U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19334956

Date: DEC. 6, 2021

Appeal of California Service Center Decision

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

The Petitioner seeks to temporarily employ the Beneficiary as a "sales engineer" in the United States 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 the Petitioner did not establish that the Beneficiary possesses a special or advanced level of knowledge and that the U.S. position would involve specialized knowledge.

On appeal, the Petitioner asserts that it submitted sufficient evidence to establish that the Beneficiary possesses specialized knowledge and that the proffered position requires specialized knowledge. The Petitioner contends that the Director failed to properly consider or ignored the evidence submitted, as well as disregarded U.S. Citizenship and Immigration Services' (USCIS) guidance for the adjudication of the petition.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[1] We review the questions in this matter *de novo*.[2] 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).

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[1] *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

[2] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. BACKGROUND

The Petitioner stated that it imports, sells, and distributes reagents, consumables, and biotechnological equipment. The Petitioner noted that it carries equipment manufactured by industry brands including [redacted], and [redacted] The Petitioner provided a 2007 distribution agreement it had entered into with the [redacted] company, a company located in South Korea. The Petitioner indicated further that the foreign entity, located in Venezuela, also engages in importing, selling, and distributing reagents, consumables, and biotechnological equipment.

The Petitioner initially provided a broad overview of the Beneficiary's responsibilities as sales engineer for the foreign entity from 2008 to 2014.[4] The responsibilities encompassed the general duties of a sales engineer which included collaborating with sales representatives to promote the company's biotechnology equipment, prepare and deliver technical presentations to customers and prospective customers, arrange for demonstrations or trial installations of biotechnology equipment, develop, present, or respond to proposals for specific customer requirements, and recommend improved biotechnology equipment to clients. The Petitioner added that the Beneficiary's responsibilities also included providing technical support and services to clients or other staff members regarding the use, operation, and maintenance of biotechnology equipment and diagnosing problems with installed biotechnology equipment. The Petitioner did not identify the amount of time the Beneficiary spent on any of the responsibilities listed. The Petitioner stated that to perform the initially described duties, the Beneficiary was required to take extensive training with the manufacturers of the products it carries to gain deep knowledge about their production process and the technologies applied to the products.

In response to the Director's request for evidence (RFE), the Petitioner described itself as "the exclusive and official distributor for Latin America, the Caribbean, and the State of Florida of all the products manufactured by [redacted]. . . ."[5] and revised the initial description of the Beneficiary's responsibilities for the foreign entity adding that the previously described responsibilities related to the company's line of ultra-low freezers, blood bank and pharmaceutical refrigerators. The Petitioner stated that the Beneficiary "is key personnel within organization with specialized knowledge in manufacturing methods, operating systems, technical features, installation, configuration, troubleshooting and repair of all [redacted]s freeze dyers [*sic*], deep freezers, blood bank and pharmaceutical refrigerators" that it distributes. The Petitioner claimed that to perform the duties it had described, "the incumbent is required to hold a bachelor's degree in electronic engineering, the completion of the 3 intensive training sessions provided by [redacted] at its factory in South Korea, and to have a minimum 4 years of experience providing technical advice and service for [redacted]'s ultra[-]low freezers, and blood bank and pharmaceutical refrigerators."[6]

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[3] This company changed its name to [redacted] in June 2009. *See* http:/[redacted]

[4] The Beneficiary indicates that the Beneficiary was promoted to president of the foreign entity in 2014 and was transferred to the Petitioner as vice president in 2016. The Beneficiary entered the United States the same year as an L-1A executive.

[5] The Petitioner also provided an application for registration of fictitious name filed January 2015, adding that it is doing business as [redacted]

[6] The Petitioner does not explain this addition of requirements to perform the position. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Moreover, the purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational

The Petitioner provided several documents related to trainings completed by the Beneficiary including: an [redacted] training from January 26 to February 5, 2008 related to [redacted] products which included an element of technical training; an [redacted] training from October 6 to October 8 discussing a new freezer model and its features and use; an [redacted] training from October 25 to November 2, 2011 on new cascade technology and advanced training in the industrial freeze dryer; and a [redacted] training from November 21 to November 23, 2012 on an overview of their products. The record also included two certificates: one issued by [redacted] on May 29, 2008 indicating the Beneficiary is certified to be a factory authorized service technician for the [redacted] products; and the second issued by [redacted] Technology on March 1, 2020 related to a purification system as well as a fluorescence detection system and noting the Beneficiary is qualified in installation and service for this product(s). The Petitioner does not further refer to the [redacted] training or the [redacted] and [redacted] Technology certificates as providing the Beneficiary specialized knowledge.

