U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-D- CO.

DATE: FEB. 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company engaged in the research, exploration, production, and sale of petroleum products, seeks to extend the Beneficiary's temporary employment as a project engineer under the L-1B nonimmigrant classification for intracompany transferees. *See* 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, Vermont Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary possesses specialized knowledge and that he has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

The matter is now before us on appeal. In its appeal, the Petitioner states that the Director applied a higher burden of proof that that required by the regulations and asserts that it submitted sufficient evidence to establish that the Beneficiary qualifies for L-1B status.[1]

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for 1 continuous year within 3 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 managerial, executive, or specialized knowledge capacity. *Id.*

If an individual will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary

[1] The Petitioner stated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence to our office within 30 days of filing the appeal. The record reflects the Petitioner has not submitted a brief or supplemental evidence and the record will be considered complete as presently constituted.

will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

> [S]pecial 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.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
>
> (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
>
> (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

II. SPECIALIZED KNOWLEDGE

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A. Evidence of Record

The Petitioner filed the Form I-129 to extend the Beneficiary's L-1B status on February 18, 2016 and indicated that it was filing an amended petition. The Petitioner's initial evidence included a letter from the Petitioner, a copy of the Beneficiary's bachelor degree in civil engineering awarded in May 2009, and a copy of the Petitioner's latest annual report.

In its letter, the Petitioner indicated that its parent company is a publicly traded international oil and gas company with approximately 76,900 employees worldwide and net annual revenue of $48 billion. The Petitioner stated that that, prior to his transfer to the United States, the Beneficiary was employed as a "Drilling and Completions Engineer" with its Canadian affiliate from January 2009 until March 2013. It described his duties as follows:

> In this capacity, [the Beneficiary] was responsible for the design of drill wells, including directional profiles, casing, cementing, drill bits, and the use of pressure isolation equipment. He utilized his specialized knowledge of [the Petitioner's] proprietary global drilling operations and procedures, , standards, and regulatory requirements to monitor active drill wells including overseeing the cost and time performance, drilling fluid properties, and directional profile progress. [The Beneficiary] analyzed and designed the down hole mechanical equipment. He evaluated drilling alternatives and assisted in managing the implementation of effective solutions for health, safety, and environmental issues. [The Beneficiary] utilized his specialized knowledge of [the Petitioner's] proprietary standards and regulatory requirement and their relation to the global drilling operations to evaluate drilling equipment and confirm compliance with [the Petitioner's] standards and requirements. He assisted client organizations in the balance of well design and operational priorities. [The Beneficiary] was also relied upon to participate in technical reviews of the engineering documentation provided from the drill wells. He provided drilling and engineering support to the engineering Design Phase for transition to detailed engineering and contributed to the development of the tie and cost estimate.

The Petitioner stated that the Beneficiary was initially transferred to its Texas, office to serve as a ' in March 2013, and that, since November 2014, he has served in the position of project engineer assigned to its Texas, operations. The Petitioner described his duties as project engineer, in part, as follows:

> In this capacity, [the Beneficiary] utilizes his specialized knowledge of [the Petitioner's] global best practices and procedures, particularly [the Petitioner's] project lifecycle best practices, to plan and execute work related to an assigned project scope that is determined by the project's work breakdown structure and geographic distribution. He is assigned to the project commencing with [redacted] and [redacted] preparation and continuing through detailed engineering, construction, systems completion and start-up to project completion. He has overall responsibility for the completion of the assigned work scope consistent with the project objectives. He reviews contractor and vendor deliverables and verifies that the contractor work processes are in place and procedures are followed. He oversees and ensures that the contractor's work follows accepted practices and confirms to specifications. He leverages his specialized knowledge to identify vulnerabilities and opportunities for improved performance and monitors that contractor's performance and identifies any required corrective actions. He leads the contractor to identify and take corrective actions when required and escalates performance issues to the Project Manager when contractor action is not forthcoming . . . . [The Beneficiary serves as the interface between the project team and the contractor. He coordinates meetings between the contractor and project team and administers and enforces coordination procedures. . . . [The Beneficiary] supervises the project's contract for his portion of the project scope including monitoring progress, ensuring appropriate reviews are conducted, managing change, and preparing all contract correspondence related to the assigned scope. He participates in [redacted] development, bid evaluation, contractor selection, identification and sourcing long lead equipment, and ensuring [redacted] contractor support until equipment is assigned to the contractor.

The Petitioner went on to state that the Beneficiary is responsible for verifying that design and construction are consistent with project specifications, and utilizing his specialized knowledge "to develop and administer an Engagement plan that anticipates requirement company reviews, resolves known uncertainties and allows for additional resources to address unknown uncertainties." The Petitioner stated that he administers "Key Issues and Project Issues" for his assigned work scope and oversees engineering, procurement and construction surveillance plans, amongst other duties. The Petitioner stated that, as a result of his employment with the company, he "has acquired a unique and specialized knowledge of [the Petitioner's] project lifecycle best practices, proprietary [redacted] standards, and regulatory requirements."

