U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-R-T- INC.

DATE: AUG. 18, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of refrigerated trailers, seeks to temporarily employ the Beneficiary as a maintenance and material supervisor 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 the Beneficiary possesses specialized knowledge, that he has been employed abroad in a position involving specialized knowledge, or that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner submits supplementary evidence and asserts that the Director misapplied the law based on an incomplete review of the evidence, and reached a decision that is inconsistent with the record. The Petitioner maintains that its manufacturing process and technologies are unique in the industry and that the Beneficiary is qualified for L-1B classification based on his possession of special and advanced knowledge in these areas.

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 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 specialized knowledge capacity. *Id.*

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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the Beneficiary's duties are typical of a worker employed in an electrical engineering technology occupation and that the record did not establish that he acquired special knowledge of the Petitioner's products, equipment, or methodologies that is truly distinct or uncommon compared to other similarly employed workers in the industry or advanced compared to other workers in the company.

On appeal, the Petitioner maintains that the Director did not consider all relevant evidence in reaching her decision and erred by comparing the Beneficiary's duties to those of "electrical engineering technicians" without evaluating the Petitioner's specific claims regarding the specialized knowledge required to perform these duties within the petitioning organization. In addition, the Petitioner contests the Director's finding that its submissions did not describe the claimed specialized knowledge with specificity or explain how such knowledge is gained within the organization. It maintains that the totality of the evidence establishes that the Beneficiary possesses specialized knowledge that is fundamentally different from that possessed by similar workers in the industry.

The Petitioner also claims that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with guidance provided in U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. Finally, the Petitioner submits an expert opinion letter from who concludes that the Beneficiary possesses specialized knowledge of the petitioning organization's "unique tools, processes, and products."

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 of its manufacturing technologies, processes, and procedures gained through training and hands-on experience during his eight years of employment with its Chinese affiliate, where he currently serves as "Electrician Group Lead."

A. Background

The Petitioner, part of a multinational group based in China, manufactures and assembles refrigerated and dry van trailers for sale to North American customers. Specifically, the Petitioner states that it uses the group's technology and proprietary manufacturing process to produce the industry's leading refrigerated trailers. The Beneficiary currently works as an electrician group lead for the Petitioner's Chinese affiliate, which specializes in manufacturing reefer and insulated containers destined for both the U.S. and European markets.

The foreign entity builds reefer components in China and ships them to the United States, which assembles and produces the refrigerated trailers in its California and Indiana facilities using the company's ' manufacturing process. The Petitioner explains that the process has manufacturing and shipping advantages, as the concept requires less floor space at the destination manufacturing facility and allows the Petitioner to better control fluctuations in demand. As such, the Petitioner notes that its Chinese affiliate designs products, techniques, equipment, processes and procedures that are unique to its model and the result of research and

development that led to patented technologies and protected trade secrets that are not available to its competitors in the industry.[1]

In a supporting letter, the Petitioner stated the Beneficiary has worked for the foreign entity since 2008 and currently is responsible for the installation, debugging and operation maintenance of the foreign entity's refrigerated trailers' blowing system (part of a patented thermal insulation system), stamping NC equipment (used for precise manufacturing of trailer components), and high-precision automatic welding equipment. The Petitioner mentioned that the Beneficiary also assists with technology transfer by training machine operators, technicians, and mechanics in the manufacturing model, supports the overseas center operation through technical support, and coordinates communications between research and development and overseas centers.

As a maintenance & materials supervisor for the Petitioner, the Beneficiary would spend half of his time overseeing the production and assembly of refrigerated trailers in its California plant, training local operators, technicians and mechanics, and providing inspection and technical support for the blowing system and equipment used in trailer manufacturing and assembly. The Beneficiary's remaining time would be spent supporting and providing maintenance information to other centers, installing and troubleshooting assembly line and equipment at centers, and assisting with research and development work.

B. 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's primary claim on appeal is that the Beneficiary possesses special knowledge of the company's proprietary manufacturing technical and equipment gained through extensive internal training and technical work experience. The Petitioner submits that, because equipment used in the process was customized specifically for the company's manufacturing needs, proficiency in the installation and operation and maintenance of this equipment requires two to five years of internal training and experience with the foreign affiliate.

