U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-A- CORP.

DATE: DEC. 19, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a data analytics services company, seeks to temporarily employ the Beneficiary as a "Senior Analyst, Consolidated Analytics Portfolio" 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 has specialized knowledge, that he was employed abroad in a position involving specialized knowledge, or that he would be employed in a specialized knowledge capacity in the United States. Further, the Director concluded that the evidence demonstrated that the Beneficiary's employment at a client location would represent labor for hire as defined in the L-1 Visa Reform Act of 2004.

On appeal, the Petitioner asserts that the Beneficiary was involved in the design and development of a proprietary framework used to provide services to a major client. The Petitioner contends that the Beneficiary's knowledge of this proprietary framework represents advanced knowledge when compared to his colleagues within the company. In addition, the Petitioner states that the Beneficiary's assignment to a client location requires him to provide services that require his specialized knowledge and does not represent labor for hire as defined by the L-1 Visa Reform Act of 2004.

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. SPECIALIZED KNOWLEDGE

The first 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.

The Petitioner and its foreign affiliates provide analytic solutions for large multinational corporations. The Petitioner indicated that the Beneficiary provides services to [redacted] for which it has been providing "customized data analysis services" since 2010. The Petitioner states that the company has developed a proprietary framework called the [redacted] which assists clients in measuring the impact of digital marketing campaigns. The Petitioner indicated that [redacted] forecasts and compares trends to help clients understand what marketing campaigns are most ideal and "automatically chooses the right forecasting technique to be applied based on the data," without requiring manual intervention.

The Petitioner states that the Beneficiary holds advanced knowledge of the [redacted] framework based on his involvement with the "initial development team." The Petitioner indicated that the Beneficiary was also involved in two major [redacted] implementation projects for high profile company clients and that he possesses "end-to-end" knowledge of the framework. The Petitioner acknowledged that others have been involved in the development of the [redacted] framework, but indicated that "[the Beneficiary] was the only person in the team who worked on this development right from its inception to its implementation for different clients." The Petitioner contends that the Beneficiary's knowledge of the proprietary [redacted] framework is advanced in comparison to his colleagues and therefore represents specialized knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through 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. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Also, the petitioner ordinarily must demonstrate that a beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

The Petitioner has made detailed, consistent, and credible claims regarding the Beneficiary's knowledge of the company's proprietary framework. The Petitioner provided several detailed duty descriptions and explanations of his knowledge, emails reflecting his work on development, and a credible letter from the client to which he will be assigned. Further, the Petitioner submits comparisons of the Beneficiary to his colleagues and subordinates and the provided evidence demonstrates that he has been promoted to assistant manager from senior analyst, and oversees several professionals, based on his development work.

In sum, we conclude that the Petitioner has submitted sufficient evidence to substantiate that the Beneficiary's knowledge is, more likely than not, advanced compared to his colleagues within the company. Further, the Petitioner has demonstrated that, based on the complexity of the company's business model, the tools, systems, and processes are highly tailored to the petitioning organization and require knowledge that would not be generally found in the industry or readily acquired through training. Accordingly, the record of proceeding now contains sufficient evidence to demonstrate that the Beneficiary holds specialized knowledge. As such, the Director's decision is withdrawn.

III. VISA REFORM ACT OF 2004

As noted, the Director also denied the petition concluding that the Beneficiary's assignment to a client location was labor for hire as defined in the L-1 Visa Reform Act of 2004.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

> An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
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> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
>
> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated

> employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

In denying the petition, the Director did not dispute that the Beneficiary would remain under the supervision and control of the Petitioner while assigned to the client location. We concur. As such, the only remaining issue is whether the Beneficiary's employment would be labor for hire, or whether his placement at the client worksite is in connection with the provision of a product or service for which his specialized knowledge is required.

The Director concluded that the evidence was insufficient to establish that the Beneficiary would apply specialized knowledge of the petitioning entity during the course of his assignment to the client. However, as discussed in the previous section, the Petitioner has credibly established that the Beneficiary holds advanced knowledge of the company's proprietary framework and that he was involved in its development. In fact, the client to whom the Beneficiary will be assigned submits a letter corroborating both the Beneficiary's experience and their need for this specific technology. Therefore, we conclude that the Petitioner has sufficiently demonstrated that the Beneficiary's assignment to the client will not be labor for hire as defined by L-1 Visa Reform Act.

IV. 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 L-A- Corp.*, ID# 842906 (AAO Dec. 19, 2017)