U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4451893

Date: FEB. 24, 2021

Appeal of California Service Center Decision

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

The Petitioner, a developer and manufacturer of drug delivery devices, seeks to continue the Beneficiary's temporary employment as a "Business Development Manager" 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 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, determining that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, and that he 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. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we conclude that the Petitioner has not met this burden. Accordingly, 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 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 and its foreign affiliate design, develop, and manufacture drug delivery devices [redacted] The Petitioner states

that the Beneficiary is considered a "product specialist" with respect to the company's [redacted] product, a patented, [redacted] designed for delivery of [redacted] prescription and over-the-counter [redacted] formulations.

The Beneficiary completed a bachelor of commerce degree in international business in 2011 and received his Master of Business Administration (MBA) in organization and management studies in 2012. The Petitioner's foreign affiliate hired the Beneficiary for the position of leads developer in October 2014.[1] In December 2015, the Petitioner filed an L-1B petition to transfer the Beneficiary to the United States, where he initially held the position of account manager. The Petitioner states that the Beneficiary currently serves as a business development manager and seeks to continue his employment in this position at an annual salary of $73,645.

III. SPECIALIZED KNOWLEDGE

The primary issue before us whether the Petitioner established that the Beneficiary possesses specialized knowledge.

The Director's decision focused on whether the proposed position of business development manager requires specialized knowledge and whether the Beneficiary had specialized knowledge at the time it filed this petition in August 2018. However, although the Petitioner requested an amendment and extension of the Beneficiary's L-1B status, it must establish that it met all requirements for this classification when it filed his initial L-1 petition. 8 C.F.R. § 214.2(l)(3)(iii).[2] Specifically, the Petitioner must demonstrate that the Beneficiary had a full year of employment abroad in a position involving specialized knowledge and that he also possessed specialized knowledge with respect to the proffered position at the time it filed the prior L-1B petition on his behalf in December 2015. See 8 C.F.R. §§ 214.2(l)(3)(ii)-(iv).

Accordingly, as a threshold issue, we must determine whether the Petitioner established that the Beneficiary acquired the requisite specialized knowledge as a result of his education, training, and 14 months of employment experience with its foreign affiliate. If a petitioner does not establish that a beneficiary possesses specialized knowledge, then we do not need to evaluate whether the position in the United States is in a specialized knowledge capacity, or if the position abroad involved specialized knowledge.

A. Definition of Specialized Knowledge

Under the statute, 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

[1] The Petitioner submitted an organizational chart which identifies the Beneficiary's job title with the foreign affiliate as "Global Leads Developer," while the Beneficiary's payroll records for his entire period of employment abroad list his job title as "chargee de prospection junior" or "junior prospects officer."

[2] See also USCIS Policy Memorandum PM-602-0167, Satisfying the L-1 1-Year Foreign Employment Requirement; Revisions to Chapter 32.3 of the Adjudicator's Field Manual (AFM) 1 (Nov. 15, 2018), https://www.uscis.gov/laws/policy-memoranda (noting that "the petitioner and the beneficiary must meet all requirements, including the 1 year of foreign employment, at the time the petitioner files the initial L-1 petition.")

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 definition.

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).

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 its 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.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether 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.

B. Special Knowledge

The Petitioner primarily claims that the Beneficiary possesses special knowledge of its organization's products and their application in international markets.

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.

Here, the Petitioner indicates that the Beneficiary gained his special knowledge of the Petitioner's [redacted] product while employed by its [redacted] affiliate as a leads developer, a position he had held for approximately 14 months at the time the Petitioner filed the L-1B initial petition on his behalf. According to the foreign affiliate, the leads developer position involved: (1) identifying new business opportunities in targeted markets and segments, with a specific focus on the [redacted] product; (2) performing leads qualification through cold calling, direct marketing campaigns, and trade

show contacts; (3) prioritizing and nurturing leads through direct contact to convert leads to qualified prospects; and (4) supporting the "specific Generics prospection plan."

