U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-A-, INC.

DATE: AUG. 25, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a United States office of a Chinese government agency that oversees training and exchange programs, seeks to temporarily employ the Beneficiary as a "Representative" 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad as a manager, executive, or in a specialized knowledge capacity, and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner submits copies of previously submitted evidence and asserts that the Director erred because U.S. Citizenship and Immigration Services (USCIS) had approved previous petitions, including one for this Beneficiary.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. 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.

An individual L-1B classification petition must be accompanied by evidence that: (1) the petitioner and the foreign employer of the beneficiary are qualifying organizations; (2) 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; (3) 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 (4) the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT IN A SPECIALIZED KNOWLEDGE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary he has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

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).

Furthermore, the regulations define specialized knowledge as:

> [S]pecial 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).

The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not a given position actually requires specialized knowledge. USCIS cannot make a factual determination regarding a specialized knowledge requirement if the petitioner does not, at a minimum, articulate with specificity the nature of the 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.

In the present case, the Petitioner's claims appear to be based on both prongs of the statutory definition, indicating that the Beneficiary's work requires a special knowledge of the company's services and their application in international markets, as well as an advanced level of knowledge of the company's processes and procedures.

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.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, a 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. A petitioner must submit evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

A. The Beneficiary's Employment Abroad

The petition must include evidence that the beneficiary worked for a qualifying organization in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year within the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii) and (iv). The Petitioner claims that the Beneficiary's prior employment involved specialized knowledge; the Petitioner does not claim that the Beneficiary was a manager or executive.

The Petitioner described the foreign employer:

> [The entity] is supported by the Chinese Government and is under the direct guidance of the State Administration of Foreign Experts Affairs. . . .
>
> [The entity] is a nationwide, nonprofit organization engaged in the international exchange of professionals and technical personnel. The purpose of [the entity] is to promote technological exchange and professional cooperation between China and foreign countries in the fields of agriculture, commerce, culture, education, finance, industry, science and technology, medicine and public health, through the international exchange of professionals.

The Beneficiary is currently "one of the Directors in the American and Oceanic Affairs division" of the foreign entity. The Petitioner described the Beneficiary's "duties for the past year":

- Formulating policy for recruitment and the exchange of talent in North and South American countries;
- Planning activities and conducting the training of foreign personnel in China;

- Assisting with the implementation of the Chinese talent export program;
- Communicating with [the organization's] offices throughout the world, ensuring a standard of procedures across the organization; and
- Helping organize and manage the [redacted] and [redacted] training programs for Chinese senior civil servants, including selecting qualified candidates for the programs.

The Petitioner stated that the Beneficiary "gained the following specialized knowledge of overseas training programs":

- Knowledge of the procedures of [the organization] in China and the US;
- Extensive familiarity with the process of selecting foreign experts to send to China and mechanics of sending training groups abroad;
- Excellent communication skills which are necessary [to] maintain strong working relationships with domestic and foreign organizations and institutions; and
- Good command of both the Chinese and English languages, which is necessary for the position.
- Familiarity with issues and problems of foreign experts being sent to the US and China.

The Petitioner contended that "no one but [the Beneficiary] can perform the duties of Representative, and no one can be trained to do so in any reasonable amount of time."

Background materials about the multinational organization established that the entity is involved in worker exchanges and training Chinese workers in the United States and other countries. These documents, however, did not provide sufficient support for the Petitioner's claim that the Beneficiary possesses specialized knowledge or demonstrate that his current or intended positions involve specialized knowledge.

Asked to provide more information, the director general of the parent entity in China stated that the Beneficiary's foreign position requires "a deep understanding of the organization and its processes and procedures" that only comes from many years of experience there. The official added that the Beneficiary has the best possible understanding of the organization's standards because he drafted them himself. The Petitioner did not elaborate or submit evidence to support or clarify these claims.

The Director denied the petition, stating that the Petitioner did not provide enough information about the Beneficiary's duties to show that they involve specialized knowledge, and that the Petitioner did not provide enough details about the specialized knowledge the job is said to require.

On appeal, the Petitioner states that the Director "has taken [the Beneficiary's] specialized background of 23 plus years of related experience, increasing in professional responsibility . . . , and dismisses it as 'not special or advanced' and that anyone can do his current job." The Director did not find that "anyone can do [the Beneficiary's] job." Many vocations and professions require

particular knowledge and skills not found in other fields, but it does not follow that those jobs involve special or advanced knowledge as the regulations define those terms. As noted in *Matter of Colley*, 18 I & N. Dec. 117 (Comm'r 1981), "[m]ost employees today are specialists," but they do not all qualify for the narrow L-1B classification. Skills specific to a particular industry or field do not inherently qualify as special or advanced knowledge.

