U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8187559

Date: APR. 28, 2020

Appeal of California Service Center Decision

Form I-129, Petition for an L-1A Manager or Executive

The Petitioner uses its social content aggregation platform to provide marketing technology services to its clients. It seeks to employ the Beneficiary temporarily as its "Enterprise Business Development Lead" under the L-1A 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 Director of the California Service Center denied the petition concluding that the Petitioner did not establish, as required, that: (1) the Beneficiary was employed abroad in a managerial or executive capacity or in a position requiring specialized knowledge for at least one year during the three years prior to filing this petition; and (2) the Beneficiary is qualified to perform the intended services in the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal because the Petitioner did not establish that the Beneficiary was employed abroad in a specialized knowledge capacity, as claimed. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's qualifications to perform the intended services in the United States. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). 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 managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(ii).

II. BACKGROUND

The foreign entity, parent to the Petitioner, uses its proprietary "User-Generated Content" ("UGC") marketing technology and "social content aggregation and publishing platform" to offer solutions to its enterprise business clients. The Petitioner states that the Beneficiary used the specialized knowledge he gained during his employment as the foreign entity's business development executive for the Europe, Middle East, and Africa region ("EMEA") to "single-handedly" create an approach and strategy for enterprise business development. The Petitioner states that the Beneficiary's specialized knowledge can only be gained through work experience within its organization, explaining that it operates within a narrow business "niche" that includes "only a handful" of competitors that offer a similar product. The Petitioner also emphasizes the "uniqueness" of the technology and solution it offers to its enterprise business clients, claiming that its product is "significantly stronger" than that of its competitors. The Petitioner attributes the Beneficiary's the creation of an enterprise business development strategy and team to the "successful pivot" of the company's product into the enterprise market.

The Petitioner points out that in the course of his employment abroad, the Beneficiary was selected as one of only three employees globally to receive leadership training and the only employee to receive enterprise business development training, which were delivered online through modules that were customized for the foreign entity's business model. The Petitioner highlights the "significant amount of functional knowledge and advanced skills" the Beneficiary gained and the "essential" role he assumed on a team tasked with overseeing the EMEA region's business development activities. The Petitioner also points to the Beneficiary's "specialized" and "advanced understanding of UGC marketing" knowledge," his "expertise of global Enterprise organizations and their approach to the developing content marketing landscape," and his "deep understanding" of the company's clients as proof that the Beneficiary acquired and used specialized knowledge, which enabled him to successfully carry out his assigned job duties during his employment with the foreign entity.

III. EMPLOYMENT ABROAD IN A SPECIALIZED KNOWLEDGE CAPACITY

The primary issue in this matter is whether the Petitioner provided sufficient evidence to demonstrate that the Beneficiary was employed abroad in a specialized knowledge capacity, as claimed.

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]

A beneficiary is deemed 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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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

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.

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 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.

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.

In the present matter, the Petitioner discussed the Beneficiary's key role as creator of the foreign organization's enterprise business development strategy and team, claiming that as a result of the Beneficiary's contributions the foreign entity was able to "significantly enhance[]" its competitiveness in the international market. The Petitioner listed and described the distinguishing features of its product, linking the release of each feature to a marketing strategy that the Beneficiary developed in the course of his tenure with the foreign entity. That said, the Petitioner credited the "product team," rather than the Beneficiary, with product development and technological optimization, claiming that the Beneficiary's specialized knowledge was "in the Content Marketing arena" and was directly associated with the UGC and "expertise of global Enterprise organizations and their developing content marketing landscape." The Petitioner did not explain how the Beneficiary's knowledge of its product or that of other enterprise organizations is specialized.

The Petitioner also highlighted the Beneficiary's creation of the enterprise business development strategy and a "best practices" approach for conveying the company's "technical expertise and unique value proposition," claiming that these factors resulted in an increase in enterprise customers.

However, because the Petitioner did not describe either the strategy or the "best practices" approach, it is unclear whether specialized knowledge played a role in their creation. Furthermore, the Petitioner did not explain how the Beneficiary's knowledge is "special" compared to others who are similarly employed in the industry, nor did the Petitioner identify the company's processes and procedures in which the Beneficiary's knowledge is "advanced" in comparison to others within the same organization. Likewise, although the Petitioner claimed that the Beneficiary "developed an advanced amount of specialized knowledge about [the company] as a global organization" and "created and implemented a new methodology" for incorporating the best practices approach to promote the company's product at various marketing events, these vague references to the Beneficiary's knowledge of the "global organization" and "new methodology" provide no substantive insight about his specific knowledge. Thus, it is unclear how the Beneficiary's understanding of the employing organization and its business components translates into "special" knowledge of the employer's products or services or "advanced" knowledge of its processes and procedures.

