U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6586244

Date: DEC. 11, 2019

Appeal of California Service Center Decision

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

The Petitioner is an IT company that seeks to employ the Beneficiary temporarily as a "Senior Software Developer" 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 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.

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, 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. Section 101(a)(15)(L) of the Act. 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 a software development company that develops mobile applications, databases, and platforms and provides web design services to over 300 clients. It says that it employs technical experts who are "well versed in all programming languages on the market" and are "ready for any task on any operating system as desired by its client." The Petitioner states that it seeks hire someone who has "a sound software engineering background and extensive experience in Android application development" to fill a specialized knowledge position. It claims that the Beneficiary is well suited for the proposed position because he has worked as a senior software developer and led the software development team during his employment for the Petitioner's foreign affiliate. The Petitioner states that the Beneficiary was promoted to head of the web department in April 2018, approximately nine

months prior to this petition's filing date. Although it claims that the Beneficiary has specialized knowledge of its affiliate's "application/software development business and software portfolio," it does point to any specific features or describe that portfolio.

The Petitioner goes on to state that the Beneficiary has both special and advanced knowledge, but it does not identify any of its organization's products, services, equipment, or techniques, or describe its organization's processes and procedures to support this claim. Rather, the Petitioner provides a list of six courses that the Beneficiary has completed and repeatedly mentions the Beneficiary's "robust and extensive" experience in software engineering, stating that he has been "involved in all aspects and phases of [the] web development process." The Petitioner states that the Beneficiary's expertise in software development and project management is critical for the purpose of allowing the foreign affiliate to introduce its existing applications and software into the U.S. market.

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.

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.

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.

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

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 such knowledge is typically gained within the organization, and explain how and when the individual beneficiary gained such knowledge.

In the present matter, the Petitioner's supporting evidence includes the Beneficiary's résumé, which shows that he assumed the role of "Senior Full Stack Developer" in three projects and was "Senior QA Automation Engineer" in one other project prior to April 2018, when it is claimed that he was promoted to head of the web department and served in the role of "Architector" in three projects. The résumé also names the projects and lists the technologies with which the Beneficiary has worked, indicating that several technologies were commonly used by his current and former employers. In two separate submissions, the Petitioner provided an overview of the Beneficiary's proposed job responsibilities and listed the job duties he performed prior to being promoted to head of the web department. Although the Petitioner claimed that the Beneficiary's knowledge is both special and advanced, it did not state how or when the Beneficiary gained such knowledge, nor did it specify the job duties that require such knowledge or clarify whether the specialized knowledge claim extends to the position the Beneficiary held prior to his promotion, which took place less than one year prior to the date this petition was filed. This point is critical, given that at least one year of specialized knowledge employment with the foreign entity is a prerequisite to meeting eligibility the eligibility criteria in this matter.

The Petitioner also provided the foreign entity's organizational chart, which identifies the Beneficiary as "Programmer Engineer of the 1st Grade" in the software engineering department, rather than as head of the web department. In fact, the chart does not include any of the position titles that were attributed to the Beneficiary in his résumé, including the position he is claimed to have held at the time of filing. The Petitioner must resolve these inconsistencies by submitting independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The chart also shows that the software engineering department employed three chief project engineers and four senior programmer engineers, all receiving wages that were approximately 30% higher than those of the Beneficiary and seven of his colleagues in the software engineering department, all of whom had the

same position titles and received the same compensation as the Beneficiary.[2] The Petitioner did not distinguish between the positions within this department in terms of the levels of knowledge they require in comparison to the level of knowledge possessed by Beneficiary. The Petitioner also did not specify any products, tools, or equipment in which the Beneficiary is claimed to have knowledge that is "special" in comparison to others who are similarly employed in the industry, nor did it describe the organization's process and procedures in which the Beneficiary is claimed to have knowledge that is "advanced" in comparison to others within the same organization. As such, the Petitioner did not establish a basis for claiming that that the Beneficiary's knowledge is either "special" or "advanced."

In a request for evidence (RFE), the Director found that the Petitioner did not show when the Beneficiary gained knowledge that is claimed to be specialized, establish that the duties performed by the Beneficiary required specialized knowledge, or demonstrate that the Beneficiary gained experience that resulted in specialized knowledge. The Director instructed the Petitioner to identify which of its products, services, tools, or equipment or its processes and procedures require specialized knowledge, explain how the Beneficiary's knowledge is special or advance, state how much training and work experience is required to attain such knowledge, and discuss how the Beneficiary's knowledge compares to that of others who are similarly employed within the employer or within the industry.

In response, the Petitioner provided a statement claiming that the Beneficiary was the "Lead Developer/Project Manager" and "played a key role in the development of various projects." The Petitioner claimed that the Beneficiary is the most knowledgeable in the applications that he developed and therefore possesses specialized knowledge with respect to those applications. Although the Petitioner provided a second organizational chart in which the Beneficiary's salary is shown to match the salaries of the project manager and chief project engineers in the software engineering department, the chart does not show that the Beneficiary assumed a "Lead Developer/Project Manager" position and therefore does not show that the Beneficiary's role in the department was either "key" or "lead," as the Petitioner indicated. The Petitioner also did not explain why the chart shows the Beneficiary's salary as matching those of three chief project engineers and a project manager when other colleagues with the Beneficiary's same position title – that of "programmer engineer of the 1st grade" – were designated with salaries approximately 30% below that of the Beneficiary. Although the Petitioner provided an employee list corroborating the salary information contained in the more recently submitted chart, the job duty summaries included in that list indicate that the Beneficiary performed the same job duties as his colleagues with the same job title. This anomaly undermines the purported nexus between the Beneficiary's higher salary and his claimed specialized level of knowledge and also leads us to question why the Beneficiary's compensation was 30% higher than his colleagues who performed the same job duties and assumed the same position title as the Beneficiary.