Likewise, the Petitioner incorrectly asserts that the Beneficiary "was found not qualified by USCIS to represent the foreign government agency where he has worked for 11 years." The Director did not find that the Beneficiary is unqualified for the positions he has held or for the offered U.S. position.

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 a 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 advanced or special, and that the beneficiary's position requires such knowledge.

Although the Petitioner asserts that the Beneficiary's position requires specialized knowledge, it has not sufficiently articulated the basis for this assertion. The Petitioner has only submitted a general description of the Beneficiary's job duties and has not identified the aspects of his position requiring special knowledge of the employer's services, techniques, management, or other interests. The Petitioner has not submitted evidence of the knowledge and expertise required for the Beneficiary's position that differentiates the employment from similar positions within the field. For example, the Petitioner states that the position requires the Beneficiary to have command of both the English and Chinese languages and "excellent communication skills," and counts these general skills among the Beneficiary's specialized knowledge qualifications. However, these skills would reasonably be common among many businesspeople and cannot be considered either special or advanced knowledge. Similarly, the Petitioner claims that the Beneficiary's "familiarity with issues and problems of foreign experts being sent to the US and China" constitutes specialized knowledge, but did not explain what these "issues and problems" are or how they are specific to the work performed by the foreign entity. This area of knowledge, without further explanation, appears to involve general knowledge of the petitioning organization's particular industry.

Although the Petitioner states that the Beneficiary has organization-specific knowledge of procedures, selection processes, and "the mechanics of sending training groups abroad," the Petitioner did not describe any of this knowledge is sufficient detail to establish that it is both uncommon within the particular industry and could not easily imparted to another individual with a similar background. The Petitioner relies on the Beneficiary's long tenure with the foreign entity, but has not established that the knowledge he gained during his employment is truly special or advanced. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the

regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner compares the present case to two precedent decisions, both of which predate the current statutory and regulatory structure: *Matter of Raulin*, 13 I&N Dec. 618 (Reg'l Comm'r 1970), and *Matter of Vaillancourt*, 13 I&N Dec. 654 (Reg'l Comm'r 1970). The Petitioner states "As in the case Matter of Raulin . . . , the Beneficiary has been employed in a specialized knowledge position at [the parent entity] in China, where he is a Director. This wording implies that *Raulin* involved a director of this Petitioner's parent entity in China. The beneficiary in *Raulin*, however, had been the executive secretary to a vice president of General Electric. The decision approving that petition provided greater detail and specificity than the current Petitioner has supplied.

The Petitioner also states: "Similarly to Matter of Vaillancourt . . . the Beneficiary is a Chinese citizen that has been employed by [the foreign entity] for more than 23 years of specialized experience." The decision in *Vaillancourt* turned on a very different issue. The petitioner in that case sought to employ the beneficiary as a manager or executive, and the ground for denial was that the beneficiary had not served as a manager or executive abroad. The regional commissioner found that the initial decision was in error because it "was silent with respect to experience abroad requiring 'specialized knowledge.'" *Vaillancourt* does not provide much guidance concerning what constitutes specialized knowledge, because that was not the core issue in dispute.

Experience and rank are not equivalent to, or evidence of, specialized knowledge, and the Petitioner has not provided enough information about the Beneficiary's position abroad to show that the position involved specialized knowledge. The Petitioner has not submitted documentation from the foreign entity such as training materials or correspondence that illustrates the nature of the Beneficiary's activities abroad.

B. The Beneficiary's Intended U.S. Employment

A petition for L-1B nonimmigrant status must include evidence that the petitioner will employ the beneficiary in a specialized knowledge capacity, including a detailed description of the services the Beneficiary will perform. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Regarding the organization's activities in the United States, the Petitioner stated that its "mission centers on . . . [r]ecruiting foreign experts to work in China in the fields of agriculture, industry, and commerce," and "[r]ecommending and sending Chinese managers, engineers, and technicians as interns and trainees in foreign counterpart enterprises and business corporations." The Petitioner asserted that the Beneficiary's "specific specialized knowledge duties in the US will be as follows:"

- Conducting and organizing management training programs;
- Coordinating and selecting new training programs for Chinese delegations;
- Assisting Chinese delegations in the US when visiting US partners;

- Evaluating existing US training programs and expanding business contacts with US academic institutions;
- Handling the financial management of the office; and
- Maintaining contact with US training channels and expert organizations.