Specifically, the Petitioner asserts that the Beneficiary has specialized knowledge of: (1) the "flip unloading station" or "flipper" (used to unload trailer floor and roof components); (2) the auto-welding machine, designed for welding the bottom side of the trailer body; and (3) the sideways or lengthways lifting and moving cart, which facilitates the transport of materials within the plant. The

[1] The Petitioner submitted copies of two U.S. patents issued to the Petitioner's group in 2013 and 2014. One is for a " that is "convenient to assemble and maintain." The other is for "

Petitioner noted that the installation, commissioning and maintenance of this equipment requires a combination of mechanical, electrical, and hydraulics knowledge that only a "higher level mechanic" would possess.[2] Later, in response to a request for evidence (RFE), the Petitioner stated that acquisition of specialized knowledge needed to operate the flip unloading station and sideways/lengthways lifting and moving car requires five years of training and experience with the company while knowledge of the operation and maintenance of the auto-welding machine requires approximately two to three years of training and experience.

First, we will address the Petitioner's claim that its manufacturing process is unique in its industry and requires the Beneficiary to have knowledge of the maintenance and repair of customized equipment which is truly different or uncommon compared to that possessed by similarly employed workers in the Petitioner's industry.

The Petitioner acknowledges that the concept is not unique to its company, but emphasizes that it has customized the manufacturing process of reefer trailers to allow division of the manufacturing process between China and the United States, complete with customized machines, equipment, and "unique patented technology." The Petitioner stated that its competitors are regionally based and "do not need to apply this global scale manufacturing process," however it did not explain why the equipment needed to assemble a refrigerator trailer is different in the modular process versus a traditional, single-plant assembly process, given that both assembly processes presumably require the maneuvering of large components such as 53 foot floors, sides, and ceilings. The main difference appears to be that the Petitioner's group ships those components to a different continent for assembly while its competitors manufacture the components and assemble them in the same space. However, given that the finished product is essentially the same, it is unclear how the equipment used in the assembly, and more specifically, the three types of equipment in which the Beneficiary is claimed to have specialized knowledge, is so different or specialized that it would require the claimed years of company-specific training.

The Petitioner has submitted documentation illustrating the company's products and evidence that its group is recognized as a leading manufacturer of reefer trailers and other containers. The evidence supports the Petitioner's claim that the process is efficient, flexible, and allows the company to reach a global client base, but it does not sufficiently differentiate the equipment and processes involved in manufacturing and assembling its reefer trailers. The Petitioner did submit a chart which briefly described differences in the design, insulation, and delivery method of its trailers, but it was unclear how any of the stated points of comparison relate to the Beneficiary's claimed specialized knowledge of equipment used in the assembly process. For example, the Petitioner states that its trailers use a hidden welding line, versus an exposed welding line, incorporate a second layer of insulated foaming, and have a hinged scuff as opposed to a one piece scuff. Overall, although the Petitioner has submitted extensive documentation, the evidence does not sufficiently articulate the

[2] The Petitioner's initial evidence included a five-page " which listed these three pieces of equipment among dozens of others, and a flow chart which illustrates the modular production process for the company's reefer trailers.

nature of the Beneficiary's claimed specialized knowledge and how it compares to the knowledge held by similarly employed workers in this industry.

We now turn to the Petitioner's claim that the Beneficiary possesses extensive training which establishes that his knowledge is truly special and could not be readily transferred to another employee without significant expenditure of time and resources.

The Petitioner submitted two different English translations of the same Chinese language document titled "Employee Training Records," which outlines technical training the Beneficiary with his current and prior employees, dating back to 2002. The first translation, submitted at the time of filing, stated that the Beneficiary completed the following training with the foreign entity and that it included, in most cases, a written examination, and practical assessment:

10/2008 to 10/2009	Production equipment maintenance skills (tooling positioning, hydraulic pressure and power equipment, commonly used electrical appliances, etc.)
12/2009 to 05/2010	Fourth training class for management cadre at basic level
07/2010 to 07/2011	Production skills learning (riveting, welding, foam, assembly independent operation, suspension assembly and repair skills, etc.)
09/2011 to 02/2012	Basic knowledge of welding engineering and training of operating skills for the post[3]
06/2012 to 12/2013	Cross training in all production and equipment team of manufacturing department
01/2014 to 12/2014	Site material management learning (the material receiving and distribution, material classification and on line, backhaul of packaging frame, etc.)
01/2015 to 12/2015	Systematic learning of production technology