The foreign affiliate's representative emphasized that the Beneficiary was required to have "specialized in-depth knowledge of the [redacted] product intricacies . . . in order to convey the distinctive advantages, efficacy, testing, and mechanisms of these [redacted] to the high-level consumers within the pharmaceutical industry." The foreign entity also explained that the role required specialized knowledge of the pharmaceutical market, the company's custom CRM (customer relationship management) system, and experience with third-party tools such as LinkedIn Sales Navigator, IMS, and Medtrack software, which the Beneficiary used to assist with market research, to allocate qualified leads to account managers, and to manage customer data and profiles to support sales force prospection.

In sum, the Petitioner claims that the Beneficiary, as a result of his 14 months of employment with its foreign affiliate, possessed special knowledge of the group's proprietary products, sales strategies and processes, including tools and systems for prospecting new client for these products, as well as knowledge of the industry in which the Petitioner and its affiliate operate.

Turning first to the Petitioner's claims regarding its products, the Petitioner has presented evidence that it has several patents for its [redacted] product and its components. The Petitioner submitted [redacted] marketing materials which reflect that there are other [redacted] designed for delivery of [redacted] formulations on the market. The Petitioner distinguishes its product by noting that it uses an [redacted] venting system" and a [redacted] valve system" to prevent contamination of the [redacted]'s contents, while other manufacturers use a filter system in their [redacted] to achieve the same result. The Petitioner explains that its venting system can accommodate a wider range of [redacted] than [redacted] that use a filter system.

Although the Petitioner repeatedly emphasizes that its product is proprietary and unique in the industry, it must still establish that the knowledge required to develop sales leads for this product is truly distinct or uncommon in comparison to that generally held by similarly employed workers in the industry and that the Beneficiary was employed abroad in a position involving specialized knowledge. The Petitioner cannot meet its burden simply by claiming that the Beneficiary's knowledge is proprietary. For example, if a beneficiary's proprietary knowledge can be gained through a brief period of training or short period of experience with the company, then his or her knowledge of the company product generally will not qualify as special knowledge.

Before addressing the Beneficiary's training history, we note that the Petitioner states on appeal that "it would take at least well over a year to train another worker in [the company's] proprietary product lines and processes, which would still not yield the level of specialized knowledge that [the Beneficiary] gained as a result of working directly with the [redacted] product development team in [redacted] while in the foreign position of Leads Developer." However, the Beneficiary himself had not worked for the foreign entity for "well over a year" at the time the Petitioner filed its initial petition to classify him as a specialized knowledge worker. In fact, he had been employed by the foreign entity for only 14 months at the time the Petitioner filed the prior petition on his behalf.

Turning to the Beneficiary's education, training, and experience, as noted, the record reflects that the Beneficiary completed his MBA in 2012 and joined the Petitioner's affiliate in October 2014. If he had any prior work experience in the pharmaceutical industry, or in business development or sales positions, it is not documented in the record. The Petitioner has also not indicated whether any related prior work experience is required for the leads developer position. It emphasized that the Beneficiary's academic coursework in marketing, management, communications, and business provided him with the foundational knowledge needed to perform the duties required of the position.

The Petitioner indicates that, during his tenure as a leads developer overseas, the Beneficiary was "heavily involved as a [redacted] product specialist," that he completed an "exhaustive amount of product training" and "far more training in [redacted] than anyone else." The Petitioner states that, as a result of this training and specific focus on [redacted], the Beneficiary has knowledge of this product that is "uncommon and distinct from any other individual" employed by the foreign affiliate, by the U.S. company, or in the industry.

