U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7040564

Date: DEC. 31, 2019

Appeal of California Service Center Decision

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

The Petitioner is a software solutions company that seeks to employ the Beneficiary temporarily as a "Senior Software Test Engineer" 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 an IT company that relies on former [redacted] personnel who use [redacted] software to provide IT solutions for complex business problems. The software business solutions are derived by using the Petitioner's [redacted] proprietary software products, which the Petitioner trademarks and then licenses to end-users. The Beneficiary is described as a team lead over a group of software professionals who enhance the end-client's systems by implementing the Petitioner's proprietary [redacted] products. The Petitioner claims that the Beneficiary has "specialized and advanced knowledge of the end clients [*sic*] business" and states that the Beneficiary will train the Petitioner's employees to use and implement its products to provide software solutions for its client,

[redacted]. The Petitioner states that the Beneficiary will use its tools to carry out his duties and refers to the Beneficiary's specialized knowledge of [redacted] systems." Although the Petitioner indicates that the Beneficiary acquired specialized knowledge during his employment with its Indian subsidiary, it refers to the foreign employer's testing schemes as "less critical" and "generic" in comparison to its own testing mechanisms and claims that the Beneficiary is a "scarce resource" with a "unique skill set" that is necessary to ensure that [redacted]s software applications are tested in a "well-managed" environment.

The Petitioner focuses on the Beneficiary's nine years of experience with financial applications and his role as lead architect on "selected [redacted] products" and their implementation within the context of [redacted]s business needs. The Petitioner also points out that the Beneficiary has "technical knowledge of the entirety of the application from inception to implementation" and claims that the Beneficiary is the only person in the company with such comprehensive knowledge. It further claims that it would take at least one year to acquire the knowledge that the Beneficiary possesses.

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

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

uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

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 repeatedly refers to the Beneficiary's "specialized and advanced knowledge" and provides a supporting statement and job offer letter indicating that the claimed specialized knowledge pertains to [redacted]'s, i.e., the client's, business projects and policies. The supporting statement emphasizes the Beneficiary's "lead architect role on selected [redacted] products" and provides a list of the Petitioner's proprietary software products that are used to service its client. However, it does not specify which products have been "selected" for the Beneficiary's use or establish that specialized knowledge is required to use these products. Likewise, the supporting statement includes the Beneficiary's job duty breakdown and points out that the Beneficiary was the lead architect in the development of several Smart products. However, it does not explain why specialized knowledge was required either to contribute to the development of these proprietary products or to perform the assigned job duties of a lead architect. Although the Petitioner repeatedly referred to the Beneficiary's knowledge as "specialized 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.

Further, the Petitioner listed the names and provided copies of training guides that it claims the Beneficiary used to attain his advanced knowledge and claimed that the Beneficiary's proposed position with the U.S. entity will allow him to share his "advanced" knowledge of the *client's* business processes and policies. To the extent that the Petitioner did not identify any of its own processes and procedures, it has not properly set forth a claim that the Beneficiary has advanced knowledge, which necessarily involves knowledge of *the petitioning organization's*, rather than a client's, processes and procedures. Moreover, by stating that the foreign entity's development environment is "less critical" and involves "generic testing schemes" in comparison to the U.S. entity, the Petitioner further undermines the claim that the Beneficiary gained specialized knowledge during his employment with the foreign entity.

In a request for evidence (RFE), the Director acknowledged the Petitioner's submission of patents and user guides regarding company products, but found that the Petitioner did not show how knowledge

or use of those products equates to specialized knowledge or specify how the Beneficiary obtained knowledge that is claimed to be specialized. The Director also found that the Petitioner did not provide evidence showing that the Beneficiary's job duties required specialized knowledge and it did not compare and contrast those duties from those of others in the industry. Accordingly, 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 and/or advanced, 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 reiterating information that it provided earlier in its initial supporting statements, pointing to the Beneficiary's nine-year period of employment and his attainment of a team lead position where the objective was to develop and implement various [redacted] applications to improve [redacted]'s digital applications and analytics. The Petitioner emphasized the Beneficiary's close working relationship with [redacted]s business associates and once again pointed to his "advanced knowledge of [redacted]'s Business Policies." The Petitioner did not claim that the Beneficiary's advanced knowledge was applicable to the Petitioner's own processes and procedures, nor did it identify any such processes and procedures. In fact, the Petitioner listed various trainings that the Beneficiary received in subject matters that deal directly with "the end client[']s policies and procedures" and provided corresponding certificates showing that the Beneficiary successfully completed trainings in [redacted]s company policies regarding human resources concerns, such as records management, unlawful harassment, drug-free workplace, Medicare compliance, etc. However, evidence of these trainings further detracts from the claim that the Beneficiary's specialized knowledge is related to his *employer's* processes and procedures.

