U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E- CORP.

DATE: AUG. 23, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which sells and distributes machine tools manufactured by its Austrian parent company, seeks to extend the Beneficiary's temporary employment as a sales manager 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he was employed abroad in position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision is "unsupported, arbitrary and capricious," and contends that the decision "ignores substantial evidence of specialized knowledge" sufficient to establish the Beneficiary's eligibility under the preponderance of the evidence standard.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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).

II. BACKGROUND

The Petitioner's group develops and produces high-tech machine tools for the metal-cutting industry. The group's products are manufactured in Europe, with corporate sales offices in Germany, Italy, the Czech Republic, and the Petitioner's location in the United States. The group also has 140 sales and service offices in global markets, with 758 employees worldwide, including 15 who work for the Petitioner. The Petitioner's Austrian parent company employed the Beneficiary as an area sales manager from 2008 until 2015, when he was transferred to the United States to work for the Petitioner as a sales manager. The Petitioner seeks to continue his employment in this position at an annual salary of $75,000. The Beneficiary earned a degree in international technical sales management in 2007 and an "engineer diploma" in 2011.

III. SPECIALIZED KNOWLEDGE

The sole issue to be addressed is whether the Petitioner established, as required, that the Beneficiary possesses specialized knowledge, that he was employed abroad in position involving specialized knowledge,[1] and that he will be employed in a specialized knowledge capacity in the United States.

In the denial decision, the Director found that the knowledge required to perform the Beneficiary's duties in the United States and abroad did not appear to be special or advanced. In making this determination, she noted that the Beneficiary acquired his knowledge of the company's products and services by attending a two-week training session. The Director concluded that the Petitioner had not shown that the Beneficiary possesses knowledge that could not be easily acquired by another sales employee, or that his position in the U.S. or abroad requires knowledge that is advanced within the company or uncommon in the Petitioner's industry.

On appeal, the Petitioner asserts that the Director ignored "substantial evidence" of specialized knowledge and reached a decision that is "unsupported, arbitrary, and capricious." The Petitioner has not submitted a brief or additional evidence and maintains that the evidence of record is sufficient to establish the Beneficiary's eligibility.

[1] The Director also discussed whether the record established, in the alternative, that the Beneficiary was employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv). However, the Petitioner has consistently claimed that the Beneficiary's employment with the foreign entity involved specialized knowledge and has not claimed that he was employed as a manager or executive as those terms are defined at section 101(a)(44) of the Act.

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.

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.

For the reasons discussed below, we find insufficient evidence to establish that the Beneficiary possesses specialized knowledge.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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 special knowledge.

In a letter submitted in support of the petition, the Petitioner stated that the Beneficiary gained "incredible specialized proprietary knowledge relating to the machines the company builds, sells and services," while employed abroad as an area sales manager for the Latin American and Caribbean markets. The Petitioner emphasized that the Beneficiary's foreign language skills make him a key company asset, and stated that he has "vast knowledge of the types of companies who purchase our machines and technical proprietary knowledge of these machines and how they function."

However, the Petitioner did not identify or describe the claimed specialized knowledge beyond stating that its -controlled milling products are proprietary, and it did not explain when or how the Beneficiary acquired the claimed specialized knowledge. The Petitioner indicated that he held the position of "area sales manager" from the time he joined the foreign company, so it was not evident that he required significant internal training to undertake the duties of the position. Nor did the Petitioner explain how the Beneficiary's former or current sales manager positions require him to apply highly technical proprietary knowledge in the performance of his assigned duties - which

include market development, dealer management, sales support of key customers, oversight of dealer sales training, local sales support, and local show organization and assistance – and are not clearly technical in nature.

The Director issued a request for evidence (RFE) asking the Petitioner to address these deficiencies. The Director instructed the Petitioner provide a more detailed description of the Beneficiary's knowledge or expertise and how it qualifies as specialized, evidence of how the Beneficiary gained his specialized knowledge, and a comparison of the Beneficiary's knowledge to that of similarly employed workers in the Petitioner's industry.

In response, the Petitioner indicated that the Beneficiary came to its foreign parent company with a degree in international technical sales management and proficiency in three foreign languages (English, Portuguese, and Spanish), a background that enables him to work with customers and dealers in the Latin American region. The Petitioner explained that the Beneficiary's responsibilities as area sales manager were initially limited to the parent company's "Industrial Training Systems" business unit between 2008 and January 2011 while he was "receiving training and gaining experience with [company] products and procedures." The Petitioner stated that his role was expanded to include the entire range of products in 2011, because he had "gained an advanced level of specialized knowledge about our proprietary machinery, products, customers, and corporate procedures."

The Petitioner did not further elaborate with details on the Beneficiary's progressive experience within the foreign entity or the nature or type of specialized knowledge he gained. Nor did it explain how he acquired specialized knowledge relative to the company's entire range of products while working within one business unit. In fact, the foreign entity's organizational chart shows that the Beneficiary was one of several area sales managers reporting to the "Industrial Training" sales director, and therefore it does not appear to corroborate the Petitioner's statement that his role and responsibilities expanded beyond the "Industrial Training" area of the business to include the entire product line.

