U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-R-A-

DATE: FEB. 27, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an astronomical observatory, seeks to temporarily employ the Beneficiary as an assistant scientist under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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, concluding that the record did not establish, as required, that: the Beneficiary possesses specialized knowledge; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director erred by disregarding persuasive information and by misinterpreting the standards for "specialized knowledge."

Upon *de novo* review, 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.*

A beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary 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. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B).

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).

An individual L-1B classification petition must include evidence that: (1) the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; (2) the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; and (3) the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to others in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

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. (The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.)

A petitioner may establish eligibility for an L-1B visa by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition. Under the statute, specialized knowledge consists of either: (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.

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.

In the present case, the Petitioner has not specifically claimed that the Beneficiary has special knowledge, but has referred to 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 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 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 beneficiary gained such knowledge.

manages the petitioning entity and also "plays an outsize role in the operations and management of" the , a radio observatory based in Chile. The Petitioner stated:

> [T]he beneficiary performs the following specialized knowledge duties at
>
> - Implement the scientific goals of the Observatory, and more generally radio astronomy and advancing state of the art technologies that support the current and anticipated future needs of the Observatory.
> - Identify and prototype technologies and/or components that may be critical to the Observatory's operational future programs, and where resources permit, to the future of radio, millimeter, and sub-millimeter astronomy in general.
> - Identify and pursue broader technical opportunities to extend radio science technology to associated disciplines, including taking advantage of opportunities for partnerships with academic and government entities, and where appropriate, for commercialization with industry partners.
> - Help develop program proposal[s], manpower pans, and carrying out strategic planning.
> - Ensure that research and technical development programs follow best project management practices, and that projects are planned and completed within established controls and according to Observatory priorities.
> - Assist in the preparation and review of [the Petitioner's] program plans, long range plans, and other strategic documentation.
> - Ensure proactive compliance with all [the Petitioner's] and government safety policies and procedures.
> - Perform other duties as assigned.

The beneficiary uses his advanced and specialized knowledge of the highly sophisticated systems, tools and technologies developed at and specifically for in performing the following duties:

- Science Operations Software Tools Tester: Acting as DSO subsystem lead scientist of Project Tracker and Project Life-Cycle, representing [the Petitioner] in meeting with external organizations in weather forecast;
- Technical Assessor: Assessing PRP Cycle 1 and 2 and acting as Technical Assessment Workshop Astronomer on duty for Cycle 0 and 2; and
- Data Analysis and Reduction of data Scientist: Studying the Effect of Altiplanic Winter in observing conditions.

. . . .

As an Assistant Scientist involved in commissioning and science verification, the beneficiary has acquired significant specialized knowledge and experience relating to the capabilities of as well as the essential . . . software, instruments, procedures and processes used to operate the facility. Through commissioning and science verification, the beneficiary has been directly involved in integrating numerous disparate, individual components into a system that functions at an engineering level and then into an instrument that meets the science/astronomy requirements through quantitative confirmation that the data produced by the instrument is valid and has the required characteristics in terms of sensitivity, image quality and accuracy. While the data generated by is shared around the world, information about how the system operates, what components require replacement or upgrading, and how operations can be improved can be acquired only through extensive prior experience with Chile.

. . . .

. . . [T]e beneficiary has been specifically chosen for this role due to his direct and specialized knowledge of the operations of the facility in Chile. This specialized knowledge does not exist in the United States labor market because it can be acquired only through direct knowledge of, and experience with, the operations of that facility.

The beneficiary's advanced level of knowledge of is integral to communicating with staff and external resources in the United States in coordinating scientific verification tasks, evaluating the control software and software tools for science operations, and planning science operations. There is no other individual within – or outside of – the organization capable of fulfilling this role, making the beneficiary uniquely suited to fill it. The responsibilities require that the beneficiary have a thorough understanding of technical product information as well as

> an ability to analyze and interpret data. Specialized and advanced knowledge of [the Petitioner's] and policies and procedures is critical to effectively contribute to the development and execution of . . . plans and strategies for the continued development and operation of Therefore, the knowledge possessed by the beneficiary is integral to the offered position in the United States and an absolute requirement for the successful performance of job duties.

The Beneficiary's 2015-2016 performance appraisal lists "Key Responsibilities" but, as a personnel document for existing staff, does not detail any specialized knowledge the position requires.

The Petitioner submitted background information about itself, and and documentation of the Beneficiary's degrees and academic background. This evidence leaves little doubt that the Beneficiary has been involved in important scientific research at a highly respected facility, but does not address the Beneficiary's role in the research. The materials do not explain how the Beneficiary possesses, or that his work involves, specialized knowledge as the regulations define that term. The background evidence does not address or support the Petitioner's assertion that the Beneficiary's work with requires years of experience and training.