III. SPECIALIZED KNOWLEDGE

The issues in this matter are 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. 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.

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.

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

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.

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hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as the nonimmigrant classification requested. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Because "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 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.

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 an employee is able to gain specialized knowledge within the organization and explain how and when the individual beneficiary gained such knowledge.

On appeal, the Petitioner emphasizes that the Beneficiary's bachelor's degree in electronics engineering provides the technical skills foundation to acquire specialized knowledge in its products. The Petitioner also refers to the letter authored by [redacted] which indicates that the Beneficiary has mastered the technology principles and concepts that [redacted] applies to its products and that such "deep knowledge" is critical for the sales and distribution of its products in Latin America and the Caribbean and through its U.S. affiliate.[7] The Petitioner adds that the Beneficiary became proficient in the use and application of his specialized knowledge in October 2011, 4 years after he started employment with the foreign affiliate as a sales engineer.

The Petitioner contends that the knowledge of its product lines cannot be gained without training with the equipment manufacturer and years of experience in selling and servicing its line of products, thus the knowledge is uncommon in the general labor market. The Petitioner, however, provides little information on why knowledge of [redacted]'s products should be considered distinct and uncommon within the industry. The Petitioner claims that the [redacted] products differ from other brands because they are equipped with COSCOM (combination of single compressor operation mode) technology and VIP (vacuum insulation panel) and use the [redacted] system. However, the COSCOM technology is not proprietary and appears to be used throughout the refrigeration/freezer industry. Likewise, VIP, a type of insulation, and Auto Cascade, a method to control temperatures, is common in comparable products. As these components of [redacted]'s products appear common in this industry, it is not clear why the Beneficiary's knowledge of this technology should be considered distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Here, the Petitioner has not provided the required detail and the necessary comparisons to demonstrate that the Beneficiary's knowledge is distinct and uncommon.

The Petitioner asserts on appeal that the Director did not properly consider the Beneficiary's training at the [redacted]s factory on the [redacted] products as evidence of the Beneficiary's specialized knowledge. However, company-specific knowledge must still be either advanced or special to conclude that it qualifies as specialized knowledge as set out in the regulations. In this matter, the Beneficiary's first

[7] This letter also provides an overview of the three trainings the Beneficiary attended at [redacted]s factory in South Korea.

[redacted] training (10 days in 2008) provided a broad overview of the [redacted] products including principal components, electrical and control components, how to diagnose a problem in an ultra-low freezer and welding and recharging refrigerant in an ultra-low freezer. The Petitioner does not explain why this general knowledge is special or advanced knowledge. Similarly, the two-day training in 2010 on a new freezer model and its components and the seven-day training in 2011 on the new cascade technology does not appear to be intensive or to provide advanced or special knowledge. Although the trainings relate to [redacted] specific products, it is reasonable to conclude that other professionals in this industry likely hold their own company-specific knowledge in order to sell, promote, and distribute products, and to provide services to their customers. The Petitioner has not demonstrated that the underlying knowledge necessary to understand the technical aspects of [redacted]'s products is uncommon or distinct or is knowledge apart from the elementary or basic knowledge possessed by others within the industry. The Petitioner has not established that the Beneficiary possesses knowledge that cannot be easily transferred to a qualified technician with a general background in the sale of biotechnology equipment.

The Petitioner points out that its distribution agreement with [redacted] states that [redacted]'s warranty does not extend to its products which have been improperly repaired or altered or modified. The Petitioner asserts that its potential buyers thus require that it "provide technical support by technicians certified by the manufacturer to protect manufacturer's warranty on the equipment." We note that [redacted] does not make this requirement and that the record does not document that the Beneficiary is a technician making repairs to its customers' equipment. Moreover, although the [redacted] letters certify that the Beneficiary attended three trainings, the letters do not certify that he is an authorized technician.

We further note that the emails provided by the Petitioner to demonstrate the Beneficiary's technical knowledge do not include evidence sufficient to demonstrate that the Beneficiary possesses specialized knowledge. The emails include: a string of emails in December 2009 of the Beneficiary requesting assistance in fixing a compressor problem[8]; emails dated in the October 2012 time frame from the [redacted] sales manager informing the Beneficiary of the diagnosis of a temperature problem and offering a resolution[9]; July 2013 emails requesting the Beneficiary's opinion on deleting a function and the Beneficiary's response; a string of emails (June/July 2014) from a client informing the Petitioner of failures in the [redacted] equipment and the Beneficiary's requests to [redacted] that the client be compensated; and an undated letter from a technical service company informing the Beneficiary of damage to [redacted] equipment and noting the repairs made. Although the Beneficiary may need basic technical knowledge to communicate with the [redacted] sales team, service companies, and its clients, these email exchanges do not demonstrate that the Beneficiary possesses special (uncommon or distinct) or advanced (greatly developed or further along in progress, complexity, and understanding) knowledge of [redacted]'s products.

