U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9500566

Date: AUG. 31, 2020

Appeal of California Service Center Decision

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

The Petitioner, a financial institution, seeks to temporarily employ the Beneficiary as a "Network and Infrastructure Administrator" 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 and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal.

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 find that the Petitioner did not meet that burden. Therefore, 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).

II. BACKGROUND

The Petitioner is the United States branch office of the largest financial institution [redacted] which also has branch and subsidiary operations [redacted] The Beneficiary has a bachelor's degree

in systems engineering, approximately 10 active Microsoft Certifications, and 13 years of professional experience in network infrastructure and administration roles. He initially worked for the foreign entity in [redacted] as an infrastructure engineer from 2010 until 2012. From 2012 until 2014, he was employed as an infrastructure specialist [redacted] during which time he worked on infrastructure projects for the Petitioner's parent entity. He returned to the parent entity in 2014 as the Assistant Manager of Technology Strategy and Innovation Team, and from May 2017 until April 2019, he was employed by the Petitioner in the United States as its Network and Infrastructure Administrator. The Petitioner now seeks to employ him in this position at an annual salary of $55,000.

The Petitioner explains that the offered position requires "specialized knowledge of our banking systems, operations, procedures and projects, and core banking systems, specifically IT Infrastructure, corporate security policies and guidelines." The Petitioner states that the Beneficiary will be responsible for the daily operations of the LAN and WAN telecommunications networks, servers and software based in [redacted] branch, and that "[t]here is no other individual that can perform these duties" without the experience he possesses.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

A. Evaluating Specialized Knoweldge

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]

A beneficiary is deemed 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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

Special knowledge concerns knowledge of the petitioning organization's products or services and its application in international markets. To establish that a beneficiary has special knowledge, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

"Advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity may meet its burden through evidence that the beneficiary has knowledge of or an expertise in the organization's processes and procedures that is greatly developed or further along in

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

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 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.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether 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.

B. Analysis

In a letter submitted in support of the petition, the Petitioner emphasized that the Beneficiary possesses: 1) extensive experience in corporate guidelines, policies in IT security and infrastructure engineering; 2) in-depth knowledge of its bank-secured telecommunications network, including customized deployments from [redacted] to the bank's main office and subsidiaries; and 3) proficiency in understanding the communications scheme of the organization's core banking software program.

The Petitioner's letter included a table listing more than 50 courses, workshops and certifications completed by the Beneficiary in the areas of cloud computing, cybersecurity, networking, Microsoft and WINTEL technologies, virtualization and project management. While this listing indicates that the Beneficiary had extensive professional training in relevant technologies when he joined the petitioner's organization in 2010 and continued to update his knowledge during his tenure with the company, all of the listed training were offered by third parties and therefore are available outside the Petitioner's organization. The Petitioner has not established that completion of these third-party courses and certifications resulted in his acquisition of special knowledge that is distinct or uncommon in comparison to other similarly employed workers in the industry. Therefore, while the Beneficiary's training in these technologies is necessary to perform the job duties, this technical background does not form the basis of the Petitioner's specialized knowledge claim.

Further, the Petitioner has not documented any formal or other company-specific training the Beneficiary completed internally in order to gain the claimed specialized knowledge. Rather, the Petitioner emphasizes that he has gained special and advanced knowledge based on his participation as a key employee in significant assignments abroad. The Petitioner emphasizes that a person with a "general IT background" would not have the knowledge to perform the same duties, noting that an "IT proficient" U.S. worker would require a significant amount of experience with the company's [redacted] headquarters in order to perform the duties of the offered position.

In describing these assignments, the Petitioner emphasizes the Beneficiary's role as "Assistant Manager of Technology Strategy and Innovation Team" where he was responsible for planning, and designing strategies to implement and renew the technological infrastructures residing at the company's computer centers [redacted] to improve cost efficiency and operational stability. Specifically, the Petitioner highlighted the Beneficiary's role as "main technical consultant and architect" for technologies adopted by the headquarters office, noting that similar projects are being deployed [redacted] following the same corporate guidelines and policies. The Petitioner indicates that the Beneficiary proposed the strategy that the corporation is using to adopt cloud technologies and environments.

