U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C- LLC

DATE: APR. 13, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an online retailer,[1] seeks to temporarily employ the Beneficiary as a "Software Development Engineer II" under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director "oversimplified the beneficiary's job duties, and . . . ignored evidence included in the record."

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).

[1] The Petitioner, a Delaware limited liability company, is part of a larger corporation that remains active. However, the entity that filed the petition withdrew its registration to do business in the State of Washington, where the Beneficiary's proposed job is located, after filing the appeal. (Search conducted at https://ccfs.sos.wa.gov/#BusinessSearch/BusinessInformation, March 13, 2018.)

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, 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 Petitioning organization is a global ecommerce retailer. The Petitioner stated that the Beneficiary "will be a key member of the [Petitioner's] Customer Service Technology (CSTech) team, which provides solutions to improve the customer experience." The Petitioner stated that "Artificial Intelligence for Customer Service (AICS), a sub-team within the CSTech organization, is a question-answering platform for customer service" and that the Beneficiary "will be working on 'Message Us' platform, which is . . . powered by machine learning, natural language processing, and workflow content."

The Petitioner asserted that the CSTech team uses a variety of proprietary technologies, such as a "tool . . . used for automating the deployment of code from a developer's environment to a production environment"; a "tool that enables teams to track and triage software bugs and issues impacting Customers"; and an "E-Commerce Storage and Computation platform."

At the time of filing, the Beneficiary had approximately 22 months of experience as a software development engineer II with the Petitioner's affiliate in India on "the Media Shopping Experience Team," which "is responsible for developing detail pages for media categories, including textbooks, DVDs, and video games, and maintaining the products and providing operational support for the products." The Beneficiary's position with the Petitioner would involve writing code "in a broad range of design approaches"; working with engineers, product managers, and customers "to develop a balance for customer requirements with team requirements"; identifying and solving problems through software enhancement and other means; and acting as a mentor to junior engineers.

III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to others in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

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 the Beneficiary possesses specialized knowledge, then we cannot conclude that the Beneficiary's past and intended future employment involve specialized knowledge.[2]

Under the statute, specialized knowledge consists of either: (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.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such 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 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 beneficiary gained such knowledge.

Special knowledge concerns knowledge of the petitioning organization's products or services and its 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.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the Petitioner 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] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. Thus, whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. Proprietary knowledge that is readily transferable to a similarly experienced employee outside of the company is not considered special or advanced.

The Petitioner stated that the Beneficiary "already has in-depth knowledge of the platforms necessary to join the CSTech team," and listed 14 "proprietary technologies" that the Beneficiary "will use . . . in his day-to-day job duties." The Petitioner provided brief descriptions of each of these technologies, but did not explain how the Beneficiary's knowledge of them extended beyond general familiarity routinely gained through employment at the petitioning company. The Petitioner also did not specify whether the Beneficiary would be modifying the listed tools and platforms, or would simply use them in the course of performing his duties. Further, although the Petitioner indicated that some skills require a "lengthy training period," it did not provide information or documentation regarding the Beneficiary's training in the company's proprietary tools and platforms. In fact, the Petitioner indicates that the Beneficiary has "spearheaded critical projects" from the time he joined the company, despite having no prior exposure to the company's internal technologies. The Beneficiary's ability to undertake and lead projects without formal training in these tools undermines the Petitioner's claims that it would be extremely time consuming for an employee from outside the company to obtain proficiency.

The Petitioner stated that the Beneficiary "is responsible for building most critical pieces of software and the core engineering components," and that his "expertise . . . qualifies him to work on developing the core data components for the CSTech team." The Petitioner asserted that the Beneficiary's "knowledge will be critical in his position in the U.S. to design and develop CSTech services and AICS."

The Petitioner listed various projects on which the Beneficiary has worked, but did not explain how the Beneficiary's tasks demonstrated specialized knowledge. For example, the Petitioner stated that the Beneficiary was the lead engineer on a project that used a "proprietary . . . service framework," the Petitioner's "code management system; a build tool . . . ; a deployment configuration management system . . . [and a tool for modeling release process and adding automation to it," as well as "security access tools."

The quoted language identified some of the Petitioner's proprietary systems, but did not show that the Beneficiary has special or advanced knowledge of those systems (as opposed to simply the ability to use them). The ability to use a tool is not necessarily specialized knowledge regarding that tool. The Petitioner did not explain with sufficient detail how much experience or training would be necessary for an otherwise qualified worker to be able to use the company's proprietary tools in a similar manner and, as noted, did not provide evidence that the Beneficiary himself received training prior to using the Petitioner's internal tools and platforms.

The Director advised the Petitioner that "[i]t is not readily apparent what special or advanced knowledge the beneficiary holds." The Director noted that the initial submission "does not compare and contrast the beneficiary's purported special or advanced knowledge to the knowledge of other employees similarly employed by the foreign entity, or within the field." The Director also stated that the Petitioner's "cover letter describes tools used by the beneficiary but does not explain whether the beneficiary's knowledge of the usage of such tools is considered advanced or special."