The Petitioner provided a list of trainings reflecting that during his 14-month period of employment with its foreign affiliate,[3] the Beneficiary completed the following trainings in the [redacted] product during this period:

- [redacted] – Microbiological studies and package (11/25/2014 – 1 hour)
- [redacted] platform (6 trainings between January 2015 and December 2015, 11 hours in total)
- [redacted] – [redacted] manufacturing technology (9/25/2015 – 1 hour)
- [redacted] Contracts (commercial perspective) (12/2/2015 – 1.5 hours)
- [redacted] microbiological studies (12/3/2015 – 1 hour)

We note that the training record reflects that the Beneficiary completed only 4.5 hours of [redacted]-specific training during his first six months of employment (November 2014 – April 2015), and 15.5 hours in total. If he was able to fully perform his duties as a [redacted] leads developer and be deemed a "product specialist" with only a half day to two days of training, then this undermines the Petitioner's claim that the "leads developer" role was a specialized knowledge position as claimed. In fact, the Beneficiary spent more time completing an external course in "prospecting over the phone" than he did receiving internal training in the [redacted] product. Even if the Petitioner established that the Beneficiary had completed "far more training" in [redacted] than anyone else at the time of his transfer to the United States, we cannot conclude that product knowledge that can be conveyed through 15 hours of training meets the standard of "special knowledge" of the company's proprietary product. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that a beneficiary's knowledge cannot be readily or easily imparted from one person to another in a short period of time.

The record reflects that the Beneficiary's training with the foreign affiliate also included tours and presentations of the company's production plant and "Innovation Center for Devices," and training in more general topics such as intellectual property management, quality department processes,

[3] In addition to the [redacted] specific training, the Beneficiary completed approximately 90 hours of internal training and 16 hours of external training in "prospecting over the phone."

technology and product management, trade shows, finance, supply agreements, confidential disclosure agreements, and "lean six sigma" training. The Petitioner did not provide sufficient information about this training to establish whether or how it contributed to the Beneficiary's claimed special knowledge.

The remainder of the Beneficiary's training abroad involved training in the company's other product lines, notwithstanding the Petitioner's claim that each leads developer has specialized knowledge related to a particular product and that the Beneficiary was trained as a [redacted] specialist. Specifically, a statement from the foreign entity explained that another leads developer based at the foreign affiliate was specialized in developing sales leads for a [redacted] product called [redacted] and another focused on the company's line of [redacted] devices. The foreign entity's representative explained that "the other Leads Developers had highly advanced, specialized knowledge in their own respective product lines and would be unable to perform the specialized duties of [the Beneficiary's] position, which is the [redacted] product."

We note that the other leads developers identified on the foreign entity's organizational chart both had the job title "Junior Leads Developer Temp." The fact that these individuals were hired as temporary employees further undermines the Petitioner's claim that all of its leads developers are trained to have "highly advanced, specialized knowledge" related to a specific product. It is unclear whether the other leads developers, like the Beneficiary, were cross trained in different product lines as the Petitioner did not provide information that would allow us to make this comparison. However, the record contains a chart that shows the number of targeted and qualified leads attributed to each leads developer in 2015 and it reflects that other leads developers were assigned qualified lead and sales targets for [redacted] despite having different areas of specialization.

In addition, although the Petitioner claims the Beneficiary's knowledge of the [redacted] product is distinct and uncommon within the company, it did not provide information that would allow us to compare his knowledge with that possessed by others within the company's sales organization as a whole, and instead compared his knowledge only to the small staff of leads developers. The record reflects that once a leads developer qualifies a lead, responsibility for converting the lead into a sales opportunity is allocated to an account manager, business development manager, or regional sales manager. Specifically, the Petitioner submitted a report on [redacted] leads prepared by the Beneficiary in 2015 which shows that approximately 80 qualified leads had been assigned to 12 different sales staff for conversion to sales opportunities. Only two of these staff were identified on the organizational chart as serving in roles with a [redacted] focus" but it is reasonable to conclude that all 12 had the necessary [redacted] product knowledge to convert leads to sales.[4] Even if we determined that the Beneficiary had greater knowledge of the [redacted] product than the temporary junior leads developers in his department, we could not reach the same conclusion when comparing his knowledge to that of other staff within the sales organization.

