, and meeting "US colleagues tasked with the development and oversight of the transition and new platform development." The Petitioner did not state or document the length of this "extensive training" or the number of employees who received it, nor has it explained the role of U.S. staff in the development of [3] The Petitioner did not establish that the Beneficiary, as a brand new employee, required an extensive period of time to become familiar with the company's warehouse operations, processes, logistics and supply chain, and existing LAN-based warehouse management system prior to being assigned to work on the web-based using his existing third-party web applications skills.

The Petitioner emphasized that this initial training was "essential for the team to understand the platform," but did not establish that this company-specific training was lengthy or involved special knowledge. Rather, it appears that any IT professional with web-based applications

[3] USCIS arrival and departure records show that the Beneficiary visited the United States from March 14 to March 22, 2015, and from March 12 to March 21, 2016.

development experience would have been qualified to work on the development of [redacted] after a brief period of training to become familiar with the Petitioner's specific warehouse system requirements. The Petitioner did not identify any aspect of [redacted] or its internal requirements that would establish how its warehouse management system is truly different or uncommon in comparison to that used by other companies in the same industry. Knowledge that is proprietary or company-specific must still be either special or advanced.

The Petitioner explained that the Beneficiary attended a second training held in March 2016 that was offered only to "team leads." Again, the Petitioner did not document the nature or length of this training or identify the number of participants. The Petitioner stated that this training involved observing "advanced warehouse operations," understanding business needs for the [redacted] technical design, performing systems analysis on how the operational needs should be implemented into [redacted] and coding the system to meet the Petitioner's requirements.

In terms of the Beneficiary's role in [redacted] development, the Petitioner noted that the Beneficiary created stored procedures and relational database tables in MSSQL, contributed to the user interface, analyzed the business and system requirements for the system, converted it to a technical design used as a roadmap for developers, mentored junior developers, and conducted code reviews. However, the Petitioner did not explain with specificity how knowledge of the [redacted] system, even as a member of the development team throughout the system's conceptualization, resulted in the Beneficiary having special knowledge that is truly different or uncommon compared to other web application developers working on business applications, either in the industry at large or within the petitioner's organization. The record contains little technical information regarding the [redacted] system itself in support of the Petitioner's claim that the Beneficiary is one of only a few people who would be capable of understanding the system at the level required for the U.S. position.

In this regard, we note that the Petitioner refers to the Beneficiary as a "pioneer developer" and at times attributes the system's concept, development, and rollout almost exclusively to him. However, the Petitioner has not identified the number or types of employees involved in [redacted] development. The Petitioner has indicated that the system was developed in the Philippines and therefore no U.S. employees have the knowledge necessary to implement it at the company's domestic warehouses. But the Petitioner also stated that the Beneficiary's March 2015 trip to the United States involved an introduction to "US colleagues tasked with the development and oversight of the [redacted] transition and new platform development." This statement undermines the Petitioner's claim that knowledge of the [redacted] system is limited to a team of developers based in the Philippines.

Therefore, the Petitioner's explanations and supporting evidence regarding the development of [redacted] are insufficient to support its claim that the Beneficiary developed special knowledge of the system that is uncommon within the company. Further, the fact that the system was developed internally for use at the petitioning organization's warehouses does not establish that those who worked on its development possess knowledge that is truly special and could not be transferred to experience web application developer with a short period of training. The Petitioner did not describe the Beneficiary's claimed knowledge with sufficient specificity and instead relies on the fact that he has

been assigned to [redacted] since he was hired by the foreign entity and a broad claim that he possesses specialized knowledge because he contributed to the development of an internal company system.