These projects included the "adoption of Office 365 cloud collaboration suite," in which the Petitioner explained that the Beneficiary worked alongside Microsoft and used his training in cloud technology and WINTEL solutions to define a platform that would support Microsoft Office 365, third party cloud applications, and in-house applications implemented on Microsoft Azure and Amazon AWS. The Petitioner emphasized that the design defined by the Beneficiary required his "advanced knowledge of our IT architecture and integrations" and the "technology, infrastructure and audit policies of the Corporation." The Petitioner indicated that the Beneficiary already led the process of migrating and adopting Office 365 in the United States using the same platform, cloud environments, and components deployed [redacted]

The Petitioner also noted that the Beneficiary acted as the technical architect for "adoption of Infrastructure as a Service in Cloud," noting that the Beneficiary "defined the core infrastructure to support business applications based on Cloud Technologies in the model of Infrastructure as a Service (IaaS) and Platform as a Service (SaaS). The Petitioner explained that "the configuration of the public clouds provided by Microsoft Azure and Amazon AWS were enabled to support applications complying with Corporate Policies and Guidelines." It emphasized that the Beneficiary's knowledge of the bank's network topology ensured that the cloud environment could be implemented without outages or other issues.

Finally, the Petitioner mentioned the Beneficiary's membership in the bank's "Technical Group" and the technical committee of the [redacted]' which "involves migration of core banking system (managed in-house) of three Affiliates to a cloud environment." The Petitioner states that the Beneficiary's contribution is fundamental "to ensure coexistence among the new core, third-parties" and "the existing cloud environments deployed during the previous projects." The Petitioner emphasized his "advanced knowledge of our systems and processes" and his "specialized knowledge of cloud technology in the financial industry."

The Petitioner maintains that a "new employee" would not have the required "technical background of the organization, current business applications, security policies and guidelines, customization made in our cloud environments as well as the new system and its integrations." Therefore, the question before us is whether the Beneficiary's knowledge of these company specific applications, security policies, systems and customized environments rises to the level of specialized knowledge. Knowledge that is proprietary or company-specific must still be either special or advanced. Accordingly, the Petitioner must establish that qualities of its internal applications, policies and systems require this Beneficiary to have knowledge beyond what is common among similarly employed network infrastructure specialists in the Petitioner's industry. For example, if a Petitioner

establishes that its internal technical environment and related policies are sufficiently complex that all of its employees who work with them have to undergo considerable training in order to perform their assigned duties, this fact may support a finding that knowledge of this internal environment alone constitutes "special knowledge".

Here, however, the Petitioner did not further describe or document its company-specific applications, technical environment, customizations or related security policies in support of its claim that this knowledge rises to the level of specialized knowledge. As noted, 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. Many companies rely on customized versions of industry-standard technologies and in-house applications to carry out their IT and networking functions and implement protocols to ensure the availability and security of their networks. Possession of this type of internal knowledge does not automatically equate to a finding that a given beneficiary possesses specialized knowledge.

Here, although the Petitioner documented the Beneficiary's completion of technical courses, certifications and workshops in third-party technologies relevant to the performance of his job duties, it has neither claimed nor documented his completion of any company-specific training related to in-house applications, systems, or network infrastructure. Nor has it indicated that such training is typically completed by employees working in comparable positions for the parent entity, or otherwise identified how such knowledge is typically gained within the organization or how long it takes to acquire such knowledge. In fact, the Petitioner did not offer any information that would facilitate a comparison between the Beneficiary's knowledge and that possessed by other similarly employed workers based [redacted]

Overall, the Petitioner's initial letter conveyed that the Beneficiary has a long tenure with the company, an extensive technical background in network and cloud infrastructure, and experience with the company's internal technical environment and recent cloud migration projects. It did not offer adequate support for its claim that the Beneficiary possesses knowledge that is truly different or uncommon compared to other network infrastructure specialists in the industry, that is advanced compared to other similarly employed workers in the parent entity, or that could not be readily transferred to another employee with a similar IT background and functional knowledge of the financial industry.

In addition to its supporting letter, the Petitioner provided a letter from [redacted], a Regional Director for [redacted] He explains that the Petitioner's [redacted] headquarters selected his company's [redacted] system as its new cloud-native core banking system as part of a digital transformation process initiated in 2015. [redacted] mentions that he knows the Beneficiary as the petitioning bank's "leading architect of the initiatives to adopt cloud-based technologies and services." He notes the Beneficiary's "specialized knowledge about the Bank's procedures and controls," and like the Petitioner, states that the Beneficiary possesses knowledge of the petitioning bank's IT environment and business applications. Finally, he states that the Beneficiary could not be replaced by "a new professional" who is not familiar with the bank's products, systems, configurations, and its integration with [redacted] cloud environment.