The Petitioner also attempts to differentiate the Beneficiary's knowledge by emphasizing that its U.S. based sales team "does not have special knowledge of the [redacted] product line" because "they have never worked with the [redacted] development team" in [redacted] Specifically, on appeal, the Petitioner

[4] The leads developer position is described in the record as a "supporting role" within the sales organization, while the Petitioner's statements indicate that the business development manager role (which the Beneficiary currently holds) performs duties requiring greater technical knowledge of the company's proprietary products.

states that the Beneficiary "worked directly with the Technology Product Manager, Program Manager, Automation Manager, Senior Design Engineer, and the Senior Design Engineers for [redacted] all of whom are patent holders for [redacted]." However, the Petitioner has not explained how or in what capacity the Beneficiary's role as a leads developer required him to "work with" these individuals or how he was provided with knowledge of [redacted] that was not otherwise available within the organization. It has provided supplemental affidavits from a U.S.-based regional sales director and [redacted] business development manager on appeal, and both of these individuals generally suggest that the Beneficiary's prior experience in [redacted] makes his knowledge special; however, these statements are similarly lacking in detail regarding the Beneficiary's role or interactions with the [redacted] development team" and such interactions are not explained in the Petitioner's description of his duties abroad.

We agree with the Petitioner that the Director erred by suggesting that the Beneficiary's knowledge is not "beyond ordinary" because the evidence did not support a finding that he is an inventor or developer of the [redacted] product. The Petitioner did not claim that the Beneficiary is a patent-holder and was not required to provide evidence in support of such a claim. There is no bright-line requirement that only a developer or inventor of a product can meet the standard of possessing special knowledge of that product. However, it is insufficient to broadly claim that the Beneficiary's knowledge is special because he "worked with" the developers in some unexplained capacity or that he was previously "based at [the company's] headquarters in [redacted] where continuous development and improvement of the [redacted] takes place." If he acquired knowledge apart from what was described and documented in his job description, job requirements, and training record, then it is the Petitioner's burden to explain and document when and how he gained this knowledge.

Simply working at the same facility as the individuals who develop the product is not sufficient to establish that the Beneficiary acquired special knowledge of the product. We note that some of the Beneficiary's [redacted] training in [redacted] was delivered by the named patent holders. However, he has continued to receive internal training from [redacted] employees while assigned to the United States and the Petitioner has not claimed that such training is only available to employees who are physically present in France or those who have previously worked for the affiliate.

We note the Petitioner explained that, in addition to the [redacted] product knowledge, the Beneficiary's role as leads developer required specialized knowledge of the pharmaceutical market, the company's custom CRM (customer relationship management) system, and experience with third-party tools such as LinkedIn Sales Navigator, IMS, and Medtrack software, which he used to assist with market research, to allocate qualified leads to account managers, and to manage customer data and profiles to support sales force prospection. The Petitioner did not further develop its claim as to how this combination of knowledge and skills qualify as specialized knowledge. The Beneficiary received two hours of training in "Microsoft Customer Relationship Management Software" and 90 minutes of LinkedIn Sales Solutions training while employed abroad, but it appears that he was expected to acquire knowledge of the Petitioner's industry and knowledge of the company's internal sales qualification systems while on the job and did not receive formal training in these areas.

Finally, the Petitioner states that the Beneficiary "as a result of his specialized knowledge" had a significant positive impact on the organization. Specifically, the Petitioner notes that his work "significantly enhanced" the foreign entity's competitiveness, image, and financial position. In this

regard, the Petitioner states that the Beneficiary's "specialized knowledge in our [redacted] product line generated more than €1 million during his period of time with [the foreign affiliate] as a Leads Developer." The Petitioner provides a separate letter identifying five sales that were completed by the foreign entity in 2016 and 2017 based on leads qualified by the Beneficiary during his period of employment abroad. The record shows the Beneficiary was given a €1 million target for "sales from qualified leads" for 2015 and that this goal was eventually met in 2017. The Petitioner does not explain how the Beneficiary's eventual accomplishment of the sales prospecting goal set for him is indicative of his special knowledge.