The Director issued a request for evidence (RFE). The Director advised the Petitioner that the initial letter provided only a vague description of how the Beneficiary's duties relate to his purported specialized knowledge and was not supported by corroborative evidence. The Director acknowledged the Beneficiary's claimed specialized knowledge of proprietary [redacted] standards and drill well design, but found that the Petitioner did not describe how the Beneficiary received training on [redacted] or provide evidence of his design contributions. The Director requested that the Petitioner identify with more specificity the nature of the Beneficiary's knowledge and provide the following:

evidence of the Beneficiary's prior training and employment and an explanation of how that relates to the claimed specialized knowledge; the minimum time required to obtain the claimed specialized knowledge, including training and actual post-training experience accrued; a more detailed description of the Beneficiary's knowledge or expertise and why it qualifies as either "special" or "advanced"; and a comparison of the Beneficiary's knowledge to that of other employees and workers in the same field and to similarly employed workers within the Petitioner's organization. The Director provided a list of other evidence that would assist in establishing that the Beneficiary possesses specialized knowledge.

The Director acknowledged the submitted position description for the U.S. role of project engineer, and observed that the Beneficiary's primary duty appears to be the day-to-day management of contractors assigned to the Petitioner's projects. The Director found that the listed job duties would be commonly performed by project engineers in the Petitioner's industry, and that the description did not explain how the Beneficiary would use his claimed specialized knowledge of proprietary standards. The Director requested more detailed information regarding the specific nature of the industry, the nature of the products and services involved, the nature of the specialized knowledge, and the need for the Beneficiary's specific specialized knowledge.

In response, the Petitioner stated that its initial evidence was sufficient to establish by a preponderance of the evidence that the Beneficiary is qualified for the requested extension of status. The Petitioner referenced his "years of experience and training abroad," noting that "very few individuals possess [the Beneficiary's] specialized knowledge of the companies [*sic*] proprietary global drilling operations and procedures." The RFE response included a letter from the Petitioner, a letter from the Beneficiary's foreign employer, and a copy of USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

The foreign entity's drilling manager, stated that the Beneficiary "possesses specialized knowledge of [the company's] proprietary global drilling operations and procedures" as a result of his employment as a drilling and completions engineer in Canada. He further explained that "[the Beneficiary] was required to know the operating and construction characteristics of all components in the drilling or completions systems that were to be used," and that "the specialized nature of his position required him to keep abreast of the best available technology" and "to maintain proficiency in well control technology and training." noted that the Beneficiary participated on multifunctional teams to provide early drilling and completions plans for [company] development projects using UPMS as a guide to format deliverables." He further provided the following breakdown of the Beneficiary's duties (bullets added):

- 10% - designing drill wells, including directional profiles, casing, cementing, drill bits, and the use of pressure isolation equipment.
- 25% - utilizing specialized knowledge of [the Petitioner's] proprietary global drilling operations and procedures, standards, and regulatory requirements to monitor active drill wells including overseeing the cost and time performance, drilling fluid properties and directional profile progress.

- 5% - analyzing and designing down hole mechanical equipment
- 10% - evaluating drilling alternatives and assisted in managing the implementation of effective solutions for health, safety, and environmental issues
- 30% - utilizing specialized knowledge of [the company's] proprietary standards and regulatory requirements and their relation to the global drilling operations to evaluate drilling equipment and confirm compliance with [the company's] standards and requirements.
- 5% - assisting client organizations in the balance of well design and operational priorities.
- 5% - participating in technical reviews of the engineering documentation provided from the drill wells
- 10% - providing drilling and engineering support to the project's front end engineering design phase for transition to detailed engineering and contributed to the development of the time and cost estimate.

Regarding the U.S. position, the Petitioner's letter reiterated the project engineer position description provided in its initial letter and added a percentage to identify the approximate amount of time the Beneficiary allocates and would continue to allocate to each of approximately 25 job duties. The Petitioner also stated:

> It should be noted that [the Petitioner] rarely makes lateral hires, our employees are hired right out of college and continuously trained in performing their duties the [company] way. As such [the Beneficiary's] leadership is currently needed to continue his management and direction of the above referenced projects. The sudden loss of [the Beneficiary] in this Project Engineer role would create an unreasonable loss and money related to numerous projects that [the Beneficiary] is currently working on.

The Director denied the petition after concluding that the Petitioner's response did not overcome the deficiencies identified in the RFE. On appeal, the Petitioner asserts that the Director applied a higher burden of proof than that required by the regulations and contends that the Beneficiary qualifies for L-1B status.

B. Analysis

Upon review of the evidence of record, including the Petitioner's submission on appeal, we find that 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 as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In order to establish eligibility, a petitioner must show that the individual beneficiary will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct

subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 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.

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. USCIS 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 visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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 a 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 advanced or special, and that the beneficiary's position requires such knowledge.

In the instant matter, the Petitioner states that the Beneficiary has special and advanced knowledge of its "proprietary [redacted] or [redacted] standards, its "proprietary global drilling operations and procedures" as well as its "project lifecycle best practices."