The second translation of the same document, submitted in response to the RFE, provided different information regarding the first two and last two training courses listed above. The Petitioner added [redacted] to the first course description, and indicated that the second course the Beneficiary completed was "[redacted] Production management training." For the 2014 course, the latter translation stated that Beneficiary completed "[redacted] production process and equipment training" and it

[3] This training was provided, in part by the [redacted] and resulted in the Beneficiary receiving an "Operating Certificate of National Special Operation (welding and cutting specialist)"

described the 2015 course as "[redacted] production process and equipment."[4] Further, the latter translation indicates that both the foreign entity and the Petitioner provided the training, while the initial translation states that the foreign entity provided all training. The Petitioner did not explain why it submitted a revised English translation of the Beneficiary's training record. Without the Petitioner's clarification, it appears that it may have simply added "[redacted]" to support its claim that these skills, which as described in the initial record appear to be very general technical skills, were in fact specialized.

Putting aside this unresolved inconsistency, we note that both training records appear to indicate that the Beneficiary had been in formal training almost continuously during his first seven years of employment with the foreign entity, a proposition that seems unlikely given the description of his job duties and claimed role as electrician group lead in the foreign entity's maintenance department during this same period of time. The Petitioner did not further elaborate on the nature or specific length or content of the training outlined in these records in support of its claim that the Beneficiary has acquired special knowledge of company equipment and manufacturing processes. Absent additional clarification, these documents are insufficient to establish that the Beneficiary spent more than six years in formal training after being hired for a "group lead" position in the foreign entity's plant.

The record also contains a document called "[redacted]" which the Petitioner submitted twice and specifically identified as additional evidence of the Beneficiary's training in response to the RFE. The document shows that the training included a two-day overview of the [redacted] model and production line, approximately one week of training in daily English communications, and longer blocks of training in: (1) production skills (riveting, welding, corner foaming, assembly process, cooler installation, repair skills); (2) maintenance skills (hydraulic and power equipment works, electrical fault diagnosis, wiring and electrical parts maintenance, common tool maintenance, welder repair and site safety); and (3) material handling (procedures for sending and receiving material, packaging frame structure, frame packing return shipping process, forklift operation). An accompanying chart indicated that this training required approximately one hour per day and the total period of training depicted is 56 days over a period of approximately six months (June to December 2014).

Although this 2014 training appeared to encompass most of the [redacted]-related skills that the Beneficiary is claimed to possess, the Petitioner did not attempt to reconcile this training summary with the training summary that suggested the Beneficiary began training in [redacted] technologies at the time he joined the foreign company in 2008 and had since been continuously trained over a period of seven years.

Based on the discrepancies and lack of detail in the documentation submitted, the Petitioner has not established how much company-specific training the Beneficiary actually completed or to what

[4] In a letter accompanying the RFE response, the Petitioner added that the last two training periods including [redacted] refrigeration system, electrical system, thermal insulation, blowing system, and foaming equipment training, but it did not provide any additional training records with this more specific information.

extent his training was specialized as opposed to general training in electrical, mechanical, hydraulics, or welding technologies and processes. Further, the Petitioner states that the Beneficiary has served as an Electrician Group Lead since joining the foreign entity in 2008, but has also claimed that the person in this position is expected to perform duties that require up to five years of training in proprietary technologies. If the Beneficiary was qualified for this supervisory position based on his prior experience with unrelated companies, this would undermine the Petitioner's claim that the position requires extensive in-house training.

Based on the foregoing discussion the Petitioner has not shown that the Beneficiary acquired special knowledge that is different or uncommon compared to what is generally found among similarly employed workers in its industry, nor has it established that such knowledge would be difficult to impart to a similarly experienced worker who is familiar with the process and equipment used to assemble refrigerator trailers.

