U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-L-A-L- INC.

DATE: FEB. 28, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a financial software and services company, seeks to temporarily employ the Beneficiary as a software developer 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, that he was employed abroad in a capacity that was managerial, executive, or involved specialized knowledge for at least one year, or that he would be employed in a specialized knowledge capacity in the United States. The Director further found that the Beneficiary's assignment to the worksite of an unaffiliated employer would not be in compliance the provisions of the L-1 Visa Reform Act, which prohibits L-1B nonimmigrants from providing "labor for hire."

On appeal, the Petitioner contends that the Director did not conduct a reasoned analysis of the evidence it submitted in support of the petition and that she overlooked the Petitioner's explanation regarding the Beneficiary's potential off-site employment at client worksites during his stay. The Petitioner asserts that it has established by a preponderance of the evidence that the Beneficiary is eligible for L-1B classification.

Upon *de novo* review, we will sustain 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 be accompanied by evidence that: (1) the petitioner and the foreign employer of the beneficiary are qualifying organizations; (2) 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; (3) 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 (4) 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. DISCUSSION

The primary issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

To establish that a beneficiary has special knowledge, 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 company or the particular industry. To establish that a beneficiary has advanced knowledge, a petitioner must submit evidence that a given 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.

The Petitioner's group of companies develops, sells, installs, and supports proprietary financial software. The Petitioner and the Beneficiary's foreign employer are primarily focused on the proprietary product, which is described as a "comprehensive and configurable loan and lease origination and risk management platform" used by top financial institutions to automate business and commercial lending. The Petitioner's parent company purchased the business (including the product, related assets, and associated services) from its prior owner, in 2013, and as part of the agreement, employees continued to provide software development and support services related to the product for an agreed period of time during the transition. The Beneficiary worked as a senior software engineer responsible for development activities related to with from 2011 until 2015. He joined the

Petitioner's Indian affiliate in November 2015, where he works as a software developer as a part of [redacted] core engineering team.

The Petitioner claims that the Beneficiary has special knowledge of the proprietary [redacted] platform based on his nearly six years of experience working on its core development team, during which time he has developed new product features that are now major components of the product offering. The Petitioner explains that he has a deep knowledge of the core architecture of the product as a former [redacted] employee, which makes his knowledge advanced relative to his peers who do not have the same length of experience, and which distinguishes his knowledge from that of software developers who have not worked on the product throughout its evolution.

The Director determined that the Petitioner did not distinguish the Beneficiary's knowledge as distinct or uncommon in comparison to other software engineers, did not articulate with specificity the nature of the claimed specialized knowledge or how the Beneficiary gained it, and did not submit supporting evidence of the Beneficiary's work on the [redacted] product. The Petitioner asserts that the Director's decision does not taking into account previously submitted evidence which specifically address these concerns. We agree with this assertion.

The Petitioner has made detailed, consistent, and credible claims regarding the Beneficiary's special knowledge of the [redacted] product. In response to a request for evidence, the Petitioner submitted a 19-page letter in which it described with specificity the nature of the Beneficiary's knowledge, how he gained it, and the value of his individual contributions to the business in terms of the value added to the [redacted] product. The Petitioner described in detail specific product features and functionalities that the Beneficiary designed and developed to enhance the product, research and development and prototype creation projects he completed, implementation tools he developed for use by the company's professional services team, and his creation of a proprietary test automation framework used to validate custom engineering builds. In addition, the Petitioner explained how the Beneficiary acquired the knowledge needed to accomplish these tasks, and how he applied the special knowledge in his assignments. Further, the Petitioner submitted evidence in support of its claims, including a detailed annual performance appraisal which lists the Beneficiary's duties and contributions in detail, and internal emails which further corroborate some of his assignments.

We find that the totality of the record substantiates the Petitioner's claim that the Beneficiary is deemed an expert with development aspects of the [redacted] platform gained through his six years of progressive experience working exclusively with this product. While he is not the product's sole creator or developer, the Petitioner has described contributions that reasonably require him to possess far more than mere familiarity with the proprietary platform, as well as a level of knowledge that cannot be considered common in the IT financial services sector or easily transferable. The record establishes that the offered position would require the Beneficiary to apply his special knowledge of [redacted] to continued core engineering development assignments and to client implementation projects, as needed, including any assignments that may require his temporary assignment to third-party worksites.

For the reasons discussed, the record contains sufficient evidence to overcome the basis for the Director's decision.

III. CONCLUSION

The Petitioner has established that the Beneficiary possesses specialized knowledge, and that his employment both abroad and in the United States requires specialized knowledge.

ORDER: The appeal is sustained.

Cite as *Matter of L-L-A-L- Inc.*, ID# 998530 (AAO Feb. 28, 2018)