U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-N-A-, INC.

DATE: DEC. 12, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company that sells and supports specialized welding equipment, seeks to temporarily employ the Beneficiary as its technical manager 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 the Beneficiary possesses specialized knowledge, that he was employed abroad in a capacity that was managerial, executive, or involved specialized knowledge for at least one year, or that he would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner submits additional evidence, clarifies certain issues raised by the Director, and asserts that it has established by a preponderance of the evidence that the Beneficiary is eligible for L-1B classification.

Upon *de novo* review, we will sustain 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.*

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).

Specialized knowledge is also defined as 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).

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. DISCUSSION

The sole issue to be addressed 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.

To establish that a beneficiary has special knowledge, 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 company or the particular industry. To establish that a beneficiary has advanced knowledge, a petitioner must submit evidence that a given 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.

The Petitioner's foreign parent company designs and manufactures specialized welding machines for clients in the wire manufacturing and related industries. The record establishes that the group has been selling its products in North America for 20 years, with over 100 customers in the United States, Canada, and Mexico. The Petitioner was established in 2015 to perform technical support and spare part sales that had previously been performed under a service contract.[1]

The Petitioner claims that the Beneficiary has both specialized knowledge of its proprietary equipment and advanced knowledge of the processes and procedures for the installation, support, and commissioning of that equipment which is not commonly found in the industry or within the Petitioner's group of companies.

[1] The Director found that the knowledge required to install, commission, and support the parent entity's products is not special knowledge because the parent company had been relying on a third-party to provide support services to its U.S. customers. The evidence submitted on appeal establishes that these support services were previously performed by a related U.S. company whose engineers and mechanics had access to company-specific training on the equipment. The relationship between the companies ended due to a transfer in ownership, which prompted the establishment of the petitioning company in 2015.

The Petitioner explained that no U.S. company manufactures the same type of specialized welding equipment, noting that most of its parent company's competitors are located in Europe. The record supports the Petitioner's claims that the knowledge required to support its parent company's equipment is not commonly found in the United States. On appeal, the Petitioner submits letters from several of its clients, who confirm that they must rely on the foreign entity's engineers and technicians to handle all but the most routine maintenance tasks for machines manufactured by the Petitioner's parent company, and to provide training to its staff. The Petitioner also provides evidence that the foreign entity has been dispatching its engineers and technicians to provide support services to U.S. clients on a short-term basis using temporary B-1 visas.[2] The clients uniformly express support for a more permanent presence of U.S.-based technical support staff to avoid lengthy and costly downtimes in their manufacturing operations.

The Petitioner has also made detailed, consistent, and credible claims regarding the Beneficiary's special and advanced knowledge. We find that the totality of the record, including new evidence submitted on appeal, substantiates the Petitioner's claim that the Beneficiary is deemed an expert with respect to the commissioning and support of its proprietary equipment gained through his more than seven years of progressive experience with the Petitioner's parent, where he currently serves as commissioning technical manager. The Petitioner explained that one of the foreign entities less-experienced engineers would not have the advanced knowledge needed to lead the North American technical services operation. The record establishes that the offered position requires the Beneficiary's advanced knowledge of the foreign entity's products (including older model machines) and their commissioning, servicing and maintenance processes and procedures, as well as experience in the training and supervision of other technicians.

For the reasons discussed, the record of proceeding now contains sufficient evidence to overcome the basis for the Director's decision.

III. CONCLUSION

The Petitioner has established that the Beneficiary possesses specialized knowledge, and that his employment both abroad and in the United States requires specialized knowledge.

ORDER: The appeal is sustained.

Cite as *Matter of C-N-A- Inc.*, ID# 698351 (AAO Dec. 12, 2017)

[2] The regulation at 8 C.F.R. § 214.2(b)(4)(i)(F) allows installers, repair and maintenance personnel, and supervisors possessing specialized knowledge to perform services or training pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery purchased from an enterprise located outside the United States.