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 specialized.

Here, the Petitioner provided a lengthy description of the Beneficiary's previous and proposed duties, but did not sufficiently explain how the performance of such duties requires knowledge that would not typically be held by or could not readily be learned by an experienced engineer in the Petitioner's industry. The Petitioner's claim rests on a general statement that its global drilling operations and procedures and project best practices are "proprietary" and that it uses a proprietary system, [redacted] in carrying out its drilling operations.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. However, a petitioner might satisfy the current standard by establishing that a beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard.

The Petitioner has not provided sufficient explanation or evidence to support its claim that the Beneficiary's claimed proprietary knowledge is truly distinct or uncommon. We note that the Director requested relevant information in the RFE that would have assisted in making this determination, such as a detailed description of the nature of the claimed specialized knowledge, how long it takes for a trained engineer to acquire the knowledge needed to perform the duties expected of a drilling and completion engineer or project engineer, how the knowledge required to support its products is different from that generally found among engineers in the industry, how much training the Beneficiary received in order to perform the duties of the position, and how many other engineers have received similar training.

The Petitioner's response to the RFE did not include this requested evidence. The Petitioner generally stated that the Beneficiary had "years of experience and training" and stated that its engineers are usually hired out of college and "continuously trained in performing their duties [the Petitioner's] way." The Petitioner did not further specify the amount or type of training the Beneficiary received or how the Petitioner's processes or methods for carrying out drilling operations is so different that another experienced engineer in the field could not readily learn to carry out drilling projects.

Further, while the Petitioner refers to its proprietary best practices, drilling operations and procedures, and [redacted] standards, it has not provided explanations or documentation regarding any of these areas of knowledge, and we cannot determine how the claimed proprietary knowledge could be characterized as distinct or uncommon in comparison to knowledge generally held by engineers working in the Petitioner's industry. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

With respect to the Beneficiary's education, training and work experience, the Petitioner provided evidence that he has a bachelor's degree in civil engineering completed in May 2009, joined the

foreign entity as a drilling and completions engineer in January 2009, and held this same position until his transfer to the United States in March 2013. The Petitioner stated that that he received training and that it prefers to hire and train new college graduates, but this was the extent of the information provided regarding the Beneficiary's training; the Petitioner did not submit any description or evidence of that training, such as course titles and completion dates, the content of the training, a description of any on-the-job training, or information regarding the number of other employees who have completed similar training. While completion of company-specific training can support a claim of specialized knowledge, the Petitioner must still establish that the training conveyed knowledge that is not common in the industry and knowledge that could not be easily imparted to similarly qualified employees from outside the company. Without this evidence, we cannot determine how long it would take an engineer with similar qualifications to acquire the knowledge needed to perform the duties of a project engineer.

We have also considered whether the evidence establishes that the Beneficiary possesses advanced knowledge. Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the Petitioner may meet its burden through evidence that the 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.

The Petitioner states that the Beneficiary was promoted to the position of project engineer with some higher level responsibilities in November 2014, and that he has been employed in progressively more specialized and responsible positions since joining the company. However, it did not provide any other information regarding other engineers employed within its global drilling operations, such as information regarding their training, professional background, and length of experience, or any other information that would allow us to make comparisons between the Beneficiary and other members of the company's engineering workforce. Again, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

Despite the promotion the Beneficiary received subsequent to his transfer to the United States, we cannot determine that the Beneficiary's knowledge is advanced in relation to the Petitioner's other employees if we have no information regarding those employees' relative knowledge and experience. The Petitioner did not provide evidence of any training the Beneficiary completed in company processes upon being hired by the foreign entity or explain the processes or procedures in which he possesses advanced knowledge. The evidence is insufficient to establish that the Beneficiary's expertise in the organization's processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the organization. In fact, at the time of his transfer to the United States, the Beneficiary still held the same position in Canada he had assumed in January 2009, prior to graduating with his engineering degree, and we cannot determine that he held advanced knowledge at the time of his transfer. The Petitioner's claims are not supported by evidence setting the Beneficiary's knowledge of company processes apart from the elementary or basic knowledge possessed by others.

Finally, we acknowledge the Petitioner's assertion that it has met all requirements specified in USCIS Policy Memorandum PM-601-011, *supra*. For the reasons discussed above, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. The memorandum highlights that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 10. Further, while the memorandum provides that a petitioner's statement alone may be persuasive evidence of specialized knowledge in some circumstances "if it is detailed, specific and credible," it also states that "the petitioner is required in all cases to compare the beneficiary's knowledge to that of others." *Id.* at 11-12. Here, while we do not doubt that credibility of the Petitioner's statements, those statements do not contain sufficiently detailed information regarding the nature of the specialized knowledge, nor do they contain the information needed to allow for comparisons between the Beneficiary's knowledge and that possessed by others within the company and in the industry.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he was employed abroad, and will be employed under the extended petition, in a specialized knowledge capacity.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-D- Co.*, ID# 169114 (AAO Feb. 27, 2017)