In response, the Petitioner stated that "no one has the same breadth and depth of specialized knowledge of the full array of tools required for developing automation in customer service on the [Petitioner's] ecommerce platform." The Petitioner also stated that the Beneficiary's "knowledge of working with various systems along with a sound knowledge of various internal technologies and processes is rare within" the company, and that "[h]is level of technical acumen in the implementation of proprietary technology is either unavailable or extremely uncommon even within" the company.

At the time the Petitioner filed the petition, the Beneficiary had worked for the foreign affiliate for about 22 months. The Petitioner's direct supervisor abroad, [redacted] stated that the Beneficiary "developed a niche expertise in implementing a complex array of . . . proprietary technologies . . . . His level of expertise is . . . extremely uncommon within the company. Compared to his teammates, he has developed an uncommon set of highly specialized skills." [redacted] added that the Beneficiary's "knowledge of internal processes, tools, technologies, services and platforms along with experience in customer interaction domain is rare within [the company] and is highly specialized."

[redacted] stated that the Beneficiary "was transferred [to the United States] because he brings knowledge in [several proprietary] technologies, a combination that none of his colleagues in the U.S. possess at the moment. . . . Prior experience in implementing a complex array of multivariate . . . internal tools is a rare ability even within" the company. He also stated: "It takes a significant training period for a new hire . . . to gain experience with the wide variety of products being used within [the company's] Media Shopping Experience team." Furthermore, he stated:

> [W]hile it may take a lengthy training period to become proficient in some of these skills, these skills are not the sole basis for [the Beneficiary's] specialized knowledge. . . . Even the vast majority of [the company's] employees that have gained experience with the proprietary tools and technologies . . . do not have the know-how and the technical maturity to see it through.

In an annual review, the Beneficiary's manager praised the Beneficiary's "deep technical knowledge." The "peer feedback" portion of that annual review indicated that the Beneficiary "has vast understanding in back-end system."

Email messages and other materials documented the Beneficiary's involvement in resolving "trouble tickets," but the submitted materials do not self-evidently show that the Beneficiary's knowledge exceeded that of other participants.

The Director denied the petition, finding that the Petitioner "did not provide evidence to demonstrate the beneficiary's knowledge and training [are] considered advanced or special compared to others similarly employed . . . within the field." The Director added that the Petitioner had not "demonstrated that the [Beneficiary's] familiarity with [the Petitioner's] products, policies, processes, methodologies, framework, and projects equates to specialized knowledge." Also, the Director concluded that the Petitioner did not specify "the nature of the beneficiary's knowledge; how such knowledge is typically gained within the organization; and how and when the beneficiary gained such knowledge." The Director found, instead, that the Petitioner had relied on "general statements" to the effect that the Beneficiary had mastered many of the company's proprietary tools.

On appeal, the Petitioner asserts that it had previously submitted detailed statements and documentation, providing specific information that the Director disregarded in the denial notice. The record does contain a large amount of information about the Beneficiary's tasks and projects; we have discussed some of the Petitioner's submissions above. But while these submissions give us an idea of the nature of the Beneficiary's work, they do not address the Director's points about "the nature of the beneficiary's knowledge; how such knowledge is typically gained within the organization; and how and when the beneficiary gained such knowledge." Regarding a given proprietary software platform, for instance, it is not sufficient to show that the platform has a complex, sophisticated structure. Different levels and types of knowledge are necessary to *create* such a platform, significantly *edit* its code, or simply *use* the platform. For this reason, it cannot suffice to simply list the proprietary tools that the Beneficiary encounters in his work. Rather, the Petitioner must show that the knowledge required to work with these proprietary tools is different or uncommon compared to that held by other software engineers and could not be readily transferred to a similarly experienced engineer in working in the ecommerce industry.

The Petitioner notes that the Beneficiary's manager abroad provided a 14-page letter, excerpted above. The letter, however, lacked sufficient detail about the Beneficiary's knowledge and how it is special or advanced in comparison with others at the company. Instead, the letter described tasks that the Beneficiary performed, and identified tools that the Beneficiary used to perform those tasks. This is not sufficient to establish specialized knowledge. As a specific example, the foreign entity stated that the Beneficiary would "[w]rite code and maintain proficiency in a broad range of design approaches," using a variety of tools. Naming two of these tools, the entity stated "significant knowledge of these tools is required to develop secure software applications and services."

Also, the Petitioner asserts that these tools are in use throughout a company that has existed for over 20 years and has hundreds of thousands of employees. At the time of filing, the Beneficiary had less than two years of experience at the company. Given these facts, a claim of specialized knowledge must go beyond the Petitioner's statement on appeal that "very few [of the Petitioner's] employees

have the same level of knowledge as the Beneficiary," or the prior assertion that the Beneficiary possesses "a combination [of knowledge] that none of his colleagues in the U.S. possess."