The Petitioner also made note of the Beneficiary's involvement in the implementation of its proprietary [redacted] products within [redacted]'s digital infrastructure, claiming that the Beneficiary had "knowledge and expertise of the product" that enabled him to conduct the necessary product testing to ensure that the [redacted] software functioned properly and could adequately address [redacted]'s business needs. However, the Petitioner did not identify any characteristics in the [redacted] products that require specialized knowledge. Although the Petitioner stated that the Beneficiary is the only person within the company who has "technical knowledge of the entirety of the application," it did not establish that comprehensive knowledge is synonymous with specialized knowledge. Further, despite claiming that the Beneficiary "gained advanced knowledge on Financial applications" during his employment with the foreign entity, the Petitioner did not describe the financial applications, explain why advanced knowledge is required to work with these applications, or specify precisely when and how the Beneficiary attained the knowledge that it claims is advanced. Because the Petitioner claims that the Beneficiary's "technical knowledge of the applications" was gained while he was leading the team that developed those applications, it does not appear that the Beneficiary acquired knowledge that is claimed to be specialized during the time period he assumed the position of senior consultant. In fact, it is unclear precisely when the Beneficiary attained the level of knowledge that is claimed to be specialized. Further, despite highlighting the Beneficiary's lead role in developing its various [redacted] applications and pointing to unique characteristics of the proprietary software, the

Petitioner does not explain why specialized knowledge was required either to work with these products or to lead an IT team in the products' development and implementation.

Although the RFE response also contains a letter from the foreign entity, the letter does not provide additional information furthering the Petitioner's claim regarding the Beneficiary's specialized knowledge. Rather, it reiterates claims about the Beneficiary's "knowledge and expertise" of his employer's proprietary software and his position as a team lead and stresses that only the Beneficiary had comprehensive knowledge of "the entirety of the application from inception to implementation," while other team members had knowledge that was narrowed down to the specifics related to their assigned tasks. The letter included an abbreviated organizational chart, which depicted the Beneficiary as a senior consulting and indicated that he was overseeing a two-person team that consisted of one senior consultant and one consultant. The chart did not state that the Beneficiary assumed a team lead position, as claimed by the Petitioner, and no information was provided to distinguish the Beneficiary's job duties as senior consultant from those of the senior consultant who was claimed as one of the Beneficiary's subordinates. Further, the Petitioner did not provide supporting evidence demonstrating that specialized knowledge is a prerequisite for having the comprehensive knowledge that the Beneficiary is claimed to possess, nor did it show that the Beneficiary's position as team lead reflected a level of knowledge that can be deemed as specialized in comparison to others. In fact, neither the Petitioner nor the foreign entity in their respective statements pointed to an increased level of complexity in the Beneficiary's job duties or described a progression in his level of knowledge to support the claim that the Beneficiary achieved specialized knowledge during his employment with the foreign entity.

The Petitioner also provided multiple user and implementation guides, which describe the technical elements and instruct the user in the functionalities of the Petitioner's software. However, the Petitioner does not explain how these documents support the claim that the Beneficiary possesses specialized knowledge. Although the Petitioner claimed that the Beneficiary received training that contributed to his gaining specialized knowledge, the only supporting evidence it provided included an email confirming the Beneficiary's registration for a 5-day Oracle workshop and multiple certificates showing successful completion of in-house trainings offered by the client regarding various human resources issues, such as fraud, waste, and abuse, records management, code of conduct, unlawful harassment, security awareness, and other similar trainings. It is unclear how either the Oracle training workshop or trainings on the Petitioner's client's HR concerns could have contributed to the Beneficiary's gaining specialized knowledge in the Petitioner's software products or 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).

On appeal, the Petitioner describes the functionalities of its software package and states that the Beneficiary led the development effort of various software tools within that package, claiming that the Beneficiary has specialized knowledge of these tools. However, the Petitioner does not offer evidence or information that furthers our understanding of the Beneficiary's knowledge or explains how that knowledge rises to the level of being specialized. Rather, the Petitioner cites to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda, but does not provide evidence to demonstrate that the terms "special" and/or "advanced," which are defined in the memorandum, apply to the knowledge that the Beneficiary possesses. Further, the Petitioner claims that the Beneficiary's knowledge is

"advanced" based on his three years of experience working with [redacted] which resulted in his being "aware of the client's policies and business needs." However, the Petitioner has not identified any employer-specific processes and procedures and instead focuses on the Beneficiary's knowledge of the client. As such, the Petitioner has not effectively made a claim that the Beneficiary possesses knowledge that is "advanced."

Although the Petitioner states that the Beneficiary has knowledge of patented software tools that are specific to the petitioning organization, thus indicating that the Beneficiary's knowledge is "special," the record lacks evidence showing precisely how and when such knowledge was gained. Further, the Petitioner does not demonstrate that the Beneficiary's knowledge is distinct or uncommon in comparison to others who are similarly employed in the IT industry. Rather, the Petitioner contends that the Beneficiary has a critical role in designing, developing, and implementing its software tools that includes testing the products to ensure their efficacy. However, the Beneficiary's significance in helping to develop and implement the Petitioner's software tools does not establish that his knowledge of those tools is specialized or that it is different from other software developers. Likewise, the fact that the Beneficiary uses the Petitioner's patented product in the course of carrying out his duties also does not establish that the Beneficiary's knowledge rises to the specialized level. In fact, despite claiming that the Beneficiary was involved in developing, implementing, and enhancing the patented software tool, the Petitioner does not specify the Beneficiary's contributions, if any, in creating the patented product or specify the specialized knowledge needed to make those contributions. Moreover, as previously noted, the Petitioner focuses on the Beneficiary's years of employment with the same entity, but does not clarify when and how the Beneficiary gained the knowledge that is claimed to be specialized. Although the Beneficiary's employment history with the same employer is relevant, it alone does not establish how the Beneficiary gained specialized knowledge or that the knowledge he gained is not common among similarly employer individuals in the IT industry.

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.