U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-USA CORP.

DATE: AUG. 3, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer and distributor of photo image products, seeks to temporarily employ the Beneficiary in a "Technical and Production Support" position 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: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the foreign employer is doing business as a qualifying organization abroad; and (3) the Beneficiary possesses specialized knowledge, has been employed abroad in a position involving specialized knowledge, and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner submits additional evidence and asserts that all requirements for the requested classification have been met.[1]

Upon *de novo* review, the Petitioner has now established that the foreign entity is doing business and we withdraw the Director's adverse determination with regard to this sole issue. However, as the Petitioner has not overcome the remaining grounds for denial, 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 managerial or executive capacity, or in a capacity involving 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 or specialized knowledge capacity. *Id.*

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

The relevant statutory definition states that a beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B).

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).

An individual L-1B classification petition must be accompanied by evidence that: the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; and the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. QUALIFYING RELATIONSHIP

The Director found that the Petitioner did not establish that it had a qualifying relationship with the Beneficiary's foreign employer, a Chinese company. The Petitioner claims that the two entities have an affiliate relationship.[2]

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act.

The term "affiliate" is defined in relevant part, as (1) one of two subsidiaries both of which are owned and controlled by the same parent or individual, or (2) one of two legal entities owned by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. 8 C.F.R. § 214.2(l)(1)(ii)(K).

The Petitioner claims that it was "founded by and ." The Petitioner has submitted: a (1) a copy of its articles of incorporation, indicating that the company is authorized to issue one million shares of stock; (2) its by-laws, signed by as president and as

[2] The Petitioner marked on the Form I-129, Petition for a Nonimmigrant Worker, that the foreign entity is its subsidiary, and later submitted an amended Form I-129 indicating an affiliate relationship. The Petitioner has otherwise consistently claimed that the two companies are affiliates. We note that the record does not establish that the Petitioner owns any interest in the foreign entity and therefore, there is no parent-subsidiary relationship. *See* 8 C.F.R. § 214.2(l)(1)(ii)(I) and (J) (defining "subsidiary' and "parent").

secretary; (3) a copy of its California business tax certificate which lists and as business owners; and (4) a copy of its 2014 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, with supporting schedules and statements. The accompanying Form 1125-E, Compensation of Officers, and Schedule K-1, Shareholder's Share of Income, Deductions, Credits, etc., identify as the owner of 100% of the company's shares.

With respect to the foreign entity, the Petitioner submitted an uncertified English translation of the foreign company's business license, but did not provide a copy of the original Chinese language document. The business license identifies as the "legal representative" and "North American Investment Company" as "shareholder" of the Chinese company. Later, in response to a request for evidence (RFE), the Petitioner submitted an expired California business tax certificate for which identified as the "business owner." The Petitioner reiterated that and are the sole owners of both the foreign employer and the American entity."

In the denial decision, the Director emphasized that the Petitioner's 2014 federal tax return showed that is its sole owner, and was inconsistent with the Petitioner's claim that and have joint ownership. With regard to the foreign entity, the Director found a similar inconsistency, noting that while the Petitioner again claimed joint ownership by and the foreign entity's business license shows that ' ' is the owner and the record suggests that solely owns that company.

On appeal, the Petitioner states:

> Both businesses, both domestic and foreign, were started by while he was married with Community property law in California states that all properties that are acquired during marriage, including business entities, are wholly owned by husband and wife . . . . It can be concluded that both the petitioning and foreign entities are wholly owned by and and therefore shows, without a doubt, that a qualifying relationship does exist between the two entities.

We agree with the Director that the record does not contain sufficient evidence to establish a qualifying relationship.

Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

The Petitioner, and the foreign entity are all corporations. When assessing whether corporate entities have a qualifying relationship, we look for probative documentary evidence showing who owns and controls the stock of all companies involved. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a

corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. *See Siemens Med. Sys., Inc.*, 19 I&N Dec. 1632. Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

In lieu of this type of primary evidence of ownership and control, the Petitioner submitted a tax return and business tax certificate which provided conflicting information regarding its ownership. The Petitioner claimed that and his spouse own the foreign entity, but submitted evidence in the form of an uncertified translation of a business license indicating that it is owned by a separate legal entity, Likewise, the only evidence of ownership the Petitioner provided for is an expired business tax certificate. Tax returns, tax certificate and business licenses do not have the same probative value as stock certificates and other relevant corporate documents.