The Petitioner stated that the Beneficiary needed significant experience before achieving his current level of proficiency, but the Petitioner did show when the Beneficiary reached that level. With respect to the claim that such proficiency is extremely rare within the company, the Petitioner did not establish how many others hold the title of software development engineer II or show how they do their jobs without that proficiency.

The Petitioner states that "USCIS erred by failing to follow its own policy memorandum." The Petitioner refers, here, to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), http://www.uscis.gov/laws/policy-memoranda. The memorandum quoted dictionary definitions of "special" and "advanced" (*id.* at 6-7) and also provided "a non-exhaustive list of factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized" (*id.* at 8). The Petitioner protests that "[t]he denial makes no mention of any of the factors listed in the policy memo," which, the Petitioner asserts, expanded upon the definitions of "special" and "advanced." The Petitioner contends that the Director erred by relying only on the dictionary definitions of those terms.

The factors listed in the policy memorandum, however, do not directly address the meaning of the terms "special" and "advanced." Rather, "[t]he presence of one or more of these (or similar) factors, *when assessed in the totality of the circumstances, may* be sufficient to establish by a preponderance of the evidence that a beneficiary has specialized knowledge" (emphasis added). *Id.* The same policy memorandum states:

> the focus here is primarily on whether the beneficiary's knowledge of the processes and procedures used specifically by the petitioning organization is advanced. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others in the petitioning organization and the relevant industry.

Id. In this instance, the Petitioner has shown that the Beneficiary's job involves a number of proprietary tools, but has not submitted evidence to support its claims that the Beneficiary's knowledge is advanced beyond others at the company working with the same tools.

The Director listed the four main categories shown in the Beneficiary's foreign job description, and found that these duties appear to be typical of a Software Developer as described in the Department of Labor's Occupational Outlook Handbook (OOH). The Petitioner asserts: "The denial oversimplifies the beneficiary's job duties and mischaracterizes the record," because the Director had quoted only the section headings and omitted the longer descriptions that followed. The Petitioner contends: "The denial should be overturned on this basis alone."

This element of the denial concerned the question of whether the Beneficiary's foreign position involved specialized knowledge, a finding that we cannot make in the Petitioner's favor without first establishing that the Beneficiary possesses specialized knowledge. Because we do not find that the Petitioner has met this first threshold, we cannot make a separate finding that his position abroad involved specialized knowledge. We note, however, the Petitioner's assertion that "there is no legal basis whatsoever for finding that because an occupation exists in the OOH, a specific position within that occupational classification cannot involve specialized knowledge." The Director made no finding that a position listed in the OOH cannot involve specialized knowledge. Rather, the Director found that the Petitioner had not established that the Beneficiary's duties require knowledge beyond what is typical for a qualified software developer.

The Petitioner offers the analogy of a surgeon who uses "specialized knowledge in doing the daily tasks of diagnosing and treating illnesses and injuries." The Petitioner states: "the fact that the surgeon's job duties are listed in the OOH make it no less likely that she possesses specialized knowledge." What the Petitioner describes, however, is knowledge *specific to a particular occupation*, which is not the same thing as *specialized knowledge*. Only a surgeon knows how to perform surgery, but this does not mean that any given surgeon has specialized knowledge *relative to other surgeons*. Otherwise, any sufficiently complicated occupation would involve specialized knowledge simply as a matter of definition.

The Congressional record states that the L-1 category was intended for "key personnel." *See* H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position that is "of crucial importance." *Webster's II New Coll. Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees are "important" to a petitioner's enterprise, in the sense that their contributions to the enterprise justify their employment. But an employee of "crucial importance" or "key personnel" must rise above the level of a petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, we must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the Petitioner's workforce. Skills intrinsic to a given occupation do not constitute special knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and § 214(c)(2)(B) of the Act.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on its statements regarding the Beneficiary's knowledge of its organization and his knowledge of the internal tools and platforms used by its software engineers. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other software development engineers, either within or outside of the organization. While there likely are no employees with the exact same knowledge the Beneficiary possesses, the record does not demonstrate that the Beneficiary's knowledge is in fact significantly different from that generally held by workers in similar positions in the industry, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

For the above reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's services and their application in international markets.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner has not provided the necessary information to make such a comparison. The Petitioner does not describe how this Beneficiary's work and responsibilities differ from other employees or how other employees gained their knowledge of the petitioning organization. The Petitioner has not established that the Beneficiary's knowledge is advanced within the petitioning organization's own operations.

While the Beneficiary may be a valuable employee who is well-qualified for the proposed position in the United States, the record does not establish that the Beneficiary possesses special or advanced knowledge.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C- LLC*, ID# 1131194 (AAO Apr. 13, 2018)