U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 8993381

Date: AUG. 4, 2020

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a manufacturer of laser [redacted] systems, seeks to temporarily employ the Beneficiary as a laser system engineer[1] under the L-1B nonimmigrant classification for intracompany transferees. 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in a capacity involving specialized knowledge, and that he would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner contends that the Director misinterpreted or disregarded evidence regarding the Petitioner's "extremely niche market" and the Beneficiary's "specialist knowledge" of its products and technology.[2]

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.

## 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

[1] The Petitioner identified the proposed position as "laser systems engineer" on the Form I-129, Petition for a Nonimmigrant Worker, but otherwise consistently states that the Beneficiary will be employed as a "field service engineer."

[2] On the Form I-290B, Notice of Appeal or Motion, the Petitioner stated that it would submit a brief and/or additional evidence to our office within 30 days of filing in October 2019. We have not received a brief or any supplemental evidence in support of the appeal.

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

The Petitioner is the U.S. subsidiary of a United Kingdom company described as "the world leader in the design and manufacture of specialized state-of-the-art industrial laser [redacted] systems." The Petitioner indicates that the group's technology is used in the aerospace, defense, rail, automotive, medical and other industries, and explains that it was established in 1998 to provide sales and support to the company's North American customer base. The Beneficiary has been working for the Petitioner's U.K. parent company since April 2014 as a field service engineer based in Mexico. The Petitioner now seeks to employ him in this position in the United States, at an annual salary of $27,404. The Petitioner indicated that the Beneficiary would be providing engineering support to its customers, including system fault diagnosis, preventative maintenance, system repair, customer training, installation, and "a variety of other technical support activities."

The Beneficiary has a bachelor's degree in electronic engineering and a "specialist technologist" qualification in mechatronics. Prior to joining the petitioning organization, he gained four years of professional experience as a process engineer.

## III. SPECIALIZED 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.[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).

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

[3] The Petitioner does not claim that the Beneficiary has been employed abroad in an executive or managerial capacity.

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 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.

A. Special 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.

The Petitioner's initial submission included a "Job Profile" for the Beneficiary's proposed position of field service engineer which indicates that the position requires "a technical qualification in Electronic or Electrical engineering," and "a broad engineering knowledge," noting that experience with "optical or laser technologies" would be an advantage. It further specified that a field service engineer is expected to maintain "a good understanding of relevant technologies" used in the company's products, including mechanical, electrical, electronic, optical and laser technologies and related software and control systems. Finally, the job profile notes that a field service engineer should maintain a "current working knowledge of all [company] products that the employee is required to work on."

The Petitioner also provided a copy of the agreement the Beneficiary entered with its foreign parent company when he was hired as a field service engineer in 2014. The agreement indicates that he was responsible to provide its customers with unscheduled repairs, scheduled maintenance and initial installation and commissioning of the company's "Products," described as a "range of lasers and laser systems." The Beneficiary warranted that he had "expertise in the marketing, installation, maintenance and repair of lasers and laser systems," and that he was "suitably trained in all of the technologies relating to the Products." The agreement indicated that he may be required to attend training on "products listed in Schedule 1" but this schedule was not provided. Based on the terms of the agreement, the Beneficiary attested that he possessed much of the technological knowledge needed for the position based on his education and prior experience gained outside the company.

In its supporting letter, the Petitioner mentioned that, over the course of four years of employment, the Beneficiary had received six weeks of training on [redacted] lasers" and six weeks of maintenance training for its "top-of-the-line equipment." However, the Petitioner did not

initially document his training, provide any information or documentation regarding its products, equipment or technologies, or provide any background on the industry in which it operates. Further, it not identify the specific products or technologies for which the Beneficiary would be expected to have a "current working knowledge" in his U.S. role.

In a request for evidence (RFE), the Petitioner, provided the following explanation regarding its products and the training it delivers:

> Due to the specialist nature of the company's products and technology the time invested in training our Field Service engineers is significant and this specialized knowledge can only be gained through time-served experience within the company. All laser training has to be done at [the parent company] in the UK and typically takes up to 2 weeks at a time with refreshers delivered at regular intervals. Basically, laser training can be broken down to the follow levels:
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> Level 1 – very basic knowledge, flash lamp and filter changes only.
> Level 2 – the above plus laser alignment and troubleshooting problems.
> Level 3 – all of the above plus replacement of core components

The Petitioner explained that it is "very difficult to get the required skill level in the market to be able to pass Level 2 and get to Level 3," and states that once the required skill level is reached it will take "up to 5 years to be able to acquire knowledge of all our laser [redacted] systems."

In the RFE, the Director requested that the Petitioner further specify the nature of the Beneficiary's specialized knowledge and the exact products and technologies in which he is claimed to have such knowledge. The Petitioner only briefly responded by noting that the Beneficiary would be responsible "to help launch and install" its [redacted] system" at a client site [redacted] in [redacted] The Petitioner indicated that [redacted] is a "downstream automated model for key customers" developed from its [redacted] series, a "6th generation laser [redacted] product range" launched in 2016. The Petitioner noted that the Beneficiary has a "strong rapport" with the customer and has the "in-depth knowledge" and "skill-set" needed to install and troubleshoot the system.

The Petitioner submitted a copy of the Beneficiary's internal training log, which indicates that immediately after being hired by the foreign entity in April 2014, he completed 125 hours of training in the United Kingdom over a four-week period. The training included [redacted] Level 2," "[redacted] Level 2," [redacted] Level 2" and [redacted] Level 2." The training log indicates that he returned to the U.K. for two weeks in December 2014 for "[redacted] level 3" and [redacted] Level 2" training (64 hours). Finally, the training record shows that he completed 37 hours of training on [redacted] Level I and II Level 3" in the United States in September 2016. Although requested, the Petitioner did submit additional information regarding what the training entailed, nor did it further explain or document the company's products or systems.