While the minimal evidence submitted suggests that owns at least some portion of both the Petitioner and the Beneficiary's foreign employer, the record does not contain sufficient to provide a complete picture of the ownership and control of all entities involved. The Petitioner's explanation regarding shared marital property does not overcome the deficiencies and inconsistencies in the record. Accordingly, the Petitioner has not established that it has a qualifying relationship with the Beneficiary's foreign employer and the appeal will be dismissed.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the record did not establish that the Beneficiary acquired special knowledge of the Petitioner's products or production processes that is truly distinct or uncommon compared to the knowledge typically possessed by other workers in the same industry, or knowledge of the company's processes and procedures that is advanced compared to other employees within the petitioning organization.

On appeal, the Petitioner maintains that it provided sufficient evidence that the Beneficiary has "specialized knowledge beyond the skills of other workers," and that it would take at least six months to train someone else to perform the same duties. The Petitioner emphasizes that the Beneficiary understands all factors necessary to produce a consistently high output while minimizing product defects and "would help the US business tremendously with his specialized knowledge of sublimation imprint production."

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.

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. 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.

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.

Here, the Petitioner claims that the Beneficiary possesses both special and advanced knowledge based on his ten years of experience working for its Chinese affiliate, where he currently works as the vice-leader of the factory imprint department.

The Petitioner and its foreign affiliate design, develop, produce, and market dye-sublimation photo image products. The Petitioner states that its flagship brand allows full-color images to be applied to products such as ceramic and stainless steel drinkware, cell phone accessories, and home and office goods.

In its support letter, the Petitioner explained that it plans to expand its production lines in its California, facility to accommodate customer needs, and requires experienced technical leaders "to enhance the production line, train our existing and new employees, establish more efficient production processes and to insure acceptable defect ratios." The Petitioner stated the "required person needs to know . . . wrapping machine, operating the Tunnel Oven, know to detect the color effect and matching colors with PMS standard."

The Petitioner explained that the Beneficiary: has the knowledge needed to train U.S. workers on the Tunnel Oven, Heating Press, Mug Wrapping Machine and 3D Machine; will help lead 20 workers on the production line; will transfer his skills in color recognition to avoid defective products; and will teach employees how to mass produce products with a low defect ratio. Specifically, it indicated he would spend 50% of his time controlling and monitoring the tunnel oven production process, 30% of his time training employees on the operation of heat presses and mug wrap machines, and 20% of his time transferring his knowledge of color matching according to PMS standards and managing and controlling the quality of printed output from various high end third-party laser printers.

The Beneficiary's duties as vice leader of the foreign entity's factory imprint department are described as: monitoring and adjusting the oven temperature; using special skills to unwrap printed

mugs using one hand; wrapping mugs with a wrapping machine; inspecting the quality of finished goods, acting as oven operation director and maintenance advisor; analyzing defects and issuing reports to production and printing departments; follow leader's production plan and being responsible for production quality; and assisting team leader to plan the production schedule.

A. Special Knowledge

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 specialized.

The Petitioner claims that the Beneficiary's "special skill sets include the operation and maintenance of all of the specialized equipment we utilize[] in [the petitioning company] for the high-volume decoration of our manufactured products" and that his expertise "does not exist in the United States."

The specific equipment includes an electric conveyor tunnel oven used for heating ceramic mugs during the sublimation process. The Petitioner notes that the oven was manufactured in China, was installed by its Chinese team, and has "special specifications only written in Chinese." The Petitioner explained that special knowledge is needed to make sure the machine runs and operates efficiently, especially when two production shifts are operating.

The Petitioner further referenced its mug wrapping machines, flatbed heat presses, and vacuum heat presses, noting that this equipment is also made in China with specifications written in Chinese. Finally, the Petitioner noted that its graphics department uses various "high-end, professional-level" inkjet and laser printers manufactured by [redacted] and [redacted]

The Petitioner submitted a summary of the Beneficiary's training and special skills, noting that he had two weeks of training in the operation of the tunnel oven and one week of training in the operation of the mug wrap machine. The Petitioner also referenced courses in heating press operation, unspecified safety courses, and "special color recognition and using technique," but did not provide the length of any additional training or specify when the Beneficiary completed it. On appeal, the Petitioner makes a general claim that it would require six months of training to impart the claimed specialized knowledge to another individual. However, the Petitioner does not specify whether this timeframe would apply to someone who already knew how to operate the same or similar equipment or someone who had no prior training in this industry.

Further, the Petitioner did not previously claim that formal training in these areas equipped the Beneficiary with specialized knowledge, but rather notes that he has developed his skill set through years of experience and trial and error to learn the intricacies of the production process, such that he has learned over time how to maximize output while minimizing defects.

