U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-E-USA, LLC

DATE: APR. 30, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a contract manufacturer of electronic devices, seeks to temporarily employ the Beneficiary as a DIP maintenance engineer at a salary of $50,000 per year[1] 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 that the record did not establish, as required, that the Beneficiary 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 erred by overlooking key claims and "report of technology breakthrough."

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).

II. BACKGROUND

[1] The Petitioner routinely capitalizes "DIP," suggesting an acronym, but the record does not appear to define the term.

The Petitioner and its foreign affiliate offer electronics manufacturing services. The Petitioner stated that the organization's "main products are Smart Home Appliance, Smart Metering, Medical Facility [*sic*], Automotive Engineering Device, Electro-mobile Power Charging Electronic Device, and Digital Earphone." The organization does not have its own product line; rather, it is a contract manufacturer for outside clients. The Beneficiary's position as a DIP maintenance engineer would involve maintaining and operating third-party equipment used in the manufacture of the products described above. The Petitioner's foreign affiliate has employed the Beneficiary as an equipment engineer since 2011. Beginning in January 2015, she has been "[r]esponsible for DIP process and Assembly process during SMT production." Before that, she was "responsible for following up DIP process soldering production."

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 she 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.

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).

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.

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

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.

The Petitioner stated "the Beneficiary possesses special knowledge of the company's product, equipment, and techniques" as an equipment engineer abroad, who would perform similar functions in the United States. The Petitioner stated:

> The beneficiary is specialized in wave soldering, reflow soldering and BGA routine maintenance, monthly maintenance and daily operation. She ensures the equipment is running properly and meets the production requirement. She is specialized in setting, reviewing and adjusting the parameters of wave soldering and reflow soldering, following up according to the different situation of the site and the product, and improving the direct pass rate after furnace. She checks the operation condition of the machine continuously during production process and solves problems in a timely manner to ensure quality and production standards. She also has specialized knowledge in technical optimization, efficiency promotion, and production cost control in DIP Process.
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> She has received numerous certificates and trainings in her specialized area of expertise. She has specialized knowledge in operating, maintaining, setting and troubleshooting machine, machine, and machine. She will be responsible for 3 production lines and operating 7 machines in total with the U.S. company.

The Petitioner stated that, "[t]o ensure the consistency of product quality," the petitioning U.S. company "bought the same machines" used at the foreign entity, and that "[a]ll these machines are different from the brands [used by] most PCB companies . . . in America." As a result, the Petitioner asserted that "no other company in the U.S." uses the manufacturing equipment that the Petitioner uses, and "the U.S. entity has not been able to find qualified personnel to operate the equipment and perform the job duties." Because the Petitioner purchased the identified equipment from outside suppliers, knowledge of its use and maintenance did not originate with the petitioning company.

The Petitioner stated: "The process is proprietary to the U.S. and foreign entities," but did not elaborate on what "the process" is. The sentence appeared in a paragraph that referred to a broad range of activities, such as "all the manufacturing, equipment operating and program[m]ing tasks." Elsewhere, the Petitioner asserted that the Beneficiary's "knowledge is proprietary," but again the Petitioner did not elaborate as to how the maintenance and use of third-party equipment is proprietary to the Petitioner and its foreign affiliate.

The Petitioner also claimed that the Beneficiary has advanced knowledge based on her experience. The Petitioner stated:

> Among all the engineers at the foreign entity, beneficiary is . . . one of the most experienced in what she does. . . . [H]er work was recognized through the awards she has received. She had even achieved technical breakthroughs to improve product processing. . . . The specialized knowledge possessed by the beneficiary was gained only through extensive prior experience because there is no other place [where] she can gain such knowledge. First, because the knowledge is proprietary. Second, she has received trainings and worked at the same position to obtain such extensive experience.
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> The beneficiary obtained this specialized knowledge in 7 years' working experience on top of all the technical knowledge and training she possessed from her previous education and training. . . . She has encountered many technical, program[m]ing and equipment issues at work and was able to resolve them and save cost and improve efficiency. . . . The current employees at the U.S. company are not able to solve these problems. In addition, as stated above the U.S. company had tried to recruit qualified employees and train them, but it has not been successful.

The above statement contains several vague assertions made without elaboration. With respect to the Beneficiary's "previous education and training," according to the Beneficiary's resume, she earned a three-year degree in applied chemical technology from a "Junior College." Under "Training Experience," the Beneficiary listed three seminars and four training sessions, but provided no details about the duration or circumstances of the listed training.