The Petitioner also provided a letter from [redacted] of [redacted] described as a "technology enabler" that worked with the Petitioner in [redacted] on "technological initiatives aligned to its Networking and Cybersecurity Program." [redacted] emphasizes the Beneficiary's "specialized knowledge on the IT infrastructure installed abroad," his "understanding of Corporate Security Policies and IT guidelines," his "understanding of the bank environment," noting that his "technical background knowledge . . . of the bank's infrastructure was a key piece for customization of the solutions and their subsequent deployment." He concluded that the Beneficiary's expertise can only be gained with the bank's head office in [redacted] and "cannot be transferred easily to another individual due to its complexity and highly technical nature."

While both [redacted] and [redacted] echo the Petitioner's statements that the Beneficiary possesses knowledge of the bank's internal network infrastructure, systems, applications and policies, their letters do not provide adequate support for a finding that the Beneficiary's knowledge is either special or advanced. Neither letter elaborates on how the petitioning company's internal technologies, systems and applications are different or uncommon within the industry. Further, neither author claims to be in a position to compare the Beneficiary's knowledge of company processes and procedures to that possessed by others employed by the petitioning organization in order to reach a conclusion that he has advanced knowledge.

In a request for evidence (RFE), the Director instructed the Petitioner to provide, in part, additional explanations of how the knowledge or expertise the Beneficiary possesses is special and/or advanced, the minimum amount of time required to obtain the claimed specialized knowledge, and, if applicable, additional training records. The Director also advised the Petitioner that the initial evidence did not compare the Beneficiary's knowledge to that possessed by other similarly experienced workers, including those in the same organization, and those employed in the same industry. The Director requested organizational charts for both the foreign and U.S. entities which clearly identify the Beneficiary's position and provide information regarding other employees working in the same department.

In response, the Petitioner submitted a letter from [redacted] the foreign entity's Manager of Technology Strategy and Innovation intended to "confirm the specialized knowledge duties" the Beneficiary performed abroad between 2014 and 2017. He emphasized that most of the duties required a bachelor's degree in systems engineering and "specialized knowledge of our technological infrastructure, banking systems, operations, procedures, technological projects and core banking systems." However, [redacted]s letter did not offer any additional explanation regarding the claimed specialized knowledge, such as how the company's systems, infrastructure, systems or related procedures are distinct from those generally found in the industry, when or how the Beneficiary acquired the claimed specialized knowledge, how the knowledge is typically gained within the organization, or how the Beneficiary's knowledge compares to that of other employees working in the same department or division. The Petitioner did not submit an organizational chart depicting the Beneficiary's department in the foreign entity or provide any other information regarding the backgrounds of similarly employed workers.[2]

[2] The initial evidence included an organizational chart that depicts the structure of the foreign entity as of "12/04/2017." The chart, which was not accompanied by an English translation, does not identify the Beneficiary or appear to include the last position he held [redacted]

The evidence submitted on appeal includes an organizational chart for the foreign entity, but it does not identify other employees in the Beneficiary's team or department or their respective duties, training, experience and qualifications. The chart identifies a "Technological Strategy and Innovation Sub-Area" within the "Technology Strategy and Continuity Management" department managed by [redacted] who reports to "IT Infrastructure and Operations Area Management." The Petitioner identifies additional lines of reporting senior to that position (including the manager of the IT Management Division and the Director of Transformation), but does not provide relevant information regarding others who work in the Beneficiary's immediate department or the three other departments who report to [redacted] Rather, the Petitioner provides a general description of the functions performed by the Beneficiary's "sub-area." The charts depict a total of five departments reporting to the head of the IT management division and indicates a large IT organization within the foreign entity. The newly provided charts do not provide any new details that would facilitate a comparison between the Beneficiary and others within that organization.

The RFE response also included a new letter from the Petitioner, which stated that the offered U.S. position requires: a bachelor's degree in systems engineering; "specialized knowledge of our banking systems, operations procedures, projects and core banking systems, specifically IT infrastructure, corporate security policies, guidelines"; and "3-6 years' experience with enterprise infrastructure, administration, and solution deployment and integration." The Petitioner emphasized that, in order to "plan, direct and coordinate the design, installation and connectivity of computer systems and network infrastructure," and "to ensure the stable operation of our organization's IT assets," one must have a "complete understanding of our business complexities," experience deploying LAN, WAN and WLAN technologies, experience working with IDS/IPS/DDOS mitigation technologies, proficiency with network protocols like TCP, HTTPS, DNS and SSL, experience designing and deploying monitoring and reporting systems, working knowledge of Linux/Windows Server-based infrastructure, and proven analytical and problem-solving abilities.