C. 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.

On appeal, the Petitioner states that his "technical expertise and skills are considered advanced even without [the Petitioner's group] as evidenced by his awards and promotion as a member of the overseas manufacturing team that advise and support [the company's] manufacturing centers around the world." The Petitioner notes that the Beneficiary received "the in 2015 in recognition of his role in advising the company's U.S. manufacturing plants in the implementation of the process.

In response to the RFE, the Petitioner had also emphasized the Beneficiary's "technical management position" as one of three group leads in the foreign entity's "Maintenance Class Group." The Petitioner noted that this group is "primarily responsible for operating, maintaining, and troubleshooting the specialized and customized equipment for the manufacturing process." The Petitioner did not provide sufficient supporting evidence to show whether or how the Beneficiary, as an "Electrician Group Lead" responsible for overseeing six electricians, gained knowledge of the company's manufacturing or maintenance processes that can be considered advanced in comparison to other employees.

First, the Petitioner has not submitted information that would allow us to compare the Beneficiary to other similarly employed workers within the foreign entity. The Petitioner notes that the maintenance class group is responsible for the customized equipment used in the process; however, the Beneficiary's position within this group has not been shown to be at a senior level. The Beneficiary has a supervisor responsible for the maintenance class group (which also includes a "fitter group lead" and a "motor group lead" and their subordinates). The next tier of employees includes several electrical and equipment engineers, a maintenance scheduling supervisor, and assistant equipment manager, and a deputy equipment manager, who reports to the manager of the manufacturing department. There are many employees who are senior to the Beneficiary with respect to the equipment maintenance within the foreign entity's plant and the Petitioner has not attempted to show how the Beneficiary compares to those workers in terms of knowledge, training or experience. While it is more likely than not that the Beneficiary's knowledge is advanced relative to the small team of electricians he supervises, the record does not support the Petitioner's claim that his knowledge of the overall process and related equipment as a whole is advanced in comparison to other members of the company's large manufacturing department. In fact, if the Beneficiary's team is primarily responsible for the electrical maintenance of equipment used in the manufacturing process, it is unclear why his position would require the claimed special or advanced knowledge of all aspects of the manufacturing process and the Petitioner's refrigerated trailer products.

Regarding the Petitioner's claim that the foreign entity specially selected the Beneficiary to support overseas operations beginning in 2014, the record is not clear on this point. While the Beneficiary's job description indicates that he has acted as an adviser to overseas operations, one version of the Beneficiary's training record indicates he was actually sent to the United States in 2014 to complete related training rather than to advise the U.S. company on the manufacturing process or to train U.S.-based technicians.

We acknowledge the Petitioner's submission of an expert opinion letter from who attests to the Beneficiary's specialized knowledge of the Petitioner's "unique tools, processes and products" and to his "advanced role" within the foreign entity, noting that he has been selected "to lead the development of [the company's] refrigeration trailers in the US." concludes that the Beneficiary has "unmatched ability in understanding the precise technical and functional specifications of the company's technologies and methodologies" and that "few [company] employees have been trained as extensively as [the Beneficiary] on the company's proprietary system," noting that others are "familiar with only certain aspects of the company's technologies and processes." He further states that the Beneficiary was part of a small team that designed and developed the processes utilized in manufacturing and assembling the company's refrigerated trailers.

has made claims regarding the Beneficiary's training, his proposed duties, and his prior duties that are not fully supported by the evidence in the record and he did not indicate what information he reviewed in reaching these conclusions. The Petitioner has claimed at times that the Beneficiary's specialized knowledge was based primarily on his ability to install and maintain three specific types of customized equipment used in the process; the Petitioner has not claimed that

the Beneficiary was part of a small team that designed and developed the entire manufacturing scheme used by the Petitioner's group. We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988).

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, for the reasons already discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the Beneficiary may be filling a role beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his specialized knowledge. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13.

Although the Petitioner considers the Beneficiary to be a valuable employee who excels at his position, it has not sufficiently shown that his knowledge of company processes and procedures is advanced compared to other similarly employed workers equipment maintenance duties within the manufacturing process, or that he possesses special knowledge that is significantly 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 will be employed in the United States in a specialized knowledge capacity.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of C-R-T- Inc.*, ID# 519632 (AAO Aug. 18, 2017)