In a section of the résumé with the heading "Technical Breakthrough," the Beneficiary stated that the "welding board surface after reflow soldering is unsmooth and granular frequently." The Beneficiary indicated that, when this flaw occurs, "usually our first reaction is to raise the temperature of the reflux zone so that the solder paste can melt fully," but "this method is not all effective in solving problems." The Beneficiary stated that she found that the best way to "make the solder joints smooth" was to "change the temperature curve of the cooling rate . . . to reach 2.5°C/SEC."

The same statement appears in a document with the heading "Technology Breakthrough of Equipment." The Beneficiary's name does not appear on this document. The document is labeled as an English translation of a Chinese original. The corresponding Chinese-language document in the record includes elements that are missing from the translation, including several iterations of the word "Yamaha" and notations such as "21W" and "24V." Therefore, the translation, if accurate at all, is incomplete at best. We note that when the Petitioner did not include any Yamaha equipment on the list of equipment of which the Beneficiary purportedly has specialized knowledge.

The Petitioner submitted copies of various certificates earned by the Beneficiary:

- Completion of a three-day "training course in . . . Stencile [*sic*] clean machine's operation, assembl[y], repairing and maintenance," October 15-17, 2016, from
- Completion of a five-day "Level 1: Primary Application" training course in "Reflow Oven JTR\JTE Series," December 6-10, 2017, from
- Completion of a five-day "Level 1: Primary Application" training course in "Wave Solder Machine WS/MPS/US/SMART Series," December 11-15, 2017, from , and
- "2017 Excellent Staff Award" from the Petitioner's foreign affiliate.

The submitted certificates show a total of 13 days of training, 10 of which constituted "Level 1" training in JT equipment less than seven months before the Petitioner filed the petition in June 2018. The Petitioner referred to "the awards [the Beneficiary] has received" but the only documented award is an in-house award that the foreign entity presented to the Beneficiary in 2018, shortly before the filing of the petition, and the award certificate does not say why she received it.

Asked for more details, the Petitioner repeated prior assertions and stated:

> The knowledge is special because it is extremely valuable to our company, most of aspects of our products, services and overall performance are depende[nt] on employees with such specialized knowledge. This knowledge is special because it is about our company's product, equipment, and techniques and it is our proprietary knowledge in wave soldering, reflow soldering and BGA routine maintenance, monthly maintenance and daily operation. The employee with such specialized knowledge is the key employee with our company and being highly regarded because of his or her contribution to our company. Such employee is given the most important assignment that enhances our competitiveness, creativity, quality and productivity. The specialized knowledge takes many years of work experience to acquire and it is not commonly held in the industry or possessed by most other employees in similar position[s]. The knowledge is special because it cannot be easily taught or transferred to another employee.
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> The knowledge is also advanced because it requires advanced level of expertise and many years of experience with our company to attain such advanced level . . . [and] the U.S. company cannot find any qualified person in the U.S. job market to perform these job duties successfully.

The above assertions lack crucial details. The statement does not show that the Beneficiary's job involves specialized knowledge. Instead, the Petitioner listed elements of the Beneficiary's work and declared them to require specialized knowledge, using generic language drawn from the regulations and other sources.

The Petitioner asserted that the position requires the following training:

- Professional skills training on back-flow welding and wave soldering

- Professional skills training for daily east reflow soldering, automatic lead-free wave soldering, soldering principle and application
- SMART series wave soldering and installation training
- Reflow oven training
- Wave solder machine training
- Stencil cleaning training

The Petitioner claimed: "It would take at least 5 years of working experience in addition to the trainings," plus "years of self-study and research," "to obtain all this specialized knowledge." The Petitioner did not corroborate or elaborate upon these assertions. The Petitioner has documented the Beneficiary's completion of only some of the above listed training, mostly within a year of the petition's filing date. The Petitioner noted the Beneficiary's seven years of experience, but she evidently accrued most of that experience without the specified training.

The Petitioner submitted a 15-page document in Chinese, with an English translation entitled "Equipment Technology Breakthrough." It discussed, in more detail, the previously described efforts to regulate the cooling rate of solder to produce a smoother finish. Like the shorter version submitted previously, this longer version did not name the individuals responsible for the claimed breakthrough or specify the role each of them played.

The Director denied the petition, stating that the Petitioner did not provide "enough detail about what [the Beneficiary's] tasks are; how and why they are specific to [the petitioning organization]; and how and why the beneficiary may be the only individual in the world that could perform them." It would be far too restrictive to require the Beneficiary to be "the only individual in the world" capable of performing certain tasks, but the outcome of the decision did not rest on this one impermissible clause.

