U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13472882

Date: FEB. 3, 2021

Appeal of California Service Center Decision

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

The Petitioner, a provider of product design, development, manufacturing, and market launch services, seeks to employ the Beneficiary temporarily as its "Senior Software 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. The matter is now before us on appeal.

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 conclude 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 part of a multinational organization that offers engineering, product design, and IT services to companies that work with "complex hardware-based systems" and operate within "complex manufacturing lifecycles." The Petitioner states that the Beneficiary possesses an "interdisciplinary skillset" which he has been using in his position as "Software Engineer" for its Spanish subsidiary, where he has worked since April 2017, servicing [redacted] in Spain ([redacted]), one of the company's "most important clients in [the] printing business." The Petitioner points to the Beneficiary's five years of experience in telecommunications engineering and embedded

communications, stating that his master's degree in telecommunications engineering and industry experience led to his expertise in the petitioning organization's [redacted] printing technology and the devices used to service that technology's [redacted] systems." The Petitioner states that the Beneficiary was "a key contributor" in bringing [redacted]s product to market and stresses the Beneficiary's leading role a "groundbreaking project" where the Beneficiary was required to use and service the Petitioner's proprietary '[redacted]" which were created for [redacted] The Petitioner claims that the Beneficiary has been using its "proprietary tools, resources, and methods" and possesses specialized knowledge of its [redacted] and their servicing technologies. The Petitioner also claims that the Beneficiary is an "expert" in the software development process as well as in "IFS," a tool used in the Petitioner's organization to manage procurement, engineering, supply chain, manufacturing, and project management activities, and that only someone who has worked in its organization and implemented its technologies in client projects can attain an understanding of how to use those technologies.

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 petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). 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 product or services and their 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 Petitioner did not initially state whether it was claiming that the Beneficiary's knowledge is "special" or "advanced," but rather submitted a supporting cover letter stating that the Beneficiary's knowledge is specialized because it is complex in matters of a highly technical nature, can only be gained through prior experience with the Petitioner's organization, is beneficial to the organization's competitiveness in the market, and cannot be easily transferred or taught. The Petitioner repeatedly stated that the Beneficiary has assumed the position of "software engineer" with the Spanish subsidiary and listed the Beneficiary's education and work experience, indicating that these elements played a role in the Beneficiary's acquisition of specialized knowledge. It also stated that the Beneficiary has "practical knowledge of cutting-edge printer technology" that may result in generating "up to $5 million" in research and development funds and "up to $7 million" in manufacturing profits. The Petitioner did not provide further information about the overall size of the research and development budget or the total profits generated from manufacturing. As such, we are unable to gauge the impact of these monetary projections on the organization.

The Petitioner also did not clarify how the Beneficiary's "practical" knowledge of software and hardware supports the claim that his knowledge is specialized. Rather, it stressed the [redacted] nature of the [redacted] the Beneficiary used in the [redacted] project and the servicing techniques, processes, and strategies associated with those [redacted], explaining that the [redacted] use a different [redacted] than what was previously used in [redacted] and that the ultimate goal was to provide a large format printer for use in different textile printing markets. However, the Petitioner did not describe the servicing techniques, processes, or strategies that the Beneficiary used, nor did it explain why specialized knowledge was required to employ these elements in the [redacted] project. Further, although the Petitioner provided a list of the Beneficiary's foreign job duties, it did not establish that

performing those duties requires specialized knowledge that is somehow distinct from the knowledge of other software engineers in the industry of large format printer manufacturing.

In a request for evidence (RFE), the Director noted that the Petitioner did not identify the Beneficiary's knowledge as either "special" or "advanced," state how someone in the Petitioner's organization would gain the knowledge that is claimed to be specialized, or distinguish the Beneficiary's knowledge from that of others who are similarly employed within the employer or within the industry. The Director instructed the Petitioner to provide evidence addressing these evidentiary deficiencies.

In response, the Petitioner provided a statement in which it referred to the Beneficiary's position abroad as that of "senior software engineer" and asserted that the duties associated with the "senior" position "are performed at a much higher level of specialization" as compared to "lower[-]level [s]oftware [e]ngineers." The Petitioner did not acknowledge or resolve its inconsistent references to the Beneficiary's position title, first as "software engineer" and later adding the term "senior" to his job title when referring to the Beneficiary in an RFE response statement. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92.