The Petitioner added that the above duties require "extensive knowledge of [the Petitioner's] policies, procedures and training programs" gained through "direct knowledge and team leadership experience."

The Director asked for more information and evidence to show that the position in the United States will require specialized knowledge. In response, the Petitioner stated that the duties of the position require "extensive knowledge of [the Petitioner's] policies, procedures, standards, and training programs" that can only come with years of experience. The Petitioner listed the Beneficiary's past positions and stated that this "advanced experience in overseas training programs" has given the Beneficiary deep knowledge of the Petitioner's activities. The Petitioner also asserted that the Beneficiary "is one of the very few" people with "experience formulating standards and poli[c]ies for overseas training." Without elaboration and corroboration, the Petitioner's statement amounts to a vague and unsupported claim that the position requires special and advanced knowledge.

As with the foreign position, discussed earlier, the Petitioner has provided only the most general description of the intended U.S. position, without documentation to show exactly what the Beneficiary would do and establish (rather than simply assert) that the position involves specialized knowledge.

In the denial notice, the Director stated that the Petitioner had "not documented the types of special and/or advanced knowledge that the beneficiary has acquired." The Director added that experience and familiarity with the employer do not necessarily equate to special or advanced knowledge.

On appeal, the Petitioner asserts:

> The [submitted] letters explain that the US position requires specialized knowledge since the Representative must conduct training courses, oversee training programs, explain the program(s) to US companies and universities and make recommendations to [the parent entity] on which candidates to select, form policy, plan activities and report to China. No one can be trained to do these tasks in any reasonable amount of time, no one can do these tasks without working for [the parent entity] for many years in professional positions so they learn the organization[']s programs, selection criteria and training.

The Beneficiary's experience is not in dispute, but the Petitioner has not established that conducting and overseeing training programs requires years of experience within the organization. It cannot suffice simply to assert that the experience is necessary. The Petitioner and its foreign parent do not have a monopoly on arranging and providing training sessions for businesspeople, and the Petitioner

has not provided a sufficient explanation of its services to allow us to compare those services to those provided by other organizations. This being the case, the Petitioner cannot establish that the Beneficiary's involvement with a particular training program is self-evident proof of specialized knowledge. The record contains minimal information about the training programs themselves and the policies that the Beneficiary is said to have formulated for the organization. Further, as with the foreign entity, the record contains little documentation relating to the petitioning U.S. employer. Third party publications and conference fliers attest to the Petitioner's existence but provide little additional relevant information.

The Petitioner states: "As in Matter of LeBlanc (13 I&N Dec. 618 (R.C. 1971)) and Matter of Michelin Tire Corporation (18 I&N Dec. 117 (Comm. 1981)), the position of Representative requires Specialized Knowledge." We note that the volume and page numbers in the citations do not correspond to the cited cases. The information given for *LeBlanc* actually pertains to *Raulin* (discussed previously); the information given for *Michelin* corresponds to *Matter of Colley, et al.* Because the Petitioner has not provided any context for the citations, we cannot determine whether the Petitioner meant to cite *LeBlanc* and *Michelin*, or *Raulin* and *Colley*. More substantively, the Petitioner does not elaborate as to how the cited cases support the present petition. Simply identifying prior case law is not a substantive argument on appeal.

The Petitioner asserts that it has filed several approved nonimmigrant petitions for L-1B status, including one for this Beneficiary several years ago. The Petitioner calls the approval of the earlier petition "[t]he most clearest [*sic*] proof that the USCIS decision . . . was clearly in error." However, each petition has its own record of proceedings, and the record before us does not include the documents from the approved petitions. Therefore, we cannot tell whether the earlier petitions contained more thorough evidence, or whether the earlier approvals were in error. It bears emphasis that, in this proceeding, the Director made no affirmative finding that the position does not involve specialized knowledge. Rather, the Director found that the Petitioner has not met its burden of proof to establish that it does. Because the Petitioner bears the burden of proof, there is no presumption of eligibility that USCIS must rebut.

For the foregoing reasons, the Petitioner has not established that it would employ the Beneficiary in a specialized knowledge capacity.

III. CONCLUSION

The record does not establish that the Beneficiary that has been employed abroad in a position involving specialized knowledge or that he would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of C-A-, Inc.*, ID# 574970 (AAO Aug. 25, 2017)