Furthermore, although the Petitioner claimed that it would take an individual at least four years to become proficient with [redacted]'s equipment, it did not provide a path for becoming proficient or establish that achieving proficiency in [redacted]s equipment is synonymous with attaining specialized knowledge. In fact, other than claiming that the Beneficiary became proficient in the use and

[8] The record does not include documentation that the Beneficiary makes the repairs but rather that solutions are conveyed to clients or service companies to make the repairs.

[9] The Beneficiary requested training on this issue, but the record does not include evidence that the training occurred.

application of his specialized knowledge four years after he started employment with the foreign affiliate, the Petitioner did not describe a progression of knowledge during the course of the Beneficiary's foreign employment or demonstrate that the Beneficiary's knowledge increased in its level of complexity to reach a specialized level of knowledge. We note that the Petitioner may be claiming that the Beneficiary possessed specialized knowledge at some point prior to his four-year anniversary employment date, but as the record does not provide a timeline or evidence of the development of the claimed specialized knowledge, this claim is unsupported. That is, the record does not include detailed descriptions of the Beneficiary's past assignments and how those assignments included progressively responsible duties. Additionally, the Petitioner does not offer an analysis or describe how it determined that the sales engineer position required four years of experience to become proficient in the use and application of the claimed specialized knowledge. Without some analysis or corroborating evidence, the Petitioner's claim is arbitrary and unsupported.

We also note that the Petitioner's distribution agreement with [redacted] executed in 2007, does not define the territory in which the Petitioner may exercise its exclusive rights. In response to the Director's RFE and on appeal, the Petitioner states that its exclusive distributorship territory is Latin America, Mexico, and the State of Florida. The Petitioner does not explain who markets [redacted]'s products in the United States outside of Florida and Internet research shows that [redacted] products are sold by other companies in the United States. The record does not include a comparison of the Beneficiary's knowledge to the knowledge of other professionals in the United States and remaining international market which sell [redacted] or similar products. This leaves substantial uncertainty whether the Beneficiary's training and foreign employment can be considered specialized as defined by the regulations. Further, as it appears that other professionals in the United States and elsewhere have knowledge of [redacted] products, the Petitioner's claim that it requires the Beneficiary's knowledge because [redacted] has shut down its training facility during the Covid crisis is unpersuasive. That is, the commonality of knowledge of [redacted]s products undermines a claim that the knowledge cannot be easily imparted to others. We also reiterate that the Petitioner has not established that the Beneficiary acquired specialized knowledge by attending the general trainings provided by [redacted] Thus, the Petitioner has not demonstrated that more likely than not the Beneficiary possesses knowledge that is special or advanced[10] as that knowledge relates to the products it promotes, sells, and distributes.[11]

Finally, on appeal, the Petitioner asserts that the Director ignored guidance set out in the Adjudicator's Field Manual (AFM) § 32.6(e) regarding factors that may be considered when determining whether a beneficiary's knowledge is specialized. The Petitioner repeats the same assertions discussed above as demonstrating the factors listed. However, as discussed, the record lacks reliable evidence establishing how the Beneficiary's claimed specialized knowledge is distinct or uncommon in the particular industry, lacks persuasive evidence establishing how the Beneficiary gained the knowledge that is claimed to be specialized, and lacks detailed information regarding the Beneficiary's assignment with the foreign entity which is claimed to have resulted in his gaining specialized knowledge. Moreover, the AFM is not a substitute for statutory or regulatory provisions and does not

[10] The record does not include sufficient information to allow us to compare the Beneficiary's knowledge of company processes and procedures to that of others within the petitioning company and its foreign subsidiary. Therefore, the record does not support a claim that his knowledge is "advanced" and thus is deficient in this regard.

[11] The Petitioner does not provide supporting evidence of brands or products, other than the [redacted] products, that it sells and distributes. As noted above, it does not refer to the Beneficiary's training with other companies as providing the Beneficiary specialized knowledge.

have the effect of binding case law precedent or USCIS policy. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

Because the Petitioner has not demonstrated that the Beneficiary possesses special or advanced knowledge, we need not 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.

ORDER: The appeal is dismissed.