Further, the Petitioner did not explain how the Beneficiary acquired the knowledge that is claimed to be specialized. Although the Petitioner stated that the foreign entity invested in an online training program, emphasizing that the Beneficiary was one of only three employees who was selected for the leadership training and was the only employee who was selected for the enterprise business development training, such training did not commenced until "[s]pring of 2017," approximately seven months prior to the date the Beneficiary's employment terminated, and no information was provided about the date of completion of the said training. Accordingly, even if the Petitioner were to demonstrate that the training resulted in the Beneficiary's acquisition of specialized knowledge, it would have been factually impossible for the Beneficiary to have completed the training and then used the knowledge gained from the training to fill a position requiring specialized knowledge for at least one year prior to the date his employment terminated in October 2017.

On appeal, the Petitioner argues that the Beneficiary's knowledge is both "special" and "advanced" and cites to a number of previously issued USCIS policy memoranda, which have since been rescinded and superseded by USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. The Petitioner highlights the Beneficiary's 2.5 years of employment with the foreign entity and his "single-handed[]" creation of an enterprise business development approach and strategy to support this claim. However, as noted earlier, the Petitioner does not describe either the strategy or the approach, nor does it establish that specialized knowledge was required to create them. Likewise, despite the Petitioner's reference to the Beneficiary's "particularly high degree of business acumen," the lack of information about the actual knowledge this "high degree of business acumen" involves precludes a determination that "high acumen" is synonymous a level of knowledge that would be deemed as specialized.

Moreover, even if the Petitioner were to establish that a "particularly high degree of business acumen" equates to specialized knowledge, it is unclear when the claimed level of knowledge was achieved. Rather than specifying a definitive path for gaining specialized knowledge, the Petitioner only broadly states that the knowledge was obtained through "dedicated coaching from [the foreign entity's] executives and also on-the-job during [the Beneficiary's] tenure" with the foreign organization. These vague statements fail to identify a progression in the Beneficiary's knowledge from the time he commenced his employment with the foreign entity up to the point when the specialized knowledge was purportedly attained. Although the Petitioner is correct in stating that neither the statute nor

regulations have a requirement for formal or other training in order to attain specialized knowledge, in this instance the Petitioner's specifically discussed the Beneficiary's formal online training, highlighting its cost and pointing out that the training was offered exclusively to only a few of its employees. As such, it is reasonable to assume that the Petitioner relied on the Beneficiary's training to support the claim that the Beneficiary acquired specialized knowledge. As noted earlier, however, based on the commencement date of the training and the termination date the Beneficiary's employment, any knowledge gained from the training could not have been used for at least one year in the course of the Beneficiary's foreign employment and thus would not serve as evidence that the Beneficiary held a position that required specialized knowledge for at least one year during his employment abroad with the foreign entity.

Further, the Petitioner's supporting statements and appeal brief reference the Beneficiary's "deep knowledge and understanding" of the foreign entity's "use cases and case studies." However, it provides no description of the knowledge or information about the cases and studies to explain how the Beneficiary's knowledge is either "special" or "advanced." The Petitioner also claims that the Beneficiary's knowledge is special because it includes an understanding of how the foreign entity's UGC platform "integrates with other technologies in the digital marketing ecosystem." However, the Petitioner did not distinguish the Beneficiary's knowledge as distinct or uncommon compared to knowledge that is generally found within the same industry. Likewise, claiming that the Beneficiary's knowledge of the foreign entity's "marketing strategies, process, and systems" is advanced is not sufficient without a description of the strategies, processes, or systems and an explanation of how the knowledge is more developed in progress or complexity in comparison to the knowledge of other employees within the foreign entity. Further, the Petitioner's claim that the foreign entity had "measurable success" as a result of its use of methodology is not in contention. That said, a methodology's "measurable success" is not necessarily proof that specialized knowledge was required for its development, particularly when the Petitioner neither describes the methodology nor offers information about the knowledge one must possess to create it.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the memorandum cited above. *Id.* However, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the Beneficiary may be filling a role that is beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his 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. In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary acquired specialized knowledge and was employed in a specialized knowledge capacity.

ORDER: The appeal is dismissed.