U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18849054

Date: AUG. 9, 2021

Appeal of California Service Center Decision

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

The Petitioner, a provider of messaging services, seeks to temporarily employ the Beneficiary as a principal artificial intelligence (AI) engineer 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 possesses specialized knowledge; has been employed abroad in a qualifying capacity; and will be employed in the United States in a specialized knowledge capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner did not meet that burden. Therefore, we will dismiss the appeal.

I. LAW

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

The Petitioner describes itself as "a messaging services company" that "has been providing SMS, email, Voice, USSD and IP messaging and chatbot development services to leading BFSI, Retail, [and]

e-commerce companies." The Petitioner asserts that its "platform handles over 4.5 Billion messages per month." The Petitioner describes its "Proprietary Tool":

> [The Petitioner's subsidiary] developed its own Natural Language Processing (NLP) technology in India. NLP is a technology which enables machines to understand and communicate with humans in human language, not formal computer languages. . . . NLP technology falls under the umbrella of Artificial Intelligence (AI) and enables computers to act like a human, allowing them to communicate and respond to [a] user's query smartly.
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> . . . From Google Search to Amazon Alexa, all major products in the world which interface with humans using language are driven by NLP technologies.

The Petitioner states that NLP is used in "artificial intelligence software that can simulate a conversation or cha[]t with a user in a natural language through messaging applications, website, mobile [applications] or [by] telephone."

The Petitioner's Indian subsidiary hired the Beneficiary in 2016 as a lead NLP engineer, giving him the title of principal AI engineer in 2019. The Petitioner seeks to employ the Beneficiary as a principal AI engineer with an annual salary of $125,000. The Petitioner states that the Beneficiary devotes the following percentages of his working time to the following duties:

1. Research and prototype of Machine Learning / Natural Language Processing algorithms, to stay ahead of competition and on top of cutting edge academic research. [20%]
2. Lead the engineering and development of the AI tools. [30%]
3. Collaborate with the engineering teams, to enable cohesive implementation of AI modules inside the products. [15%]
4. Collaborate with product and project management teams to ensure a stable and viable AI dependent product and development plan. [15%]
5. Design and implement data management and tag strategies to ensure accurate data being tagged for AI systems. [15%]
6. Push the vision for AI and explore new possibilities in and out of the current products. [5%]

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, 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).

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.

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 submits several letters signed by the company's chief financial officer (CFO). Some of these letters are on the letterhead of the petitioning entity in California, and list a U.S. telephone number to contact the CFO; others are on the letterhead of the Petitioner's subsidiary in India, showing an Indian contact number.

The CFO states: "the Beneficiary has accumulated almost three (3) continuous years of work experience at [the foreign subsidiary] devoted exclusively to NLP," and is "a key employee" with "uniquely cross-functional knowledge of our proprietary software and advanced knowledge of internal company processes." The CFO does not explain how the Beneficiary's duties as a lead NLP engineer from 2016 to 2019 differed from those of a principal AI engineer thereafter. Rather, the CFO cites the same job description for both positions.

The CFO states that the Beneficiary was hired directly into a "specialized knowledge position," and that "the Beneficiary was hired . . . to assume this specialized knowledge role at the overseas entity."

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

This wording indicates that the Beneficiary did not require any prior experience with the company to qualify for his initial position as lead NLP engineer. But the Petitioner does not establish where or how the Beneficiary obtained relevant specialized knowledge before his hiring in 2016. Instead, the Petitioner asserts that the Beneficiary's "knowledge is rooted in over 3 years of work experience" with the foreign subsidiary – experience that he did not possess at the time of his initial hiring.

Also, while the Petitioner asserts that the Beneficiary has accumulated significant specialized knowledge during three years at the foreign subsidiary, the Beneficiary's stated responsibilities do not appear to have changed during the course of his employment with the foreign subsidiary. The subsidiary provides one job description, and indicates that this same description covers the Beneficiary's responsibilities and duties from the time of hiring to the present, both before and after what is described as a promotion from lead NLP engineer to principal AI engineer.

