U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-H- INC.

DATE: DEC. 21, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner's United States subsidiary, which provides helicopter pilot and mechanic services, seeks to continue the Beneficiary's temporary employment as a helicopter pilot under the L-1B nonimmigrant classification for intracompany transferees.[1] 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 has been employed abroad in a position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision fails to address the Petitioner's primary claims regarding the Beneficiary's specialized knowledge. The Petitioner emphasizes that it established by a preponderance of the evidence that the Beneficiary possesses specialized knowledge as defined in the statute, regulations, and a 2015 U.S. Citizenship and Immigration Services (USCIS) policy memorandum.

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

[1] The Petitioner, , is a Canadian entity; the intended U.S. employer is a wholly-owned subsidiary of 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).

Under the statute, a beneficiary is considered 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, 8 U.S.C. § 1184(c)(2)(B). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge.

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).

II. BACKGROUND

The Petitioner supplies helicopters and helicopter services in support of activities such as forestry and firefighting operations, seismic operations, search and rescue, aerial spraying, heli-hiking, and heli-skiing. The Petitioner (and its predecessor company) have employed the Beneficiary as a helicopter pilot in Canada since 2002. The Beneficiary has been serving as a helicopter pilot for the Petitioner's U.S. subsidiary in L-1B status on an intermittent basis since 2013, and the Petitioner seeks to continue his intermittent employment for two additional years at an annual salary of C$100,906. The Petitioner provided evidence of the Beneficiary's commercial helicopter licenses and qualifications from the Federal Aviation Administration, Transport Canada, and the U.S. Department of Agriculture/U.S. Department of the Interior, as well as evidence of his training and flight hours.

The U.S. entity, provides helicopter crews to which does business as .[2] leases the Petitioner's helicopters but requires crews from the Petitioner to pilot and maintain them. has contracts to provide forest management and firefighting services to the U.S. Department of the Interior and the U.S. Forest Service. The Petitioner specifies that the Beneficiary's assignment would be in connection with contract to provide services to the U.S. Forest Service in Alaska.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director found that the Beneficiary's duties abroad and proposed duties in the United States appear to be similar to that of a commercial pilot as described in the Department of Labor's *Occupational Outlook Handbook* (OOH). Further, the Director found that the Petitioner did not explain with sufficient specificity how the Beneficiary's familiarity with the company's products, services or processes equates to specialized knowledge, and had not shown how the

[2] The Petitioner refers to as a related or affiliated entity, but the exact relationship is not documented in the record.

Beneficiary's current and proposed positions require him to possess knowledge that is truly different, uncommon, or advanced compared to that possessed by similarly employed pilots in the industry.

On appeal, the Petitioner asserts that the Director's decision improperly relied on information found in the OOH, and lacked a detailed analysis of the facts of the case and the Petitioner's specific claims regarding the Beneficiary's specialized knowledge. The Petitioner argues that it established that the Beneficiary possesses both special knowledge of its services, equipment, and techniques, as well as advanced knowledge that is well beyond that found "among seasonal firefighting helicopter pilots."

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 he has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity. As noted, the Petitioner claims that the Beneficiary has both special and advanced knowledge.

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.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, 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 particular industry. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.

Here, the Petitioner asserts that the Beneficiary has special knowledge of its "uniquely modified and equipped helicopters, the demands made on these helicopters by the specialty helicopter services [the Petitioner] and [redacted] provide, [and] the company's techniques and procedures for carrying out specific types of operations."

With respect to the helicopters, the Petitioner explained that it has a fleet of 14 helicopters, developed by its predecessor company in cooperation with which have been modified to have increased power and better performance under hazardous conditions and special flying situations. The Petitioner asserted that the modified helicopters pose "unique problems" not relevant to a standard helicopter, including a modified engine control system that gives the pilot greater control over the power output of both engines. The Petitioner further explained that the modification to the power control system results in more total horsepower, and requires a complex mechanical system which "requires additional training to understand." In addition, the Petitioner noted that the helicopter has a modified torque (power) limiting system which makes additional demands on the pilot not made by an unmodified

The Petitioner later added that these modifications give the helicopters greater capacity to carry water loads and fire retardants; however, it did not submit documentary evidence in support of its claim that operation of the helicopter is limited to its specific organization, or to corroborate its claim that this helicopter possesses unique features not available on other rotary aircraft used for high altitude firefighting, forestry, and related applications. Further, while the Petitioner noted some differences between the original and modified helicopters, it did not specify the amount or type of training required for a pilot who is experienced with the to become qualified in piloting the The Beneficiary's own U.S.-government issued Helicopter Pilot Qualification Card lists his authorized aircraft simply as