The Petitioner repeated its claim that the Beneficiary is "the only qualified individual who can perform these highly technical duties" and emphasized that he gained experience in corporate guidelines, IT security policies, infrastructure engineering, and the bank's secured telecommunications networks based on his prior experience with the foreign entity. The Petitioner, however, did not further elaborate on the nature of these guidelines, policies or technology infrastructure in support of its claim that this internal knowledge qualifies as either "special" or "advanced."

It also provided a chart comparing the Beneficiary's essential duties and responsibilities to those of others in the same department within the Petitioner's [redacted] office – identified as an IT support technician and a project and planning analyst.[3] The Petitioner concluded that "there is no other individual who can compare to [the Beneficiary's] education, training, certifications and experience in the field." While this evidence indicates that the Beneficiary's proposed duties are distinct from other employees within the small IT department of the [redacted] branch office, it does not allow us to compare his duties, knowledge and qualifications to those of others within the organization and is not sufficient to support the Petitioner's claim that he is the "only qualified individual." The Beneficiary currently works for the parent company and the Petitioner did not provide the requested information

[3] A U.S. organizational chart submitted at the time of filing included an "IT Manager" (the Beneficiary's supervisor) and a "Support and Systems Administrator." The Petitioner did not provide the duties or qualifications for these individuals.

comparing his knowledge, skills, training and experience to staff employed with the foreign entity in support of a claim that his knowledge is special or advanced within the organization.

Finally, the Petitioner's RFE response included an "Expert Opinion Evaluation" prepared by [redacted], [redacted] an associate professor at [redacted] University. [redacted] concludes that the Beneficiary's offered position "requires that the candidate have specialized knowledge in proprietary technology and operations" particular to the petitioning organization. He states that his conclusion was based on a review of the Petitioner's initial supporting letter, the letters of [redacted] and [redacted] a copy of the RFE, and two Department of Labor publications. He does not indicate whether he has reviewed the statutory and regulatory definitions of "specialized knowledge" applicable to this matter.

[redacted] lists the Beneficiary's proposed duties and states that performance of the stated tasks requires "advanced training" in the Petitioner's "proprietary programs" as well as "processes and procedures" that the Beneficiary himself developed. However, the record does not support a finding that the Beneficiary completed any internal training in the company's "proprietary programs," nor does it identify "processes and procedures" specifically developed by him. He also states that the position requires "proficiency with company-specific procedures and methodologies" that "can only be acquired through a long period of training" and notes that many elements of the position are "highly unique" to the Petitioner. The record, however, does not indicate that the Beneficiary undertook a "long period of training" in any "company specific procedures and methodologies" or identify the specific elements of the required knowledge that are "unique." Finally, [redacted] states that the role requires someone with specialized knowledge that is different from what is generally found in this industry and "can only be acquired through prior experience and training in proprietary programs that are not readily available in the U.S. labor market." He does not explain how or why the knowledge required for the position is different from that possessed by similarly employed workers in the industry, or identify any "proprietary programs" in which the Beneficiary completed training.

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). Further, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. Id. [redacted]'s opinion includes several statements about the training required for the Beneficiary's position that are not supported by the record and is not based on a review of all of the evidence reviewed by the Director.

On appeal, the Petitioner reiterates many of its previous claims and maintains that it submitted credible evidence to demonstrate that the offered position requires specialized knowledge. The Petitioner emphasizes the Beneficiary's knowledge of the bank's network topology, business applications, customized cloud environment and related security policies and processes, and asserts that a "new employee" who lacks a technical background with the organization could not replace him. While the Beneficiary may have knowledge that could only be gained through prior experience with the petitioning organization, this characteristic alone is not probative of his specialized knowledge absent evidence that this knowledge is special or advanced. Here, the Petitioner makes broad assertions about the Beneficiary's claimed specialized knowledge related to the bank's applications, systems,

network, cloud architecture, and policy. However, it has provided limited evidence demonstrating how this knowledge is different or uncommon when compared to the that held by similarly employed workers in its industry. The Petitioner documented the Beneficiary's completion of technical training in third party technologies that are required for his position but has not indicated that the company offers its IT personnel training on the bank's customized or internal systems, applications, technologies, policies or processes. Further the Petitioner has not identified how long it would take a similarly experienced network infrastructure specialist who has worked in the Petitioner's industry to acquire the knowledge needed to perform the job duties. It simply states that a "new employee" with a "general IT background" could not perform the duties. Finally, the Petitioner has not offered evidence that would allow us to determine whether the Beneficiary has advanced knowledge of the company's processes and procedures in comparison to his peers within the organization.

Because the Petitioner has not demonstrated that the Beneficiary possesses special or advanced knowledge, we need not address whether the Beneficiary was employed abroad or will 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.