U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18984593

Date: DEC. 6, 2021

Appeal of California Service Center Decision

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

The Petitioner, a specialized engineering consulting firm, seeks to temporarily employ the Beneficiary as a "senior design engineer" 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: (1) the Beneficiary's position abroad involved specialized knowledge, (2) the Beneficiary is qualified to perform the intended services in the United States, (3) the Beneficiary's position in the United States would involve specialized knowledge, and (4) the Beneficiary's placement at the worksite of an unaffiliated employer would not be labor for hire.

On appeal, the Petitioner contends that the Director's decision did not give proper weight to the supporting evidence.

Upon *de novo* review of the record, we conclude that the record contains sufficient evidence to overcome the Director's bases for denial and we will sustain the appeal.

Under the statute, a beneficiary is considered to have specialized knowledge if he or she has a "special" knowledge of the company product and its application in international markets. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). 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.

On appeal, the Petitioner clarified how the Beneficiary gained his specialized knowledge. The Petitioner discussed his progressive experience in the nuclear reactor industry beginning in 1999 and continuing with the foreign entity intermittently until his full-time employment with the foreign entity in March 2018. The Petitioner included letters from the Beneficiary's initial mentor as well as his direct supervisor at the foreign entity. The letters described a specific subset of nuclear reactor technology involving [redacted] reactors which is being explored as a safer

alternative to fuel rod reactors.[1] The supporting evidence describes how the Beneficiary acquired distinct and uncommon knowledge relating to the specific type of fuel handling and storage systems used for this technology. His experience was gained working within the particular subset of nuclear technology and more particularly with the foreign entity's work in designing and developing the technology for application within the nuclear industry. Further, the Beneficiary contributed to a patent application for a specific valve used in the [redacted] systems design.

The Petitioner and its client are one of only a few companies in the active process of developing, designing, and demonstrating the [redacted] modular reactor. As the field is small, the Beneficiary's knowledge of the [redacted] system as it relates to this specific technology, more likely than not, is distinct and uncommon among engineers in the nuclear reactor field. The Petitioner indicates that it requires the Beneficiary's services in the United States to further develop the [redacted] system component based on its U.S. client requirements and specifications.

The Petitioner acknowledges that its principal and another individual[2] within the foreign entity have familiarity with the U.S. client's particular [redacted] modular reactor. However, the Petitioner sufficiently demonstrated that the Beneficiary, based on his training, progressive experience, and unique work assignment, is one of the few individuals in the industry who possesses design-level knowledge of the [redacted] system that are critical to its client's continued development and demonstration of its [redacted] modular nuclear reactor. Upon review of the totality of the record, the Petitioner has established that more likely than not the Beneficiary possesses specialized knowledge.

Given that the Beneficiary utilized his specialized knowledge abroad in designing a [redacted] system using [redacted] technology, and that he will use this same knowledge of this technology in the United States, we conclude that both his position abroad and his proposed position in the United States involve specialized knowledge. Furthermore, given that the Beneficiary is an expert in this field with multiple years of experience, we also conclude that he is qualified to perform the duties of his proposed position.

Lastly, the Petitioner has also demonstrated that the Beneficiary's work would not be labor for hire.[3] The Petitioner established that the Beneficiary would be supervised and controlled by the Petitioner when assigned to its client's work location. It also credibly established that the Beneficiary will provide services for which the specialized knowledge specific to the Petitioner is necessary. As such, the Petitioner has demonstrated that the Beneficiary would utilize specialized knowledge specific to the Petitioner and its affiliated companies pursuant to his work for its client; as such it has established that he would not be employed as labor for hire.

ORDER: The appeal is sustained.

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[1] The Petitioner provided evidence showing that the U.S. Department of Energy has supported the development of this technology and continues to do so by awarding significant funds for the development of a small modular nuclear reactor in the United States.

[2] USCIS records show that an L-1B petition filed by the Petitioner on behalf of this individual was approved.

[3] See L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act.