U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7052316

Date: FEB. 12, 2020

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 "Business Systems Analyst II" 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 Petitioner 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 a software technology company that offers [redacted] a means to connect through the use of a smartphone software application, text messaging, or its company website. The Petitioner provides a way for users to [redacted] request. The Beneficiary is described as a subject matter expert in the Petitioner's Business-to-Business ("B2B") Platform, finance operations, and proprietary software, which the Petitioner claims are required for the Beneficiary assume his U.S. position where he will assist an IT team in continuing to build the Minimal Viable Product ("MVP") whose purpose is to develop "a specialized set of tools and technologies to manage B2B transactions." The Petitioner

claims that the Beneficiary has worked closely with its B2B platform during his employment abroad and has therefore "exhibited a highly advanced understanding" of the product's development, management, and execution. It also claims that the Beneficiary has "extremely specialized and advanced knowledge" of its software systems and "internal programs" and a "deep knowledge" of its proprietary tools and processes, which include e-Invoicing, the B2B platform, and accounting reconciliations. The Petitioner indicates that the Beneficiary's "high level of proficiency in product development and [] accounting reconciliation" and his claimed "unparalleled skill set" in the B2B platform are equivalent to having specialized knowledge.

The Petitioner stresses the Beneficiary's "cross-functional understanding of finance and business systems," which it claims is unique to the Beneficiary, and states that the Beneficiary will use his advanced knowledge of the company's finance, accounting, and taxation operations "to make critical decisions" about the B2B platform. The Petitioner claims that the Beneficiary acquired specialized knowledge during his employment with the foreign subsidiary and is therefore the most qualified candidate to lead the U.S. team in developing the MVP product.

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

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

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.

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 provided statements from the foreign and U.S. entities claiming that the Beneficiary has "advanced knowledge" of its organization's finance, accounting, and taxation "operations" and that he "relies on his specialized knowledge of [the organization]'s proprietary tools and systems" to support its operations. The Petitioner also referred to the Beneficiary's "deep knowledge of [the organization]'s proprietary tools and processes." However, it elaborated only on some of the tools that are currently part of the B2B platform and an internal analytics tool that it seeks to add to that platform, but it did not explain how the Beneficiary's knowledge is "special" in comparison to others who are similarly employed in the industry, nor did it identify any proprietary processes to support the claim that the Beneficiary's knowledge is "advanced" in comparison to others within the same organization. Likewise, although the Petitioner provided the Beneficiary's job duty breakdown, which elaborates on the platforms and products the Beneficiary will develop and describes how he will meet his job responsibilities, it relied primarily on the proprietary nature of the tools and products the Beneficiary would use and build in the course of his work, but it did not explain why specialized knowledge is required to execute his assigned job duties.

Further, the Petitioner broadly stated that "a significant amount of time" would be required to attain the Beneficiary's level of knowledge of the Petitioner's proprietary tools and systems and to train someone to perform at that level, claiming that the Beneficiary had worked in a specialized knowledge capacity for the 12-month period prior to the filing of this petition. However, the Petitioner did not support this claim with an explanation of when the Beneficiary gained the knowledge that it claims is specialized, nor did it describe a path for obtaining such knowledge.

In a request for evidence (RFE), the Director found that the Petitioner did not show when the Beneficiary gained knowledge that is claimed to be specialized, establish that the duties performed by the Beneficiary required specialized knowledge, or demonstrate that the Beneficiary gained experience that resulted in specialized knowledge. The Director instructed the Petitioner to categorize the

Beneficiary's knowledge as either "special" or "advanced," provide evidence establishing how the knowledge was obtained and the amount of time the Beneficiary has been using such knowledge, and distinguish the Beneficiary's knowledge from that of others who are similarly employed within the employer or within the industry.

In response, the Petitioner explained that the B2B proprietary platform and tools were created to address business needs that could not be met with pre-existing tools or solutions, stating that the proprietary materials were built in-house using the Petitioner's "complex software architecture." The Petitioner did not describe the software architecture to explain why it was deemed "complex," nor did the Petitioner claim or provide evidence demonstrating that specialized knowledge was necessary to use the software. Further, despite claiming that the Beneficiary has "specialized and advanced knowledge" of the B2B platform because he was part of the three-person team that designed and created it, the Petitioner did not describe the knowledge or experience required to build the platform or explain how and when the Beneficiary acquired such knowledge.

