U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-, INC.

DATE: FEB. 27, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a telecommunications solutions provider for the contact center industry, seeks to employ the Beneficiary as its financial manager 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, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary possesses specialized knowledge and that she 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 misapplied U.S. Citizenship and Immigration Services (USCIS) statutory, regulatory, and policy standards to the facts presented and misinterpreted much of the supporting evidence submitted in support of the petition.

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.*

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) requires that an individual L-1B petition be accompanied by evidence that the beneficiary was employed abroad in a position that was managerial, executive or involved specialized knowledge, evidence that the beneficiary's prior education, training and employment qualifies him/her to perform the intended services in the United States, and evidence that the beneficiary will be employed in a specialized knowledge capacity, including a detailed description of the duties to be performed.

II. SPECIALIZED KNOWLEDGE

The Director found that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that she has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A. Evidence of Record

In a letter in support of the petition, the Petitioner explained that it seeks to transfer the Beneficiary from her current financial manager position at its Romanian affiliate to a U.S.-based financial manager position in which she will assume additional responsibilities. The Petitioner stated that the Beneficiary has performed the following duties abroad since assuming the position in April 2014:

- Manage and control of revenue and costs of goods . . . .;
- Oversee direct reports;
- Control monthly financial reporting and analysis:
  - Overseeing capital expenditures allocation by business units.
  - Overseeing financial package reporting presentations by business units (monthly financial statements, actual versus budget analysis).
  - Overseeing various financial reconciliations;
- Conduct audit support:
  - planning and providing for organization of internal materials necessary for the audit process;

- Maintain internal controls:
  - Coordinating the month end closing process with the other accounting personnel;
  - Supervise employees who prepare financial reports.

The Petitioner stated that once the Beneficiary is transferred to the United States, she will delegate reports preparation to her subordinates and will continue performing the following duties:

- Control and analyzing the revenues and cost of goods;
- Overseeing the direct reports;
- Reviewing the monthly financial statements with the CEO and the President;
- Organizing the external audit process;
- Coordinating the month end closing process with other accounting personnel;
- Managerial support and monitoring of strategic business plans and forecasts;
- Participating in negotiations with clients;
- Managing accounts and financial functions of the California office;
- Interacting with any necessary regulation institutions during the audit;
- Coordinating budget and planning approaches with sales teams;
- Assisting in company growth through detailed analysis of client per product.

The Petitioner stated that the Beneficiary has "unique and comprehensive knowledge of our proprietary internal financial systems and complex operating systems" and contributed to the development of "many" of these systems. The Petitioner also noted the Beneficiary's "keen understanding of [the company's] products and services ranging from consumer products to wholesale services to telecommunications services."

In further explaining the Beneficiary's specialized knowledge, the Petitioner explained that: (1) she has knowledge of the inner financial workings, internal financial systems and complex operating systems used within the foreign and U.S. companies, and which can only be gained with the foreign entity; and (2) she "constructed processes" such as those used to plan and organize audits, to "fit the needs of the company" and therefore has contributed to the company's efficiency and competitiveness. The Petitioner stated that her special assignment-based financial planning duties and her cultivation within the company and with clients makes her "an incomparable asset to our competitive edge and financial position."

The Petitioner stated that the Beneficiary gained her specialized knowledge through her exposure to the company's "inner financial workings and complex operating systems" combined with "specialized knowledge of budgeting, financial and accounting practices"; "knowledge of financial techniques and tools in order to transpose the business elements and build business analytics"; and "building such tools, implementing and maintaining, and permanently adapting them on [a] regular basis." In addition, the Petitioner explained that the Beneficiary "has built complex and analytic tools for products by client, by channel, and she maintains interfaces with other software systems built in [the company], and she is the only owner of this tool."

More specifically, the Petitioner stated that the Beneficiary is "involved in the specifications design and implementation process of virtual platforms for which specialized software is created for the company named The Petitioner explained that "[t]rying to train someone else to learn all of these tools would require more than 1 year, which is not feasible, nor would it result in that person being at [the Beneficiary's] level." The Petitioner noted that the Beneficiary "developed these systems, processes, systems and tools in the first place" and therefore the 1 year of training is not applicable to her. The Petitioner concluded by noting that she "has gained specialized knowledge of applicable financial practices and business operations experience in leading the development of programming and forecasting herself, which makes her the only candidate" for the U.S. position.