In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee, particularly one who was specifically charged with generating sales, did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. While the Beneficiary may have filled a role beneficial to the foreign entity's financial position or competitiveness in the marketplace, this characteristic alone is not probative of his specialized knowledge. The Petitioner must, as a threshold matter, demonstrate that a beneficiary acquired knowledge of the company's products or processes that is special or advanced, and the Petitioner here has not met that burden. A beneficiary's contributions to a company's competitiveness or financial position cannot substitute for the required specialized knowledge.

Again, the Petitioner must establish that the position of leads developer required the Beneficiary to have knowledge that is uncommon in the industry and knowledge that could not be readily transferred. Here, the evidence showed that the Beneficiary stepped into the role with no apparent background in the pharmaceutical industry and was able to meet and exceed his qualified leads targets despite having just 15.5 hours of [redacted] product-focused training over a one-year period. The Petitioner has not established that the position was one which involved or required specialized knowledge of the company's products.

Clearly, any company will require members of its sales organization to understand the company's products, so that the staff can identify potential customers and explain the advantages of the product. The knowledge that comes from sales experience, however, does not necessarily amount to specialized knowledge as the regulations define that term. We note that all employees can be said to possess unique skill sets to some degree; however, a skill set that can be easily imparted and mastered is not "special knowledge." The Petitioner has not shown that the Beneficiary, as a leads developer, acquired familiarity with its proprietary products that meets the threshold of special knowledge, or that he was employed abroad in a position requiring specialized knowledge. Rather, the Petitioner describes the position as a "supporting role" and presented evidence that the foreign entity was able to rely on temporary workers to fill vacancies for its leads developer positions.

While there may not be any employees with the exact knowledge the Beneficiary possesses, the record does not support the Petitioner's claim that the Beneficiary's knowledge gained as a leads developer was in fact significantly different from that generally held by workers in similar positions in the industry, or by other similarly employed workers in the foreign entity.

For the foregoing reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's products and sales methods and their application in international markets.

C. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge. We note that the Petitioner's primary claim relates to the Beneficiary's "special knowledge" of the company's product and this claim has been addressed above. Although the Petitioner also generally claims that the Beneficiary possesses advanced knowledge of the company's processes and procedures, it has not sufficiently articulated this claim by clearly identifying any specific processes or procedures or explaining when and how the Beneficiary was able to acquire advanced knowledge during his 14 months of employment abroad as a leads developer. Therefore, in the absence of any additional evidence or argument on appeal, we will not disturb the Director's determination that the Petitioner did not establish that the Beneficiary possesses advanced knowledge. Issues or claims that are not raised on appeal are deemed to be waived. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009). See also Sepulveda v. U.S. Att'y Gen., 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court determined the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

D. Prior L-1B Approval

Finally, we acknowledge that USCIS approved the initial L-1B petition that the Petitioner filed on behalf of the Beneficiary. Each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). 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. See Matter of Church Scientology Int'l, 19 I&N Dec. 593, 597 (Comm'r 1988); see also Sussex Eng'g, Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987).

In addition, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another petition. See La. Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

IV. CORPORATE STATUS

We note that routine checks of publicly available corporate records indicate that the Petitioner, a Delaware limited liability company (LLC) which had registered to do business as a foreign LLC in the State of Illinois, had its status "revoked" by the Illinois Secretary of State in July 2019, subsequent to the filing of this appeal. The record reflects that the Petitioner's headquarters (which is also the Beneficiary's worksite) are in Illinois. We were unable to verify whether the Petitioner remains in good standing in Delaware or in another state.

The revocation of the Petitioner's active status in Illinois may be material to its eligibility for the requested visa. While we are not denying the petition on basis of this information, this issue should be addressed by the Petitioner in any future proceeding. Specifically, this revocation may indicate that the Petitioner does not continue to exist as an intending employer, that it is not authorized to

conduct business, and that it is no longer a qualifying organization. See section 214(c)(1) of the Act; see also 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (l)(3).

V. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary possesses specialized knowledge. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.