Finally, the Petitioner submitted a document titled "CSE Knowledge Matrix" which provides the results of an assessment of the Beneficiary's training and demonstrated skill on a number of company products/systems as of July 2019, which was more than one year after the petition was filed. The Petitioner also provided these matrices for four other field service engineers based in the United States

and Mexico, including two new employees who had less than one year of experience. The Petitioner emphasized that the Beneficiary is the third longest-serving employee in the group and received the second highest score on the assessment.

The Director acknowledged this evidence but determined that the Petitioner did not explain how the Beneficiary's position requires him to possess knowledge that is "special" or demonstrate how it is different or uncommon in comparison to the knowledge of other similarly employed workers in the Petitioner's industry.

On appeal, the Petitioner emphasizes that the Director disregarded the fact that it "operates within a global and extremely niche market," but it has not submitted a brief elaborating on this claim. As noted, the Petitioner indicates that it manufactures industrial laser [redacted] systems for the aerospace, defense, rail, automotive, medical industries. There is no additional information in the record regarding the Petitioner's products or the industry within it operates. While the Petitioner's claim that it produces products within a "niche market" is noted, it has not met its burden to establish that the knowledge needed to perform the duties of a field service engineer is "special knowledge" that is truly distinct from what is held by other similarly employed workers.

We acknowledge that the Petitioner has referenced what appear to be proprietary product lines including [redacted] and [redacted] The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the beneficiary's knowledge be proprietary. However, a petitioner might satisfy the current standard by establishing that a beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. We look at the nature of the proprietary knowledge, how it can be acquired within the company, and when and how the Beneficiary gained such knowledge in order to determine whether the knowledge qualifies as "special knowledge.

The Petitioner has not provided sufficient explanation or evidence to support its claim that any proprietary knowledge the Beneficiary has obtained is truly distinct or uncommon. For example, the Petitioner did not explain how the knowledge needed to maintain and service its products is uncommon compared to the knowledge possessed by service engineers working for other companies that make similar products. Without this information, we cannot make any meaningful comparison between the Beneficiary's knowledge and the knowledge held by other similarly employed workers in the industry, and cannot conclude that his knowledge is truly special. Again, it is the weight and type of evidence which establishes whether or not the Beneficiary actually possesses specialized knowledge

As noted, both the job profile for the field service engineer and the Beneficiary's agreement with the foreign entity indicate that the company hires workers who have engineering degrees and an understanding of the mechanical, electrical, optical and laser technologies used in the Petitioner's products. The record reflects that the Beneficiary received 125 hours of training over a four-week period immediately after being hired, but he has received only three weeks of training in the ensuing four years. Therefore, it appears that much of his knowledge about company products was readily learned by him on the job and accessible to him based on his education and prior experience.

Further, the Petitioner provided little information regarding the Beneficiary's training other than the titles of the courses he completed. While completion of company-specific training may support a claim of specialized knowledge, the Petitioner must still establish that the training conveyed knowledge that is not common in the industry and knowledge that could not be easily imparted to similarly qualified employees from outside the company. The evidence submitted does not sufficiently establish how long it would take an engineer with similar qualifications to acquire the knowledge needed to perform the duties of a field service engineer. It appears that the Beneficiary himself been able to successfully perform these duties, which include installation, maintenance and repair of the Petitioner's products, despite having a limited amount of formal company-specific training.

Overall, the Petitioner has not submitted sufficient explanations or evidence to support its claim that the Beneficiary possesses special knowledge of its products that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained engineers in the Petitioner's industry.

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 noted, in response to the RFE, the Petitioner indicated that the Beneficiary has the third longest tenure among the five field service engineers currently based in the United States and Mexico. The Petitioner provided a "CSE Knowledge Matrix" for each of these employees (including two recent hires) and asserted that the Beneficiary's score demonstrates that he has a breadth and depth of knowledge of company products not possessed by some of the other similarly-employed staff, particularly the recent hires.

This evidence reflects that, as of 2019, the Petitioner had only one field service engineer with experience comparable to that held by the Beneficiary, who himself scored lower on the matrix than the other Mexico-based employee.[4] However, the Beneficiary currently works for the Petitioner's U.K. parent company and the Petitioner did not provide any information comparing his knowledge, skills, training and experience to staff employed with the foreign entity in support of a claim that his knowledge is advanced within the organization.

Further, the comparisons the Petitioner drew between the Beneficiary and other field service engineers appear to be based on product knowledge, while advanced knowledge is based on knowledge of a company's processes and procedures. The Petitioner did not identify the company processes or procedures, if any, in which the Beneficiary possesses advanced knowledge. Therefore, the evidence

[4] The Petitioner did not identify which entity employs this individual, who is identified as "FC."

is insufficient to establish that the Beneficiary's expertise in the organization's processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the organization. Here, the Petitioner's claims are not supported by evidence setting the Beneficiary's knowledge of company processes apart from the elementary or basic knowledge possessed by others.

While the Beneficiary's knowledge of certain products and related maintenance procedures may be advanced compared to the Petitioner's recent hires, the Petitioner must still show that he possesses advanced knowledge in comparison to similarly employed workers within the foreign entity and that the knowledge he possesses could not be readily transferred to another employee with a similar technical skill set. The Petitioner did not provide the information needed to make such a comparison and has not established that he possesses advanced knowledge.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he has been employed abroad and will be employed in a specialized knowledge capacity with the Petitioner in the United States. *See* Section 214(c)(2)(B) of the Act.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether the Beneficiary has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

**ORDER:** The appeal is dismissed.