In support of the petition, the Petitioner provided evidence of the Beneficiary's educational credentials, which include a bachelor's degree in economics and a master's diploma in international accountancy and financial audit. The Petitioner also submitted: copies of two corporate reports and four financial reports for the year 2014-15, which it attributed to the Beneficiary; screenshots of ' screenshots of a ' ; and a training transcript for the .

The Director issued a request for evidence (RFE). The Director acknowledged the submitted evidence and advised the Petitioner that the supporting documentation was insufficient to establish that the Beneficiary possesses knowledge that is special or advanced or why such knowledge could not be readily transferred to a similarly educated and experienced financial professional. The Director stated that the Petitioner should provide a comparison of the Beneficiary's knowledge to that of other employees and workers the same field, a more detailed description of the Beneficiary's knowledge and whether it is "special" or "advanced," and additional information regarding the amount or type of training needed for another employee to acquire the claimed specialized knowledge. The Directors also provided a list of additional evidence the Petitioner may wish to submit in support of the petition.

In response, the Petitioner submitted a letter in which it repeated that the Beneficiary has a "comprehensive knowledge of our internal financial systems and the complex operating systems utilized within the company, such as as a result of her experience working in Romania. The Petitioner identified the tool developed by the Beneficiary as the ' ' and emphasized that the Beneficiary will hold a key position that requires daily interaction with upper management, particularly during the business forecast process. The Petitioner resubmitted the supporting evidence provided at the time of filing.

In denying the petition, the Director acknowledged the Petitioner's claim that the financial manager position requires knowledge of the company's products, processes and systems, but determined that the Petitioner had not shown that a similarly-employed worker in the field could not readily acquire this company-specific knowledge. The Director emphasized that the Petitioner must establish that any company-specific or proprietary knowledge is either "special" or "advanced" and concluded that the Petitioner had not done so.

On appeal, the Petitioner asserts that the Director misapplied the applicable statutory, regulatory and USCIS policy standards to the facts of this case, and misinterpreted the Petitioner's supporting documentation submitted to corroborate the Beneficiary's specialized knowledge.[1] Specifically, the Petitioner asserts that the Director "failed to recognize that [the Beneficiary's] creation of complex Operating System ('OS') tools for [the Petitioner], and her involvement with the design and implementation of [the Petitioner's] proprietary software, constitutes specialized knowledge." The Petitioner suggests that the Director placed too much emphasis on the stated job duties, without considering the specialized knowledge required to carry out those duties.

B. Analysis

Upon review of the petition and evidence, including the Petitioner's appeal, we agree with the Director's decision.

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 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 the 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. A petitioner should also describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

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

[1] The Petitioner cites to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

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 knowledge of the company's products, inner financial workings and financial systems, as well as its budgeting, financial, and accounting processes and practices. In addition, the Petitioner asserts that the Beneficiary has specialized knowledge of proprietary software systems and tools, including and

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 the petitioner's industry or that can be easily imparted from one person to another is not considered specialized.

While we do not doubt that the Beneficiary has become familiar with the foreign entity's products, clients, and "inner financial workings" in her 2 years of employment as a financial manager, the Petitioner did not sufficiently describe or document this company-specific knowledge, or how the Beneficiary acquired it, in sufficient detail to support a claim that the knowledge she has acquired is truly distinct in comparison to the knowledge that would generally be held by a financial manager in its industry. Any financial manager would reasonably be expected to acquire such company-specific knowledge of their employer, either through formal or on-the-job training. The record does not contain information regarding the Beneficiary's prior employment history. It appears based on the limited information provided that she was hired for the financial manager position in 2014 despite having no prior employment within the Petitioner's group. The Petitioner has not stated that the Beneficiary underwent any internal training in the company's systems, processes, practices or other aspects of its financial operations before fully assuming her duties, nor has it otherwise submitted evidence to establish how this company-specific knowledge is truly distinct, uncommon and not something that could be easily imparted to a similarly educated and experienced professional in the field.

