U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6947621

Date: JAN. 6, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (L-1B)

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as a "Senior Architect- POS" in the United States 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 Director of the California Service denied the petition concluding that the record did not establish, as required, that: (1) the Beneficiary's position abroad involved specialized knowledge, (2) the Beneficiary is qualified to perform the intended services in the United States, (3) the Beneficiary's position in the United States would involve specialized knowledge, and (4) the Beneficiary's placement at the worksite of an unaffiliated employer would not be labor for hire.

Upon *de novo* review, we conclude that the record now contains sufficient evidence to overcome the Director's bases for denial.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through 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. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Also, 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 Petitioner has provided detailed, consistent, and credible claims regarding the Beneficiary's knowledge of the company's proprietary object detection algorithm (ODA). The Petitioner provided several detailed duty descriptions and explanations of the Beneficiary's knowledge and documentation substantiating that he developed the Petitioner's ODA and that he will be tasked with a significant assignment to implement this unique technology into a major client's point of sale system. Further, the submitted evidence credibly establishes that the Beneficiary was involved with the development of the company's proprietary ODA, this technology is unique within the industry, and that he is the

only developer within the company holding his level of knowledge of the algorithm he developed. In sum, we conclude that the Petitioner has submitted sufficient evidence to substantiate that the Beneficiary's knowledge is, more likely than not, advanced compared to his colleagues within the company. Further, the Petitioner has demonstrated, based on the unique nature of the company's ODA, that it would not be generally found in the industry or readily acquired through training. Therefore, the totality of the evidence establishes that the Beneficiary possesses specialized knowledge.

Given that the Beneficiary's utilized specialized knowledge abroad in developing the ODA, and that he will use this same knowledge of this technology in the United States, we conclude that both his position abroad and his proposed position in the United States involve specialized knowledge. Furthermore, given that the Beneficiary is an expert in the ODA he developed and a highly educated software developer with several years of experience, we also conclude that he is qualified to perform the duties of his proposed position.

Lastly, the Petitioner has also demonstrated that the Beneficiary's work would not be work for hire. In denying the petition on this ground, the Director determined that the Petitioner established that the Beneficiary would be supervised and controlled by the Petitioner when assigned, on certain occasions, to its client's work location. We concur with this determination. However, the Director concluded that the Petitioner did not demonstrate that the Beneficiary's assignment would involve him utilizing the company's specialized knowledge.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

> (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
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> (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
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> (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

The Petitioner has submitted sufficient evidence to demonstrate that the Beneficiary more likely than not developed a proprietary ODA and that he was specially chosen for a major client project based on his expertise and experience in this technology. It credibly established that the Beneficiary would be applying his knowledge of the Petitioner's proprietary ODA and implementing it into a major client's point of sale system. As such, the Petitioner has demonstrated that the Beneficiary would utilize specialized knowledge specific to the Petitioner and its affiliated companies pursuant to his work for its client; as such it has established that he would not be employed as labor for hire.

ORDER: The appeal is sustained.