The CFO contends that, in comparison to other employees of the petitioning organization, the Beneficiary has much higher skills in the following areas:

- NLP infrastructure development;
- Machine learning algorithms development;
- Translating product requirements to Machine Learning specs;
- Developing data management and product development strategy;
- Enabling consumption of AI and ML tools; and
- Testing and identifying loopholes in the data collection and product development phase to enable automation.

The CFO states that "out of around 100 people in the engineering department, no one possesses more knowledge than [the Beneficiary] since he has developed or directed the development of all the tools and algorithms by himself." The CFO also states: "As our Lead NLP Engineer and now our Principal AI Engineer, all the intellectual property around the use of NLP and Machine Learning has been directly developed by him or was made under his direction." In later correspondence, the CFO states that, out of 176 employees, "Beneficiary is one (1) out of 3 employees . . . who has functional and operational knowledge of the end-to-end solution flow, being the key person who developed and researched NLP Technology at [the Indian company] since July 18, 2016."

After the Director requested documentary evidence to permit a comparison between the Beneficiary and others at the company, the Petitioner submitted educational documents for the foreign subsidiary's principal solutions engineer and its vice president of technology architecture. The former earned a bachelor of engineering degree in production engineering; the latter earned a bachelor of technology degree in electrical engineering and undertook a "Two-Year Post-Graduate Programme in Management."

The Petitioner, however, does not show that the Beneficiary's university education gave him specialized knowledge relating to AI or NLP. At the University of [redacted], the Beneficiary received a bachelor of business studies degree in 2011, and a master's degree in operational research in 2013. The Petitioner submits a copy of the transcript from the Beneficiary's baccalaureate program, but not from his master's program. The baccalaureate transcript lists 24 specific course titles, five of which identifiably relate to computers or information technology:

- Computing Tools for Business Management;
- Computer Algorith[m]s and Problem Solving;
- Information Technology in Management;
- Introduction to Data Based Management Systems; and
- Design & Management of Information Systems.

The Petitioner did not submit a transcript from the Beneficiary's graduate studies at the University of [redacted] and therefore the record does not show what courses he took at that time.

In response to a request for evidence, the Petitioner submitted partial transcripts from master's degree programs at the University of [redacted] from 2012, the University of [redacted] from 2012-2013, and the University of [redacted] in 2013-2014, none of which the Petitioner had mentioned in the initial submission. There is no evidence that the Beneficiary received a degree from any of these institutions. A transcript for the "First Year of Graduate Studies" in "Mathematical Models in Economics and Finance" from [redacted] lists only mathematics courses. The transcript from [redacted] indicates that the Beneficiary began, but did not complete, a master's degree program in mathematical sciences, including three electives in computer sciences:

- Introduction to Bioinformatics;
- Machine Learning; and
- Advanced Machine Learning.

The transcripts from [redacted] list passing grades in three of four computer science courses:

- Machine Learning
- Introduction to Bioinformatics
- Advanced Machine Learning
- Advanced Bioinformatics

The other courses in [redacted] concerned biology and statistics. The Petitioner does not explain how these courses gave the Beneficiary special knowledge of the Petitioner's products, service, research, equipment, techniques, management, or other interests.

After the Director requested "[e]vidence of patents . . . awarded to the petitioning organization based on the beneficiary's work," the Petitioner submitted copies of Indian "Patent registration" applications naming the Beneficiary as a co-inventor of "[redacted] and [redacted]." There is no evidence that Intellectual Property India approved the applications. The two applications are dated minutes apart on May 18, 2020, nearly three months after the filing of the petition and more than two months after the issuance of the request for evidence. The timing of the applications suggests that the Petitioner filed the applications to support the petition, rather than to assert any timely claim to intellectual property rights. These May 2020 filings cannot establish that the Petitioner met all eligibility requirements at the time of filing in February 2020, as required by the regulation at 8 C.F.R. § 103.2(b)(1). The lack of evidence of such filings from before 2020 is significant, considering the Petitioner's claim that the Beneficiary has been leading the development of the company's bedrock technology since 2016.

The Director concluded that the Petitioner did not establish "that the beneficiary has knowledge or experience in the field of computer technology engineering and development that is significantly different from that possessed by similarly employed workers in the same industry."