Calling "the largest astronomical project in existence," the Petitioner stated that " is a single telescope of revolutionary design, composed of 66 high precision antennas" which must be synchronized "with a precision of one millionth of a millionth of a second . . . with an accuracy equal to the diameter of a human hair." The Petitioner did not, however, explain the Beneficiary's role in this process or explain how the knowledge required to fulfill that role is special or advanced.

In the denial decision, the Director acknowledged the Beneficiary's academic training and employment experience at the foreign observatory, but found that the Petitioner had not shown that the Beneficiary's familiarity with the subject of his work amounts to special or advanced knowledge.

On appeal, the Petitioner stated that it "conclusively address[ed] each of the issues raised in" a request for evidence. The Petitioner's letter in response to that request is largely similar to the Petitioner's initial statement. The second letter included more information about how operates, but not about the Beneficiary's role or how his work involves specialized knowledge.

The Petitioner alleges "a clear misreading and misinterpretation" of the statute and a list of factors found in a 2015 policy memorandum. The Petitioner asserts that the Director "did not consider the . . . memo guidelines in adjudicating the petition and ignored the evidence presented by the petition that clearly demonstrated eligibility under this standard." Specifically, the Petitioner states that it has met the following factors listed in the memorandum:

- The beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the employer's productivity, competitiveness, image, or financial position.

- The beneficiary's claimed specialized knowledge normally can be gained only through prior experience with the petitioning organization.
- The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience (because, for example, such knowledge may require substantial training, work experience, or education).
- The beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily unique to the petitioning organization.

USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* 8 (Aug. 17, 2015), http://www.uscis.gov/laws/policy-memoranda. The Petitioner, on appeal, does not explain how it has met the above factors. The Petitioner paraphrases, and sometimes directly repeats, assertions from its earlier statements, and asserts that " is a one-of-a-kind and state-of-the-art astronomical facility and that the beneficiary is engaged in planning and executing the facility's scientific commissioning using his specialized scientific expertise." The Petitioner does not explain how the commissioning process at differs from that at other radio telescope arrays, or how the Beneficiary's role, individually, differs from that of other assistant scientists and astronomers on duty at or other radio observatories.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on its statements regarding the Beneficiary's knowledge of its organization. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other assistant scientists, either within or outside of the organization. While there may be no other employees with the exact same knowledge the Beneficiary possesses, the record does not demonstrate that the Beneficiary's knowledge is in fact significantly different from that generally held by workers in similar positions in the industry. The Beneficiary has years of experience working with but this does not show that the Beneficiary's knowledge of takes years to acquire.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner has not provided this information. The Petitioner did not describe how this Beneficiary's work and responsibilities differ from other employees or how other employees gained their knowledge of the petitioning organization. The Petitioner has not established that the Beneficiary's knowledge is advanced within the petitioning organization's own operations.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the Petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

We note that the Petitioner stated "[t]he beneficiary will continue to be based in Chile," but the Petitioner seeks the L-1B visa "so that [the Beneficiary] travel to the United States on an intermittent basis . . . to coordinate scientific verification tasks, evaluate the control software and software tools for science operations, and plan science operations." The Petitioner has provided little information about the Beneficiary's intended activities in the United States, and has not adequately explained how those activities would involve specialized knowledge. Whatever the nature of the Beneficiary's primary employment in Chile, the Beneficiary does not require United States immigration benefits or employment authorization for him to continue to perform that work in Chile.

We further note that the Petitioner has filed another nonimmigrant petition, seeking to classify the Beneficiary as an H-1B nonimmigrant worker. That petition has been approved, neutralizing any argument that denial of this petition will adversely affect the Petitioner's mission. The Petitioner acknowledges this other approval, but maintains that approval of the present petition "will benefit [the Petitioner] with L-1B petitions it may file in the future." Approval of this petition would set no broader precedent, particularly in light of the Petitioner's claim that "[t]here is no other individual within – or outside of – the organization capable of fulfilling this role," in which case we would not expect to see additional petitions for other beneficiaries to fill that same role. If the other petitions would involve wholly different positions, then the approval of this petition would not provide much useful guidance. On the other hand, if the other positions are largely similar to this beneficiary's position, then the Petitioner mischaracterized that position. Either way, we make no broader finding as to whether or not astronomers may, under some circumstances, qualify for L-1B status. We find only that the Petitioner has not met its burden of proof in this particular proceeding.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge. Therefore, we cannot find that the Beneficiary's past employment abroad and his intended U.S. employment involve specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of N-R-A-* ID# 862164 (AAO Feb. 27, 2018)