On appeal, the Petitioner emphasizes that the Beneficiary's specialized knowledge is primarily based on her "creation of complex Operating System ('OS') tools for [the Petitioner], and her involvement with the design and implementation of [the Petitioner's] proprietary software." 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.

Again, the Petitioner has not adequately supported its proprietary knowledge claim with a detailed description and documentation of the Beneficiary's claimed specialized knowledge. We

acknowledge the Petitioner's claim that the Director's analysis over-emphasized the Beneficiary's stated duties and overlooked the claimed knowledge required to perform those duties. However, it is notable that none of the Beneficiary's current or proposed duties include any responsibilities related to the development of tools or software, or even mention the use of any tools, software or systems necessary to carrying out the duties. While we must look at the job duties in the context of the claimed specialized knowledge required to perform those duties, in this case, there is a clear gap between the stated duties and the purported specialized knowledge derived from the development of proprietary software.

We acknowledge that the Petitioner provided some documentation related to and the latter of which appears to be a customized report produced in MicroSoft Excel, which the petitioner refers to it as a "tool" developed by the Beneficiary. However simply showing that these tools exist and are in use within the company is insufficient to establish that the Beneficiary possesses specialized knowledge of the tools, or that her knowledge is derived from her contribution to the development of "many" of the company's internal tools and systems. The Petitioner has not provided a description of her role in any software or systems development activities or sufficient supporting evidence demonstrating that this development role has been part of her duties as a financial manager. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner went on to state that it would require more than 1 year for someone to learn its internal financial systems and tools, and implied that the training is "not applicable" to the Beneficiary because she "developed these systems, processes, systems, and tools in the first place." The Petitioner offered no further explanation regarding its training program to support its claim that it would take more than a year for a trained financial professional to learn how to use these tools, and, as discussed, did not support its claim that the Beneficiary developed these tools since joining the company in 2014. Further we note that, although the Petitioner states these tools and systems are proprietary, the Petitioner has provided very little information in support of a claim that the knowledge required to work with these tools could only be gained through either participation in the tools' development or, alternately, through a lengthy period of training.

In sum, the submitted positions do not describe the Beneficiary's role in the development of the Petitioner's proprietary systems and tools and the record does not adequately support the Petitioner's assertion that the Beneficiary's claimed specialized knowledge derives from her major role in the development of these systems and tools since their early stages.

Based on similar evidentiary deficiencies, the record does not support a finding 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 has not provided information or evidence that would allow us to make a meaningful comparison between the Beneficiary's knowledge and that of other workers within the Petitioner or foreign entity. The Petitioner emphasizes the Beneficiary's management role and her interaction with senior management and executives. However, despite the Beneficiary's financial manager job title and level of responsibility, we cannot determine that her knowledge of company processes and procedures is advanced in relation to the Petitioner's other employees if we do not have sufficient information regarding those employees' relative knowledge and roles. The Petitioner has not provided organizational charts or identified the roles and relative knowledge of other similarly employed workers within the U.S. or foreign entities. The Petitioner did not provide evidence of any training she completed in company processes upon being hired by the foreign entity or explain the processes or procedures in which she possesses advanced knowledge.

The Petitioner did state that the Beneficiary has been responsible for establishing procedures within her department such as audit procedures; however, it did not describe or document these procedures or explain why this knowledge is advanced and could not be easily imparted to another employee. Further, as discussed above, the Petitioner has not adequately described or documented the Beneficiary's claimed role in the development of its internal financial systems and tools in support of its claim that her 2 years of employment as a financial manager resulted in her acquisition of advanced knowledge not widely held within the Petitioner's organization.

Overall, the evidence is insufficient to establish that the Beneficiary's expertise in the organization's processes and procedures after 2 years of employment abroad is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the organization. Here, 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 claim that the Beneficiary possesses various characteristics of a worker with qualifying specialized knowledge as set forth in USCIS Policy Memorandum PM-601-011, *supra*, at 8. 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. While the Beneficiary may be filling a role that may be beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of her specialized knowledge. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized" and such factors must be supported by evidence. *Id.* The memorandum highlights that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 10.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that she has been employed abroad and will be employed in a specialized knowledge capacity with the Petitioner in the United States.

III. CONCLUSION

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. § 136. Here that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N- Inc.*, ID# 202360 (AAO Feb. 27, 2017)