U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-L-

DATE: APR. 17, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a financial institution, seeks to continue the Beneficiary's temporary employment as a "VP; Consultant – Data Mining/Warehousing" 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 position involving specialized knowledge; and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director's "decision lacks virtually any legal analysis."

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, 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 a financial services company, seeking to employ the Beneficiary on its Business Intelligence Services Technology Center of Excellence, which provides data and analytics services to the Petitioner's Global Wealth and Investment Management division. The organization's affiliate in [redacted] hired the Beneficiary for a similar position in 2010, and he transferred to the United States under the company's blanket L petition in March 2014. The Beneficiary completed a bachelor's degree in computer engineering in 2010 just prior to joining the Petitioner's foreign affiliate.

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 he possesses specialized knowledge, then we cannot conclude that the Beneficiary's past and intended future employment involve specialized knowledge.[1]

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

[1] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

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.

In the denial notice, the Director found that the Beneficiary's duties appear to be typical for an operations research analyst, and therefore do not evidently involve special or advanced knowledge. The Director acknowledged that the Beneficiary's training and experience with the petitioning company has made him familiar with the company's "products, policies, processes, methodologies, framework, [and] projects," but the Director found that the Petitioner did not specifically describe the claimed specialized knowledge or explained "how such knowledge is typically gained within the organization."

Apart from two introductory paragraphs and other references to the denial notice, the Petitioner's appellate brief is essentially a slightly modified version of a letter that the Petitioner had previously submitted in response to a request for evidence. Because most of the brief simply repeats information already in the record, the only new substantive argument is the Petitioner's assertion that the Director did not sufficiently analyze the evidence in the record. The Petitioner repeats prior claims but does not directly address the Director's findings about those claims.

Below, we will discuss the Petitioner's claims in greater detail than the Director did, and in this way address the Petitioner's primary concern on appeal.

The Petitioner's description of the Beneficiary's work uses several acronyms and initials:

- LOB – Lines of Business
- GWIM – Global Wealth and Investment Management: a component of the Petitioner's parent company
- BI – Business Intelligence: a process of data analysis to support decision-making by financial advisors
- MIDAS – Management Information Decision Analysis System: "a comprehensive Business Intelligence (BI) environment that consists of the BI platform, data provisioning streams that bring pertinent historical data into the environment, a data warehouse, and access and reporting tools for sharing data with business users"
- BIST – Business Intelligence Services Technology: the parent company's "primary provider of management information reporting data and analytics services." The Petitioner stated that

"BIST supports the MIDAS BI platform and performs GWIM data processing and warehousing and BI reporting."

- COE – Center of Excellence: A BIST component "responsible for the oversight, design, development, and implementation of strategic, enterprise, departmental and tactical reporting and banking application solutions across the GWIM organization"

The Petitioner discussed the Beneficiary's employment at the Petitioner's affiliate in :

> [The Beneficiary] gained specialized knowledge and experience with the MIDAS data warehouse and led multiple project teams in the delivery of Business Intelligence solutions for management reporting. . . . Utilizing MIDAS, [the Beneficiary] provided financial sales, business performance and regulatory reporting solutions to senior management. He gathered LOB reporting requirements, performed data analysis and translated data into technical specifications. . . .
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> . . . [The Beneficiary] developed a strong understanding of [the parent company's] proprietary processes and the techno-functional requirements of the Global Wealth and Investment Management (GWIM) business. He served as a critical member of the BIST COE team and it's [*sic*] accurate reporting to business users. As a result of his extensive experience with the company's proprietary MIDAS data warehouse, [the Beneficiary] gained specialized knowledge of [the parent company's GWIM] business and substantial experience analyzing the requirements of the company's unique, global business users. . . .
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> [The Beneficiary] has attained a level of specialized knowledge that is uncommon within the [parent company's] organization and the financial services industry. In fact, [the Beneficiary] is one of a very small number of employees within our entire global workforce currently capable of successfully filling this position . . . in the United States.
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> Due to the advanced and unique nature of [the Beneficiary's] experience and knowledge, it would be a difficult and time consuming process to impart an equivalent level of expertise to another individual. Bringing in another employee to perform the duties of this . . . position would require at least 12 months of intensive training on our proprietary BI, reporting and query tools as well as the MIDAS system before the candidate could achieve the equivalent knowledge and experience necessary to perform the required position responsibilities. Understanding how trades and other data flow through our internal systems is a complex and ever changing domain where the diagnosis of a problem relies on prior experience with similar situations. It takes significant time to acquire the experience and exposure to real-world situations required to respond to problems occurring in time-pressured environments.

The Petitioner also stated:

> [The Beneficiary] was critical to [the COE] initiative in [redacted] and gained extensive experience using our proprietary BI and reporting tools as well as Cognos, Tableau and OBIEE. [The Beneficiary] has been identified as the only strategic resource that can manage the sustainability and rebuilding of the COE in the United States.

The Petitioner asserted that the Beneficiary "has highly specialized knowledge of our Business Intelligences Services Technology reporting procedures and internal trade technologies, that can only be gained through years of extensive on the job training."

The Director advised the Petitioner that the initial statement did not provide enough information to show that the Beneficiary possesses specialized knowledge. In response, the Petitioner stated that the Beneficiary "was an integral part" of a "five person team" that "created a key proprietary tool." The Petitioner described this tool as "a comprehensive business intelligence platform that mines data, stores it, shares it with key decision-makers, and provides reporting to all levels." The Petitioner then stated that the Beneficiary "helped design and implement the GWIM Business Intelligence COE component of the MIDAS platform," but it is not clear whether this is the "key proprietary tool" described above.