In addition, the U.S. Forest Service contract under which the Beneficiary would work in the United States indicates that the helicopter service provider must supply a "medium helicopter," noting that "a or equivalent may typically fulfill the above minimum and/or target requirements" to perform the intended firefighting services in Alaska. The fact that the is listed in the government contract suggests that the operation of this aircraft is not limited to the Petitioner's own fleet for 14 helicopters. Further, based on this information, there are several types of helicopters that are capable of performing in firefighting situations. The Petitioner's suggestion that it has developed a truly special aircraft for firefighting purposes is not adequately supported by the record and we cannot determined that the Beneficiary's extensive experience piloting a constitutes knowledge that is truly different or uncommon among helicopter pilots within the Petitioner's industry. The evidence submitted is not sufficient to allow us to make comparisons between the Beneficiary's particular aircraft experience and that possessed by other helicopter pilots working in this field.

The Petitioner indicates that "only 34" of its own pilots are qualified to operate the aircraft. Given that it has a fleet of 14 and the submitted U.S. government contracts require to supply both a pilot in command and a relief pilot in command for each aircraft, it does not appear that the knowledge is particularly different or uncommon within the petitioning company itself, or that it constitutes special knowledge among the company's own pilots. The Petitioner emphasizes that it has 102 employees, but does not indicate how many of them are helicopter pilots, as opposed to mechanics, administrative, managerial, or support staff.

The Petitioner also contends that the Beneficiary has special knowledge of its services and techniques, emphasizing that its specialized services include "very hazardous operations, such as mountain flying and fire-fighting" and that its pilots face mountain and wilderness locations, reduced visibility, high winds, high altitudes, and remote locations. The Petitioner indicates that it "has developed its own techniques and procedures for performing these types of operations and training programs for its pilots in these areas," and notes that a pilot must have both training and substantial experience in the company's specialized techniques in order to be assigned to operate its helicopters as the pilot in charge.

However, the record indicates that the Petitioner operates in a highly regulated industry and any pilot who performs similar services would be required to undergo specialized training to master the skills needed to work in these types of dangerous conditions. The Petitioner emphasizes that it has over 50 years of experience in this specific industry, but has not submitted sufficient supporting evidence to support its claim that its own training programs are distinct in comparison to those provided by other helicopter service providers who perform the same type of work. In order to find that the Beneficiary in this matter possesses specialized knowledge, the Petitioner must establish that the specific demands of the helicopter pilot position within its organization require him to possess knowledge and skills that are not typically possessed by other pilots who perform similar work.

Here, while the record shows that the Beneficiary is a highly trained and experienced pilot whose documented flight time significantly exceeds that required to perform the contracted services in the United States, it has not met his burden to establish that he possesses knowledge of a product, service, technique, or equipment that qualifies as "special knowledge" under the applicable definitions.

Specifically, the Petitioner states that [redacted] requires [redacted] to supply [redacted] pilots who have 4000 total flight hours in a turbine helicopter and 1000 [redacted] hours, while the specific U.S. Forest Service contract under which the Beneficiary will work requires a pilot with a minimum of 1500 flight hours in helicopters, 100 hours in a helicopter with the specific weight class of the helicopter used to provide the services, 100 hours in turbine engine helicopters, 50 hours in the same make and model of helicopter as the one provided by the contractor, 10 hours in designated mountainous areas, 200 total mountain flight hours, and 10 hours of longline vertical reference flight hours. The Beneficiary has nearly 8000 flight hours, including 4050 hours in a [redacted] helicopter, 7000 mountain hours, and 975 vertical reference hours. However, based on the terms of the contracts submitted, this level of experience is not actually required in order to perform the intended services in the United States.

The Petitioner also makes a broader claim of special knowledge, noting that flying in mountainous regions requires a higher level of skill that "few pilots" have, and noting that not all pilots receive such training much less operate aircraft during forest fires. The Petitioner further claims that "helicopter pilots themselves are a growing rarity," citing to several submitted media articles regarding the job market for helicopter pilots, projected pilot shortages, and the particular challenges faced by helicopter pilots who fight wildfires.