The Petitioner also provided an employment letter from the foreign entity listing the Beneficiary's job duties abroad. The letter referred to the Beneficiary's position as that of "Software Developer" and listed the position's four components – software development, architecture design, client management/communication, and quality assurance – but did not state that the Beneficiary assumed the role of a project lead, as indicated in the Petitioner's response statement. That said, the letter listed

[2] The chart shows an eighth employee holding the position of "Programmer Engineer of the 1st Grade" receiving wages that were approximately 16% higher than that of the Beneficiary and seven of his colleagues. The Petitioner did not clarify the reason for the difference in wages.

eight projects in which the Beneficiary participated during his employment with the foreign entity, noting that in one project the Beneficiary was recognized as having "clear skills as a developer and leader" because of his completion of the greatest number of tasks among his team of 4-6 developers. The letter stated that in another project the Beneficiary "led the web team" in building a mobile application and listed the Beneficiary's "notable contributions" to that project along with several others, but it did not distinguish the Beneficiary as having "special" knowledge of the employer's products in comparison to other employees within the organization, nor did it point to aspects of his knowledge of the company's processes and procedures that could be deemed as "advanced" in comparison to similarly situated employees within the industry.

The Petitioner also provided the foreign entity's "Certificate of Employment," which contains the Beneficiary's job duties and dates of employment and states that the Beneficiary assumed the position of "Lead Full Stack Developer" during his employment with the foreign entity. Despite using the term "Lead" in the Beneficiary's position title the certificate does not state that the Beneficiary was promoted to an actual leadership position; rather, it states that the Beneficiary "[w]ork[ed] collaboratively with the project manager," thereby contradicting the validity of the Petitioner's claim that the Beneficiary was employed abroad in a leadership capacity. There is also no indication that the term "lead" in the Beneficiary's position title reflected his level of knowledge as being "special" or "advanced" in comparison to others. In fact, the certificate also does not point to an increased level of complexity in the Beneficiary's job duties or describe a progression in his level of knowledge to support the claim that the Beneficiary achieved specialized knowledge during his employment with the foreign entity.

Further, although the Petitioner provided the Beneficiary's translated income statements from March 2015 through March 2019 showing that his salary progressively increased during his period of employment abroad, it did not provide evidence showing a link between the salary increases and increased levels in the Beneficiary's knowledge. Likewise, although the Petitioner provided three certificates showing that the Beneficiary "successfully completed" requirements for a Microsoft Certified Professional and a Microsoft Specialist in 2013 and for a Microsoft Certified Solutions Associate in 2016, it has not established that satisfying the underlying requirements of these certificates, two of which were awarded more than two years prior to his employment with the foreign entity, led to the Beneficiary's attaining either "special" knowledge of the foreign entity's products or services or "advanced" knowledge of its processes and procedures. 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 also offered multiple statements from representatives of the foreign entity in which it was stated that the Beneficiary's specialized knowledge resulted from his education, training, and experience associated with his position as a senior software developer. The same statements claim that the Beneficiary's "specialized and advanced knowledge" stems from his certifications and trainings in various IT technologies, including .NET, .NET Core, HTML, and CSS, as well as JavaScript, NodeJS, and ReactJS. The Petitioner does not, however, explain how the Beneficiary's knowledge of software programming tools that are commonly used in the IT industry is different from the knowledge of similarly employed individuals either within the same organization or within the industry. Moreover, the Petitioner does not actually identify any of its organization's products or services or its processes and procedures in which the Beneficiary is claimed to have specialized

knowledge, nor does it claim that the Beneficiary's knowledge specifically pertains to its organization's products or services or to its processes and procedures.

On appeal, the Petitioner claims that the Beneficiary has "deep, advanced knowledge" of various security aspects that are critical to the process of building and enhancing functionalities in existing information systems. It also claims that the Beneficiary gained advanced knowledge of Amazon Web Services "[w]hile working on different projects" and asserts that the Beneficiary's use of "serverless architecture" is an approach that is "used in rare cases" and therefore its use "can be assessed as specialized knowledge." The Petitioner goes on to make similar claims about the Beneficiary's advanced knowledge in using previously referenced IT technologies and even discusses projects the Beneficiary worked on with a prior employer to support the claim that he "gained and used deep knowledge" in these technologies. However, these assertions do not establish that the Beneficiary possesses knowledge that pertains to his employer's products or services or to its processes and procedures, nor do these assertions establish that the Beneficiary's knowledge rises to the specialized level. Likewise, the Petitioner makes repeated references to various projects in which the Beneficiary was a key contributor, lists IT technologies in which the Beneficiary is claimed to have become more proficient than "the typical worker," and highlights the Beneficiary's knowledge of something that is not common among software developers. However, the Petitioner has not established that the Beneficiary's knowledge pertains specifically to his employer's products or services or to its processes and procedures.

As noted earlier, in order to demonstrate that the Beneficiary possesses specialized knowledge the Petitioner must show that the Beneficiary 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. Here, the Petitioner has not identified any employer-specific products or services or processes and procedures and thus it has not effectively made a claim that the Beneficiary possesses knowledge that is either "special" or "advanced."

In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that he was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.