The Director also found that the Petitioner did not submit evidence to establish that the maintenance of the equipment that the Petitioner uses requires specialized knowledge compared to the equipment used elsewhere in the industry.

On appeal, the Petitioner contends: "The director failed to analyze whether the foreign position involved an advanced level of knowledge." The Petitioner, however, does not go on to explain how the position does require an advanced level of knowledge. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). As noted above, the Beneficiary's documented training amounts to three courses over less than three weeks, most of which occurred less than a year before the petition's filing date. The Petitioner does not explain how the Beneficiary was able to work for the foreign entity for several years before receiving the "Level 1" training documented on the December 2016 certificates.

In response to the Director's finding that the Petitioner did not provide enough information about the Beneficiary's tasks, the Petitioner responds that it "provided more than sufficient evidence," including "a report of technology breakthrough achieved by the beneficiary." This report does not identify the Beneficiary or address the question of how the claimed breakthrough establishes special or advanced knowledge. Also, it does not specify when the "technology breakthrough" took place, which is a

significant omission because advanced knowledge is typically reliant on considerable past experience. The "report of technology breakthrough" appears to be a self-serving internal document with uncertain bearing on the case at hand.

The Petitioner asserts that "the Beneficiary's knowledge would be very difficult to impart to another," and that the U.S. company had suffered loss and delays because it could not locate or train employees with the required knowledge. The Petitioner's unsupported assertions carry limited weight, particularly when the Beneficiary has only 13 days of documented training. Furthermore, that training was provided by the manufacturers of the equipment in question. The Petitioner has not shown that this short-term training is unavailable to U.S. workers.

The Petitioner asserts that "there is no other place that [workers] can gain such knowledge," but the Petitioner does not elaborate on this point. The omission is especially significant because the Beneficiary works with equipment purchased from outside suppliers, and therefore the question necessarily arises as to why the Petitioner's foreign affiliate is purportedly the only place where one could accumulate experience working with that equipment. The Petitioner does not answer that question, instead simply asserting that the Beneficiary has experience unavailable elsewhere.

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 enough information about the organization's other employees, their education levels, and work experience. The Petitioner does not describe how the 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.

The Petitioner asserts that it meets all five criteria for specialized knowledge listed in a memorandum from Richard E. Norton, Associate Commissioner for Examinations, Immigration and Naturalization Services, CO 214.2L-P, *Interpretation of Specialized Knowledge Under the L Classification* (Oct. 27, 1988). This same list later appeared in a memorandum from James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, INS, (CO 214.2L-P), *Interpretation of Specialized Knowledge*, (Mar. 9, 1994) (Puleo memo). The most recent guidance to the agency appears in U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), http://www.uscis.gov/legal-resources/policy-memoranda, which superseded and rescinded the Puleo memo. *Id.* at 5.

The 2015 memorandum included an updated list of possible qualifying factors, which shares some common elements with the earlier list, but the Petitioner must first meet the basic test of showing that the Beneficiary possesses special or advanced knowledge. For instance, while the Beneficiary may be filling a role beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone does not demonstrate specialized knowledge. As noted in the memorandum, the listed elements are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id* at 8. 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 Beneficiary should, as a threshold matter, possess

- *special knowledge*, which is knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets that is distinct or uncommon in comparison to that generally found in the particular industry; or
- *advanced knowledge*, which is knowledge of or expertise in the petitioning organization's specific processes and procedures that is not commonly found in the relevant industry and is greatly developed or further along in progress, complexity and understanding than that generally found within the employer.

Id. at 7. The Petitioner asserts, on appeal, that "companies in the same industry in the U.S. do not use the same process, equipment, [and] techniques. The processes and techniques used by the Petitioner [are] proprietary." Third-party machinery is not the petitioning organization's product or equipment. The Petitioner states: "The beneficiary's job involves DIP process, process optimization, [and] production process. The job duties are performed within the company's production process and involve company procedures." This general statement does not identify specific processes and procedures that are not commonly found in the relevant industry. Using one brand of soldering machine instead of another is not a process or procedure. Also, the Petitioner has not shown that its methods of maintaining the soldering equipment differs from the methods used by other companies using that same equipment. In this respect, it is significant that the Beneficiary received maintenance training directly from the manufacturers.

Furthermore, the length of the Beneficiary's experience at the foreign company is not, by itself, evidence that the Beneficiary's knowledge is greatly developed or further along in progress, complexity, and understanding than that generally found within the employer. Length of employment is not synonymous with advanced knowledge.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-E-USA, LLC*, ID# 3050540 (AAO Apr. 30, 2019)