As noted, the Petitioner must establish that the Beneficiary's knowledge is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Here, the appropriate point of comparison here is not every person qualified to pilot a helicopter. The Petitioner provides very specific types of helicopter services that are a recognized sector of the industry at large and we will not look beyond this specific sector determining whether the Petitioner established that the Beneficiary's knowledge is different or uncommon. Helicopter pilots who work in dangerous conditions undoubtedly require different or more extensive training than those who work in other conditions, but the Petitioner has not supported its claim that firefighting helicopter pilots in general, or the Beneficiary in particular, have special knowledge. The fact that the position requires significant training and skill is insufficient to elevate it to one requiring specialized knowledge.

While we acknowledge the dangerous nature of the work the Beneficiary performs, his extensive experience, and the value of the services the Petitioner provides in fighting wildfires in the United States, the Petitioner has not met its burden to establish that the Beneficiary's skills are truly different or uncommon in comparison to other helicopter pilots in its industry. The Petitioner did not establish that the Beneficiary possesses, or that the offered position requires, special knowledge as defined in the regulations.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced 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, as with special knowledge, 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.

Here, the Petitioner claims that the Beneficiary's knowledge is advanced among its employees because he is one of only 34 pilots qualified to operate its fleet of [redacted] helicopters. As noted above, the Petitioner did not establish the number of helicopter pilots or it employs or their specific qualifications and simply states that it has a total of 102 employees, which likely includes pilots qualified on other types of helicopters in its fleet. The Petitioner has not submitted information that would allow us to compare the Beneficiary to the 33 other [redacted]-qualified pilots, and has not established that the Beneficiary's [redacted] qualification can be considered to require knowledge that is advanced within the company. Further, the Petitioner indicates that it requires its pilots to have specific training in its processes and procedures for operating these helicopters in mountainous terrain and under firefighting conditions. It is reasonable to believe that the other 33 pilots who are qualified to perform the same duties as the Beneficiary have also completed this training and are capable for performing the contracted services in the United States.

Despite the Beneficiary's long tenure with the company, the Petitioner has not shown how his training and experience with this helicopter, or his training in mountainous and firefighting operations, is advanced relative to his similarly-trained and qualified colleagues. Further, as noted above, the Petitioner has not shown that the specific assignment in the United States actually requires a pilot with the amount of training and flight experience that the Beneficiary possesses.

On appeal, the Petitioner also claims that the Beneficiary, who will be assigned to provide services in Alaska, already possesses "advanced familiarity" with the terrain in the region. While the record demonstrates that he has provided services in the same region before, the terms of the contract under which he will work do not require to provide a pilot with specific knowledge of the terrain in a certain region of Alaska. The Beneficiary's prior experience in the assigned region may be beneficial, but the Petitioner has not identified any aspects of this terrain which would explain why that experience qualifies as advanced knowledge that could not be transferred to someone with the requisite hours of mountainous area training and who is otherwise qualified to perform the contracted services.

Finally, the Petitioner argues that the Beneficiary has acquired advanced knowledge in comparison to "seasonal firefighting helicopter pilots" because he works year round. The Petitioner notes that, due to the seasonal nature of the work in the United States, finds it difficult to train and develop its own pilots year-round. However, it appears that the Petitioner's Canada-based pilots likely work year round, dividing their time between Canada and the United States, and the Petitioner did not explain how the Beneficiary acquired advanced knowledge relative to the other employees in the company. It is also unclear whether the Beneficiary is engaged in firefighting operations on a year-round basis, as the record indicates that he also provides services for heli-skiing and heli-hiking contracts. As noted, a determination as to whether an employee possesses advanced knowledge requires a comparison between the Beneficiary and the other employees of the petitioning company. The Petitioner has not indicated whether or how many of its pilots are seasonal workers only, and how many provide services year round.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, for the reasons discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the record shows that the Beneficiary possesses the qualifications needed to perform the intended services in the United States, the Petitioner has not established that he possesses knowledge that is truly different or uncommon in comparison to other pilots who are licensed to perform helicopter firefighting services. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13. The Petitioner here has not submitted sufficient evidence to establish how the Beneficiary's knowledge qualifies as "special" or "advanced" as those terms are defined in the statute and regulations.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further 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.

IV. PRIOR APPROVALS

We acknowledge that USCIS has approved other petitions that had been previously filed on behalf of the Beneficiary by the Petitioner, the U.S. entity, or their predecessors. If the previous nonimmigrant petitions were approved based on the same evidence contained in the current record, the approval would constitute an error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be unreasonable for USCIS or any agency to treat acknowledged errors as binding precedent. *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center Director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

V. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of A-H- Inc.*, ID# 1800792 (AAO Dec. 21, 2018)