The Petitioner noted that the B2B platform is unique within the industry, indicating that the Beneficiary's ability to build such a platform demonstrates that his knowledge is advanced as compared to others in the industry and within the employing organization. The Petitioner claimed that an experienced engineer or analyst outside of its organization would need at least six months of "extensive training and work" to begin to learn and understand the Petitioner's internal tools, adding that "additional time" would be necessary to become proficient and productive in using these tools. In support of this claim, the Petitioner provided a training record, which lists seven training sessions that were spread out over a six-month period starting in May 2018 and ending in February 2019 and included only 42 days of training total. Further, the training record does not show who was offered the training, indicate that the training was limited to only certain employees within the company, or establish that the Beneficiary was among the trainees. There is also no indication that the training was followed by an assessment demonstrating a trainee's proficiency in the subject matter post-training. Moreover, if the training was a necessary component of the Beneficiary's claimed specialized knowledge, as the Petitioner has indicated, it is unclear how the Beneficiary could have completed the training and accumulated one year of employment in a specialized knowledge capacity prior to this petition's filing date, given that the training started just nine months prior to petition's filing and ended only three days prior to that date.

Although the Petitioner also provided a product roadmap containing team objectives and timelines as well as the effects of having met those objectives, this document does not identify the Beneficiary's precise role with respect to the objectives or establish that the Beneficiary's involvement with the company's proprietary tools required specialized knowledge. Likewise, although the Petitioner provided job descriptions, position titles, and salaries for the individuals who work in the division of the Beneficiary's proposed position, this information does not distinguish the Beneficiary's knowledge from that of others within the entity, nor does it impart any new information about the knowledge that is claimed to be specialized.

On appeal, the Petitioner claims that the Beneficiary has knowledge that is advanced, pointing to the Beneficiary's work with the "highly specialized" B2B platform, which is claimed to have improved the Petitioner's efficiency in generating invoices and reconciling receipts. To the extent that "advanced knowledge" concerns a beneficiary's knowledge of the petitioning organization's processes

and procedures and the Petitioner has not identified or described internal processes and procedures to which the Beneficiary's claimed advanced knowledge would pertain, the Petitioner has not met its burden. Rather, the Petitioner relies on the Beneficiary's claimed in-depth knowledge of proprietary tools within the B2B platform as the basis for claiming that the Beneficiary's knowledge is specialized, pointing to his bachelor's degree in engineering, his role as the sole analyst to work on the platform's products "since day one," and his "level of skill and experience" with the B2B platform as compared to others within the industry. We find, however, that the Petitioner did neither clarified a path for gaining the knowledge that it claims is specialized nor established precisely how the Beneficiary actually obtained that knowledge.

As previously noted, the Petitioner's submission of a training record is insufficient because not only is there no evidence establishing that the training is a prerequisite to gaining the specialized knowledge that the Beneficiary is claimed to possesses, but the dates of the training show that even if the Beneficiary took all seven sessions, he could not have used the new knowledge for a long enough time period to demonstrate that he was employed in a specialized knowledge capacity for at least one year prior to filing the petition. Although the Petitioner stresses the Beneficiary's approximately 1.5 years of experience working exclusively with the B2B platform, this information does not clarify precisely how and when the Beneficiary gained the specialized knowledge he is claimed to possess. Although the Beneficiary's employment history with the same employer is relevant, it alone does not explain how the Beneficiary gained specialized knowledge or establish that the knowledge he gained is not common among similarly employed individuals in the IT industry.

Further, the Petitioner does not provide sufficient evidence to establish precisely how much time would be required to attain the Beneficiary's level of knowledge to support the claim that such knowledge cannot be readily transferred to another employee within the Petitioner's organization. The record also lacks evidence showing that specialized knowledge was required to create the B2B platform and to impart knowledge in the use of that platform to others within the organization. Despite explaining how its organization benefits from the tools in the B2B platform, the Petitioner did not establish that specialized knowledge was required to assume a critical role in the platform's development. 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 from that of other analysts within the industry.

Lastly, the Petitioner referenced the Adjudicator's Field Manual (AFM) to support its assertions regarding the Beneficiary's claimed specialized knowledge. However, we find that the Petitioner's reliance on the AFM is misplaced, as this document is an internal tool that is intended for use by USCIS employees in the course of their reviews of petitioners' respective records. The AFM is not a substitute for statutory or regulatory provisions and does not have the effect of binding case law precedent or USCIS policy. An agency's internal personnel guidelines "neither confer upon [plaintiffs]

substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

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.