The Petitioner also provided a letter from its parent company's head of human resources which lists all trainings the Beneficiary attended while employed abroad. According to this letter, the Beneficiary received two weeks of internal technical product training when he joined the company in 2008, and subsequently attended "continuous internal technical product training of new product developments and technical features" which took place "twice a year" and were one or two days in duration. The Beneficiary also attended: two days of training on software programs used by the company for business operations and marketing; an annual internal sales strategy workshop (one to two days); an internal sales strategy seminar (one day); an external sales management seminar (two days); and an external course in Portuguese language (eight months).

While we do not doubt the proprietary nature of the internal product training, we agree with the Director's determination that training that can be delivered in two weeks (with one or two days of annual refresher training) more likely than not conveys knowledge that can be easily transferred from one person to another. The Petitioner stated that the knowledge required "to sell and support

the products could not be conveyed to a new employee without significant interruption to our plans while a new employees spends years with the company gaining this special expertise." However, the Petitioner did not demonstrate that the Beneficiary himself was require to gain years of experience prior to assuming a sales manager role.

As a result, the Petitioner did not establish that the product knowledge required for the area sales manager position is special knowledge that is truly different or uncommon in comparison to that used by similarly employed sales workers in the same industry. In addition, the Petitioner did not differentiate its products from other milling and grinding products available in the machine tools industry. Knowledge that is proprietary or company-specific must still be shown to be either special or advanced in order to be deemed specialized knowledge.

Here, the evidence indicates that the Beneficiary assumed the area sales manager role with the parent company and was expected to perform the duties of the position with only minimal internal training. These facts undermine the Petitioner's claims that a newly hired employee could not possibly serve in a sales manager role in its company.

The Petitioner also emphasizes the Beneficiary's language skills and relationships with Latin American customers as unique within the company. As an example of his "specialized knowledge in action," the Petitioner noted that the Beneficiary helped secure a major contract in Honduras, noting that his "advanced machine knowledge was required in order to identify and quote the correct machines to fit the customer's needs and his familiarity with the language and culture were key in building a solid rapport with the customer." While the success of this project evidences the Beneficiary's language and technical sales skills, the Petitioner did not explain how the project required specialized knowledge of the company's products, rather than familiarity with the products and their features. A press release describing the project indicates that an Austrian engineer would be sent from the parent company to provide technical training to the client for a 12-month period. This underscores the fact that the Beneficiary, as a sales manager who completed only two weeks of technical training, did not receive the type of comprehensive training that would demonstrate specialized knowledge of the products.

The Beneficiary's ability to communicate with Spanish and Portuguese-speaking clients in his assigned sales region is undoubtedly valuable to the company, but the Petitioner has not shown how his ability to speak Spanish and Portuguese can be considered special knowledge specific to the company.

Overall, the record contains insufficient evidence to establish that the Beneficiary's knowledge of the Petitioner's products constitutes "special knowledge" that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained sales professionals in the Petitioner's industry. The Petitioner's claims are overly broad and not supported by sufficient evidence to meet its burden of proof.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given 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. Also, 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 has claimed that the Beneficiary has "vast knowledge of the types of companies who purchase our machines," and "an advanced level of specialized knowledge about our proprietary machinery, products, customers, and corporate procedures." However, the Petitioner has not provided information that would allow us to compare the Beneficiary to other workers within the group's operations and therefore has not sufficiently supported its claim that the Beneficiary's knowledge of company processes and procedures can be considered advanced.

The Petitioner provided an organizational chart depicting its parent company's sales organization, which shows 10 area sales and technical sales managers, including the Beneficiary, reporting to either the "Industry Sales Director" or to the "Industrial Training Sales Director." All of the sales managers appear to have an assigned geographical region, with little or no overlap. The Petitioner does not appear to claim that every member of the sales organization has specialized knowledge, and it has not shown how the Beneficiary's specific assignment resulted in his acquisition of advanced knowledge in comparison to his colleagues. As noted, he assumed the duties of the position after a short period of product training, and has received minimal internal training in company processes or procedures related to product sales. The Petitioner did not provide information regarding the backgrounds or duties of other staff in the sales organization. Rather, the Petitioner indicates that the Beneficiary is unique within the company due to his focus on the Latin American region. This geographical emphasis, however, is common throughout the company's sales organization and the Petitioner has not shown how it amounts to "advanced" knowledge.

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 discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While we do not doubt that the Beneficiary's technical sales skills, experience working with Latin American customers, and foreign language capabilities make him a valuable employee; however, these characteristics are not probative of the Beneficiary's 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. The Petitioner here has not submitted sufficient evidence to establish how the Beneficiary's knowledge qualifies as "special" or "advanced."

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.

IV. 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 E- Corp.*, ID# 1589907 (AAO Aug. 23, 2018)