On appeal, the Petitioner discusses various aspects of the Beneficiary's claimed duties, and asserts that only the Beneficiary has the knowledge necessary to perform or oversee the various functions described. The Petitioner asserts that much of this knowledge is available only within the company, and that only the Beneficiary has that knowledge, which leaves unanswered the question of how the Beneficiary obtained that claimed specialized knowledge.

The Petitioner also observes that the Beneficiary has prepared training materials for other employees, but involvement in such training does not demonstrate that the covered subject matter amounts to specialized knowledge.

The assertion that the Beneficiary's knowledge is the result of his experience with the company contradicts the claim that the company "initially employed [him] in the specialized knowledge position of Lead NLP Engineer in July 2016." The Petitioner has not shown that the Beneficiary had any prior employment experience with NLP technology, and the incomplete evidence of the Beneficiary's university education does not show training in that technology either. We must conclude, from the available evidence, that the Petitioner employed the Beneficiary not merely as an NLP engineer, but as a *lead* NLP engineer, with little or no prior experience with NLP technology. Statements indicating that the Beneficiary's duties have remained essentially the same since 2016 do not support the conclusion that his responsibilities grew appreciably over time.

The Petitioner seeks to compare the Beneficiary to over 170 other employees at the foreign subsidiary, but the Petitioner provided specific evidence relating to only two of those employees, both of whom earned degrees that appear to relate to the company's work more directly than the Beneficiary's business degree does. The Beneficiary pursued graduate studies at several other universities with mixed results, but the Petitioner has not shown that, or explained how, the Beneficiary's studies led to specialized knowledge of NLP.

The Petitioner has not established that the Beneficiary possesses specialized knowledge. As such, we need not discuss the question of whether his past work abroad, and his intended employment in the United States, require such specialized knowledge.

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

IV. ADDITIONAL ISSUES

Beyond the Director's decision, we briefly note that the regulation at 8 C.F.R. § 214.2(l)(3)(i) requires the Petitioner to establish a qualifying relationship with the Beneficiary's overseas employer. The Petitioner has provided only fragmentary documentation of this relationship, such as an interrupted sequence of share certificates. The Petitioner does not explain the absence of complete documentation.

Also, the record does not establish the extent of the Petitioner's business operations in the United States (as opposed to services remotely provided to U.S. clients by foreign entities). On the petition form, the Petitioner claims only two employees in the United States, compared to 176 employees at the subsidiary in India. The Petitioner states that, if the petition were approved, then the company's U.S. staff would consist of the following:

- Chief Operating Officer;
- Principal AI Engineer (the Beneficiary);
- Director of Business Development; and
- Business Development Consultant

This list includes no other dedicated AI or NLP staff in the United States.

The Petitioner states that its initial submission includes a "lease agreement," but the submitted document is a "membership agreement" in [redacted] which is a shared workspace area in [redacted] California. The month-to-month agreement permits the Petitioner to use one desk in the shared space. The Petitioner executed the agreement in 2015, before any company related to the Petitioner had hired the Beneficiary, and therefore we must conclude that the Petitioner rented this one workspace for use by an employee other than the Beneficiary. Given this very limited arrangement, the Petitioner has not shown where the Beneficiary would work in the United States, or even that the petitioning entity has an actual site of operations in the United States. It bears noting that the [redacted] address of [redacted] does not match the [redacted] address shown on the Petitioner's printed letterhead and income tax returns.[2]

The Petitioner has submitted minimal evidence of business activity in the United States, and the company relies on what amounts to virtual space leased from a third party. It is questionable that the Petitioner is doing business in the United States as required by 8 C.F.R. § (l)(1)(ii)(G)(*2*).

V. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

[2] USCIS records show that unsuccessful attempts to verify the Petitioner's business operations at the [redacted] address led, in part, to the issuance of a notice of intent to revoke the approval of an earlier petition for this Beneficiary. The Petitioner acknowledges the issuance of that notice in its current petition. The Petitioner claims a different address in this proceeding, at [redacted]'s location, but an administrative notice we mailed to that address has been returned as undeliverable.