With reference to the Beneficiary's specific skills, the Petitioner notes that he can detect the cause of tunnel oven malfunctions, knows the different temperature and time settings for different products, "knows the best way to wrap products before printing," and has "a unique understanding and sense about color" which allows him to "test the color effect when the printing is finished through the oven and find out relative methods to mend it if there is a color difference compared with the original sample." On appeal, the Petitioner notes the Beneficiary's ability to use his specialized knowledge to quickly adjust production settings based on visual inspection of finished products to ensure nearly perfect output., and notes that his skills "allow him to output over 30% more decorated products at a lower defect rate than anyone else in the company" by making "crucial, time sensitive decisions on the production floor."

It is evident that the Petitioner deems the Beneficiary to be highly skilled in the dye-sublimation imprint process. However, to establish that his knowledge and skills constitute "special knowledge," the Petitioner must establish that he possesses knowledge that is truly distinct or uncommon in comparison to knowledge held by similarly employed production leaders in the Petitioner's industry. The Petitioner has not stated that its equipment, production techniques, or technologies are specific or proprietary to the company or somehow different from what is used by its competitors in this field.

For example, the Petitioner makes sublimation products for large companies such as and which likely rely on a number of different imprinting companies to produce their product lines. The Petitioner has not identified any aspects of the tunnel oven, heat press, 3D printers, third-party laser printers, or mug wrapping machines that it uses to distinguish them from the type of equipment typically used in this field. The Petitioner emphasizes that some equipment in its U.S. facility was manufactured in China and has certain specifications written in Chinese. However, it has not explained why such specifications could not simply be translated, nor has it identified any other aspect of the equipment that differentiates it from the heat tunnels, presses, and wrapping machines used by other companies who make the same types of products as the Petitioner does. Further, the Petitioner's California facility is already using this equipment to produce final products and it is unclear why the staff there would not be well-versed in its operation.

Simply stating that the Beneficiary is more adept at operating these machines to achieve desired results compared to other workers in the company is not sufficient to establish that he has special knowledge. Rather, the petitioning organization would need to establish that it uses equipment or production techniques that require the Beneficiary, to have knowledge that is different from what is generally held by other workers who perform similar duties within the industry. Even though imprinting production personnel outside the organization do not have the Beneficiary's exact experience with the petitioning organization's production environment, the record contains insufficient evidence to establish that the Beneficiary's knowledge is different or uncommon in comparison to others working in this type of position.

Rather, it appears that other employees in the company and in the industry can perform and do perform the same type of duties using the same or similar equipment. The Beneficiary may have a particular talent or skill in carrying out these duties effectively, but the Petitioner has not shown that

these qualities equate to special knowledge of the Petitioner's products, equipment, or production methodologies.

B. Advanced Knowledge

We have also considered whether the evidence establishes that the Beneficiary possesses advanced knowledge.

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 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. 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 states that the Beneficiary is able to "output over 30% more decorated products at a lower defect rate than anyone else in the company." The Petitioner operates five manufacturing facilities in China and one in the United States. It acknowledges that other employees have received similar training, perform similar responsibilities and operate the same machinery, but explains that no other employees can achieve the same impressive results. The Petitioner also states that the Beneficiary, who has worked for the foreign entity for 10 years and in his current position for approximately 6 years, has a longer tenure than other employees, but it has not provided information that would allow us to compare his duties, training, or experience with that of other workers in leadership positions. It does appear that his knowledge would be broader in comparison to the team he leads, as those employees appear to have responsibility for discrete parts of the process - they are divided into "paper wrapping," "mug wrapping," "quality check" and "packaging" teams.

Further, as discussed above, we found the Petitioner did not submit sufficient evidence to establish that knowledge of its equipment, techniques, and methods related to dye-sublimation imprinting could not be easily imparted to an experienced production employee in the Petitioner's industry. The Petitioner has not distinguished its processes or procedures for imprinting from those used throughout its industry. Even if we conclude that the Beneficiary has advanced knowledge of these procedures relative to co-workers in lower-level positions, the Petitioner must still establish that the Beneficiary's knowledge is different from that held by workers in similar positions in this field.

It is clear that the Petitioner considers the Beneficiary to be a valuable and highly productive employee who excels at his position, but it has not sufficiently shown that his knowledge is different from what is generally held in the Petitioner's industry.

Because the Petitioner has not demonstrated that the Beneficiary possesses special or advanced knowledge, we need not address whether the Beneficiary has been employed abroad in a position

involving specialized knowledge or will 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 it has a qualifying relationship with Beneficiary's foreign employer or that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of P-USA Corp.*, ID# 538012 (AAO Aug. 3, 2017)