The Petitioner also stated that as a result of working directly with [redacted], which it deemed one of its "most important clients," the Beneficiary received "exclusive training" and became an expert in its [redacted] printing technology, enabling him to have access to "exclusive prototypes and other production units" that are not available to others within the organization. The Petitioner stated that the Beneficiary was responsible for servicing the [redacted] which required him to develop software, create algorithms, and coordinate test definitions to maintain novel technology that combines [redacted] and [redacted] in large format printing. The Petitioner also pointed to an 18-month timeline during which the Beneficiary is claimed to have supported, trained, and led research and development efforts to improve the servicing of the [redacted] stating that the Beneficiary used "proprietary tools, resources, and methods" on [redacted] projects and that specialized knowledge is required to develop and service the "extremely complex" [redacted] technology, which was developed for [redacted]

In addition, the Petitioner provided a training log itemizing over 900 hours of coursework the Beneficiary completed between June 2018 and January 2020, noting that this coursework was not offered to other software engineers in the organization. The log shows, however, that 784 hours were attributed to courses that were not taught by the Petitioner's in-house personnel and whose respective titles referenced [redacted], the Petitioner's client, rather than the Petitioner itself. Although the Petitioner stated that the Beneficiary's training was for the purpose of obtaining "specialized knowledge in [redacted]" it did not explain how such training could have conveyed special knowledge of the Petitioner's products or services or advanced knowledge of its processes and procedures. The Petitioner also did not establish that the Beneficiary attained specialized knowledge and held a position requiring such knowledge for at least one year prior to February 2020, when this petition was filed. *See* 8 C.F.R. § 214.2(l)(3)(iv). Although the training log shows that the Beneficiary's coursework spanned a 19-month period, the Petitioner did not specify precisely which course(s) resulted in knowledge that is claimed to be specialized or when the Beneficiary is claimed to have attained that level of knowledge. Further, although the Petitioner previously stressed that the Beneficiary's specialized knowledge pertains to its [redacted], only one course, which comprised

120 of the total 904 hours of coursework, pertained specifically to the subject of [redacted] This evidence detracts from the claim that the Beneficiary's coursework contributed to and was part of the process that resulted in the specialized knowledge he is claimed to have attained with respect to the Petitioner's products or services or its processes and procedures.

On appeal, the Petitioner again refers to the Beneficiary's foreign position as that of "senior software engineer" and attempts to distinguish his position as "highly special" as compared to "lower-level [s]oftware [e]ngineers." As previously noted, however, the reference to the Beneficiary's foreign position as that of a "senior" software engineer is not consistent with the initially submitted evidence, where the Beneficiary's position title was said to be one of "software engineer." The Petitioner has not resolved this discrepancy. *Matter of Ho*, 19 I&N Dec. at 591-92.

The Petitioner also provides a statement claiming that "many years" of experience with [redacted] technology is required to gain the knowledge that is claimed to be specialized. However, the record lacks evidence showing that the Beneficiary had "many years" of experience in this field. Rather, it indicates that the Beneficiary acquired a master's degree in telecommunications engineering and had over five years of professional experience working in telecommunications engineering and embedded communications prior to assuming his position as software engineer for the foreign subsidiary. However, the Petitioner does not claim or demonstrate that the Beneficiary's education or prior work experience directly involved working with [redacted] technology. Although the Petitioner points to the experience the Beneficiary gained working with this technology since getting hired by the foreign subsidiary in April 2018, the 22 months of employment he accumulated in his foreign position as of the date this petition was filed does not qualify as "many years" of experience. As noted earlier, although the Petitioner contends that the Beneficiary's training and work with the foreign subsidiary resulted in specialized knowledge, it does not specify the precise path or timeline for gaining such knowledge or describe how the Beneficiary's level of knowledge with regard to the foreign entity's products progressed from the time he was first hired to the time he attained the level of knowledge that the Petitioner claims is specialized.

Furthermore, the Petitioner highlights the Beneficiary's work "with the technology directly at/with [redacted]' thereby indicating that the specialized knowledge claim is based primarily on the knowledge that the Beneficiary gained with regard to the client entity's products rather than the proprietary products of his foreign employer. Although the Petitioner provides a supplemental training log on appeal, this document further highlights that the coursework was not geared towards furthering the Beneficiary's knowledge of the foreign employer's products or that entity's processes and procedures, but rather that it pertained mainly to [redacted] products and developing software to ensure optimal functionality of those products. Thus, despite claiming that the Beneficiary possesses knowledge that is both "special" and "advanced" because it is proprietary and not widely held throughout the organization or the industry, the Petitioner's focus on its client's products detracts from this claim, as the Petitioner must establish that the Beneficiary's special or advanced knowledge pertains directly to the products or the processes and procedures of the employing entity. In this instance, because [redacted] is not the employing entity, knowledge that pertains to [redacted] products or [redacted] processes and procedures cannot be deemed as specialized.

Lastly, although the Petitioner asserts that the Beneficiary possesses knowledge that is beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of the

Beneficiary's specialized knowledge and is only factor in determining whether the Beneficiary possesses knowledge that is specialized. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. It is ultimately "the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13.

In light of the evidentiary deficiencies described herein, 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 will be dismissed.