Overall, the record contains insufficient evidence to establish that the Beneficiary's knowledge of third-party web application technologies and tools combined with his familiarity with the Petitioner's warehouse and logistics requirements and its [redacted] system, constitute "special knowledge" that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained IT professionals in the Petitioner's industry. While we do not discount the possibility that the Beneficiary's role in the development of [redacted] may have resulted in his acquisition of specialized knowledge, the Petitioner's claims are overly broad and not supported by sufficient evidence to meet its burden of proof.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given beneficiary has knowledge of or 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. Also, as with special knowledge, the petitioner ordinarily must demonstrate that a beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

As noted, the Petitioner has identified the Beneficiary as one of three programmers assigned to develop [redacted] in the Philippines. The Petitioner states that, as a result of this assignment, he has advanced knowledge of the [redacted] system requirements, concept, and development, as well as advanced knowledge of related processes needed for the continued development and deployment of the system. However, the record contains insufficient information regarding the size and scope of the team assigned to the [redacted] project and the Beneficiary's exact role in its development. The Petitioner does not appear to claim that every employee assigned to the work on [redacted] has specialized knowledge, yet it has not shown how the Beneficiary's specific assignment resulted in his acquisition of advanced knowledge in comparison to his colleagues.

Despite the Petitioner's claim that [redacted] was developed exclusively by its Philippines affiliate, it identified U.S.-based employees responsible for development and "oversight of the [redacted] transition and new platform development." The foreign entity's organizational chart showed the Beneficiary as a member of an eight-person team who reported to a "team lead, applications." The team members included three other senior application developers, two staff identified as "Developer Applications II," a lead business analyst, and a junior information systems associate. The Petitioner did not provide information regarding the backgrounds or duties of other staff on the same team or

the U.S.-based employees working on [redacted] who provided training to the development team. The Petitioner broadly stated that the Beneficiary's skill set "is especially unique when compared with other developers on the team" but did not offer support for this statement. The organizational chart is insufficient to support the Petitioner's claim that the Beneficiary's was "leading the team," or its claim that he has "virtually created the [redacted] system" and holds advanced knowledge of the system and related processes which is not held by the other application developers.

The Petitioner submitted one document as evidence of the Beneficiary's claimed advanced role on the [redacted] development team – a "Carrier Code Integration" technical design document authored by him in June 2016. This document contains no specific references to [redacted] The "overview" section states: "*This document contains technical specification and high level design of* [redacted] *This* document is intended for Analyst, Developers and QA.". The Petitioner did not explain what [redacted] is or explain its connection to [redacted] It simply stated that this document was intended "to teach [redacted] system Analysts, Developers, and Quality Assurance personnel about the underlying code of the system." This single technical design document for a company system with no documented connection to [redacted] is insufficient to establish the Beneficiary's advanced knowledge of the [redacted] system or its related processes.

The Petitioner also emphasized the fact that the Beneficiary was tasked with deploying [redacted] at its [redacted] Florida facility in October 2016. The Petitioner noted that he imparted technical knowledge to the local workforce, trained warehouse personnel in [redacted] functionalities, created manuals, and performed troubleshooting and support duties. The Petitioner did not explain how this assignment established his knowledge of the system as advanced compared to that of other persons assigned to the [redacted] team in the U.S. and abroad. As noted, the Petitioner did not compare his deployment role to that of other members of the team, and it is unclear how many [redacted] deployments have been undertaken. While his knowledge of the system would be considered advanced compared to the warehouse personnel who are the end users, the Petitioner must still show that he possesses advanced knowledge in comparison to similarly employed workers and that the knowledge cannot be readily transferred to another employee with a similar technical skill set. The Petitioner did not provide the information needed to make such a comparison.

We acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, for the reasons discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While we do not doubt that [redacted] was developed to improve the company's productivity and competitiveness in the marketplace, and the Beneficiary was one of the employees who performed duties related to its development, this characteristic alone is not probative of the Beneficiary's specialized knowledge. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13. The Petitioner here has not

submitted sufficient evidence to establish how the Beneficiary's knowledge qualifies as "special" or "advanced."

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether the Beneficiary has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

IV. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of I-M- Inc.*, ID# 1137525 (AAO Apr. 12, 2018)