The Petitioner stated that the Beneficiary is "the most qualified" of "only three employees within our company capable of successfully providing subject matter expertise for the MIDAS platform and other strategic data management initiatives in the GWIM Business Intelligence COE." The Petitioner added:

> [The Beneficiary] utilizes his specialized knowledge of the MIDAS platform and the internal processes and structure of the GWIM organization. This knowledge is "special" and "advanced" because it relates to specific technologies and implementation tactics, as well as the operational context that is unique to the [parent] organization. [The Beneficiary] developed this specialized knowledge over seven years of service with our company. In those years, he played a primary role in enhancing the MIDAS platform, leveraged this expertise in MIDAS to lead several project teams to deliver business intelligence solutions for management reporting, and gained an in-depth knowledge of the GWIM organization's business, operations, and technology in the process. Furthermore, [the Beneficiary] is an expert in a variety of other proprietary business intelligence tools, including Cognos, Tableau, and OBIEE. Experience with these business-critical technologies and internal processes would be impossible to gain outside of the [parent] organization. . . .
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> . . . .

> . . . [The Beneficiary] is one of only five (5) who have proficiency in business intelligence technologies such as the MIDAS platform. Of those five people, [the Beneficiary's] specialized knowledge far exceeds the others' since he has been at the forefront of business intelligence initiatives since the Center's inception in 2008.

With regard to the last quoted sentence above, the Petitioner had previously stated that "[t]he Center of Excellence . . . was created . . . in 2009." Either way, the Petitioner's foreign affiliate did not hire the Beneficiary until June 2010, a month after he graduated from college. Therefore, he was demonstrably not involved with the COE at the time of its inception in 2008 or 2009. If he was placed at the COE immediately upon his hiring, then it is evident that working in the COE does not inherently require special or advanced knowledge, because the Beneficiary could not have attained that knowledge before June 2010.

With respect to the Petitioner's assertion that "only five [employees] have proficiency in business intelligence technologies such as the MIDAS platform," an organizational chart in the record shows that the Petitioner's "Head of Business Intelligence Services and the MIDAS Platform" has at least 15 subordinates, including individuals not under the Beneficiary's authority in charge of "MIDAS Core Processes," "MIDAS & MIP Applications/Infrastructure," and the "MIDAS Helpdesk & User Training."

The Petitioner submitted the Beneficiary's "Learning History," indicating that the Beneficiary registered for 64 training courses between November 2010 and August 2013, and completed 61 of them. The record provides little information about these courses apart from dates and titles. The Petitioner did not explain which of these courses imparted specialized knowledge in a manner that would be difficult and time-consuming to repeat. The Petitioner did not establish that any of the courses represented long-term training; the Beneficiary completed three of the courses 15 minutes apart on the afternoon of April 12, 2013. The only courses that appear to have involved training specifically related to the Beneficiary's technical duties were a single course in "GWIM Business" and 14 short courses in IBM Cognos 8 BI completed over the course of five days in March and April 2011. The Petitioner has not established that the Beneficiary's work at the [redacted] COE required him to complete training on proprietary or company-specific technologies.

The Petitioner submitted printouts of electronic slide presentations, but did not provide context to establish their significance. One presentation on MIDAS dates from 2004, nearly six years before the Beneficiary joined the company.

In terms of material that specifically mentions the Beneficiary, he prepared or co-prepared documents about several projects, including the following examples:

- "[P]rocuring servers to set up a robust infrastructure for BI Reporting COE's reporting solutions for the GWIM business and other technology stakeholders"
- "Extending Business Capabilities . . .with IBM Cognos Solutions"
- "Advanced Scheduling Capabilities and Cube Automation Practice"

- "[T]o procure and setup a state-of-the-art BI infrastructure on physical servers to support advanced reporting capabilities across different tools" – a project largely handled with Cognos tools

The Beneficiary prepared a number of these documents during his first 18 months at the company.

The Petitioner referred to Cognos as one of its "proprietary business intelligence tools," in which it would be "impossible to gain" expertise outside the petitioning organization, but the submitted documentation indicates that Cognos is an IBM product. One of the Beneficiary's reports indicated: "Cognos has been the tool of choice for business reporting within the BIST group since 2004. Currently, there are over 1000 active users using the tool for their ad-hoc and production reporting purposes." The Petitioner also referred to "Tableau" and "OBIEE" (Oracle Business Intelligence Enterprise Edition) as its proprietary tools, but both are also third-party technologies widely available outside the Petitioner's organization.

The apparent exaggerations and inaccuracies in the Petitioner's statements limit their credibility and reliability.

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.

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. It is reasonable to believe that all major financial institutions develop internal tools and methodologies, but in this instance the Petitioner has identified some tools as proprietary even when the record shows them to originate from third party providers. The Petitioner has not sufficiently explained what knowledge the Beneficiary has gained that is specific to only its organization, and the Petitioner has not established that it would take a significant amount of time to train a qualified worker to perform the duties required of the proposed position.

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.

We cannot differentiate the Beneficiary's knowledge from other employees within the petitioning organization without reviewing 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 has asserted, without elaboration, that the Beneficiary is one of only five, or three, employees possessing certain knowledge, but the record does not support these claims. 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.

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. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of others in comparable positions, 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 specialized knowledge as contemplated in the statute and regulations.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge. This finding inherently precludes a finding that the Beneficiary's employment abroad and in the United States involve specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of M-L-*, ID# 862836 (AAO Apr. 17, 2018)