U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF K-I-, INC.

DATE: JAN. 19, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as a "senior security consultant" 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity. The Director concluded further that the record did not establish that the Beneficiary's assignment to an unaffiliated employer's facility would be permissible under section 214(c)(2)(F)(ii) of the Act, as created by the L-1 Visa Reform Act of 2004.[1]

On appeal, the Petitioner asserts that the Beneficiary possesses "specialized and advanced knowledge" of its methods, processes, and techniques for executing specific types of projects and that this knowledge is required to properly execute and complete the project in the United States. The Petitioner claims that the evidence already submitted establishes the Beneficiary's eligibility by a preponderance of the evidence and that it has no additional material to supplement the record. The Petitioner avers that the Director did not apply the regulatory and statutory definitions and U.S. Citizenship and Immigration Service (USCIS) policy interpreting the specialized knowledge definitions.

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

[1] As the appeal will be dismissed on the issue of specialized knowledge, the Petitioner's lack of compliance with the L-1 Visa Reform Act of 2004 is moot. We will not address this issue further in this decision.

## 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.* The petitioner must also establish that 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).

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).

## II. BACKGROUND

The Petitioner is an information technology business with over 9000 employees in the United States and worldwide and an estimated gross annual income of 400 million worldwide. The Petitioner states that it "works with 60+ Global Automotive companies, 15+ leading energy & utility companies, 70+ Global Manufacturing companies and 8 of the top ten semiconductor companies to develop innovative IT solutions in various areas."

The Petitioner asserts that the Beneficiary is being transferred "because of her specialized and advanced knowledge of the execution of [redacted] for [redacted] projects."[2] The foreign employer's representative confirmed the Beneficiary's employment since December 2011. The Petitioner claims that "[h]er education, qualifications and the experience gained at [the petitioning organization's family of companies] working on the [redacted] for [redacted] projects,[3] will be of tremendous use in the position offered to her at our company." The

[2] The Petitioner noted that [redacted] is an enterprise resource planning (ERP) system which was acquired by Oracle in 2005 and that the proposed U.S. project is a "[redacted] upgrade project from [redacted].1. for [its] client."

[3] Although the Petitioner indicates numerous times in the record that the Beneficiary "has specialized and advanced knowledge of the [redacted] for [redacted] projects," it does not provide a detailed explanation of this technology in layman's terms. To the extent that the Petitioner has explained the technology involved, the record indicates that [redacted] is an Oracle product that is widely available in the ERP systems field. While there are several ERP systems that are widely used across different industries, the Petitioner does not claim that knowledge of [redacted] itself qualifies as specialized knowledge.

Petitioner contends that "[i]t would be unfeasible to train a US worker in the knowledge that [the Beneficiary] possesses, since the knowledge was gained overseas and required at least one year of experience on [redacted] upgrade projects at [the foreign employer] in India to gain it."

We have considered the Petitioner's reference to USCIS policy on the adjudication of L-1B petitions and in particular USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. As explained in the memorandum, USCIS is able to adjudicate L-1B petitions most effectively when a petitioner "explains in detail the specific nature of the industry or field involved, the nature of the petitioning organization's products or services, the nature of the specialized knowledge required to perform the beneficiary's duties, and the need for the beneficiary's specialized knowledge." In this matter, the Petitioner has not provided the necessary detailed information required to establish these essential elements.

## III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary's prior education, training, or employment qualifies her to perform in a specialized knowledge capacity and further determined that the record did not establish that the Beneficiary's foreign position and proposed U.S. position require specialized knowledge.

On appeal, the Petitioner asserts that the Beneficiary has been employed with the foreign entity for more than the required year. The Petitioner emphasizes that the Beneficiary gained valuable specialized and advanced knowledge[4] of its methods, processes, and techniques for executing specific types of projects and that this knowledge is required to properly execute and complete the project in the United States. The Petitioner repeats that the Beneficiary has specialized and advanced knowledge of its execution of the [redacted] for [redacted] projects and that it "would be unable to find anyone else with his [*sic*] deep knowledge of [its] processes, procedures and methods for executing the project." The Petitioner reiterates that only those who have worked on the [redacted] for [redacted] project for a long time would have this required 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 she possesses specialized knowledge, then we cannot conclude that she has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

[4] The Petitioner refers to the Beneficiary's knowledge as specialized and advanced throughout the record. It appears that the Petitioner is claiming that the Beneficiary's knowledge is both "special" and "advanced" and thus that her knowledge is specialized under both prongs of the statutory definition of specialized knowledge.

A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge.[5] Under the statute, a beneficiary is considered to have specialized knowledge if he or she has: (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.

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 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.

A. Special Knowledge

The Petitioner's primary claim is based on the Beneficiary's experience gained at the petitioning organization's family of companies working on the for project.

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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.

The Petitioner stated that the Beneficiary has been working in the domain and has "undergone various training related to tools such as Q-Software, ALL OUT, E1 Config, E1 SOD, Streamliner, Audit run, Insight, Oversight." The Petitioner does not include any information on the amount and type of training the Beneficiary received to use these tools and significantly does not differentiate these tools from tools used industry-wide to upgrade systems or the security subset functionality. The Petitioner has not supported its claim that the Beneficiary's knowledge is different from that generally held by other consultants.

[5] Although some aspects of the "special" and "advanced" knowledge definitions may overlap, we will address each element individually.

The Petitioner also stated that the Beneficiary "is an expert in [its] proprietary '[redacted] and [redacted] Framework,' she is actively involved in development of this product for the past 4 years," and that this "Framework is widely used in [redacted] projects." The Petitioner also listed the Beneficiary's tasks within the [redacted] and [redacted] frameworks. However, the Petitioner has not articulated or documented the function of these systems or how the Beneficiary used these proprietary tools during the course of her duties. The Petitioner's claim that the Beneficiary was actively involved in development of this product is not corroborated in the record. The Beneficiary does not reference these particular tools on her resume and does not indicate that she was involved in the development of these products. The Petitioner also has not specified how much training is needed to become proficient in these tools and the record does not contain evidence that the Beneficiary received any formal training in these internal tools or systems.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. However, whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by a beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed individuals in the industry. It is reasonable to believe that all consulting companies develop internal tools and methodologies for implementation of client projects. Without a substantive explanation or evidence, the Petitioner has not established that its internal tools are particularly complex or that it would take a significant amount of time to train an experienced [redacted] consultant who had no prior experience with the Petitioner's family of companies to perform the duties required of the position.

Rather, the record suggests that the Petitioner's technical employees may undergo limited short-term training sessions. It does not include evidence that the Beneficiary or the Petitioner's other technical employees must attend extensive training sessions in the use of the company's tools, services, or methodologies, or intensive training related to their project assignments. It appears that the internal systems and tools used within the petitioning organization are reasonably used company-wide by company employees, and that these systems and tools are similar to those used industry-wide.

The Petitioner emphasizes that it is the Beneficiary's exclusive work on security projects as well as her education and three years of experience in the [redacted] field that is the foundation of her "specialized knowledge." However, the Petitioner does not offer any analysis on how the Beneficiary's day-to-day work experience and minimal training resulted in special knowledge. Based on the evidence submitted, the Petitioner's internal tools, methodologies, and project implementation practices can be readily learned on-the-job by employees who otherwise possess the requisite technical and functional background in ERP and more specifically the [redacted] system. For example, the Beneficiary's resume shows that when she began work for the foreign entity in December 2011, she was assigned the role of senior [redacted] security consultant without undergoing any specific training on the petitioning organization's tools, services, or methodologies. The Petitioner has not established that the Beneficiary's work experience either on [redacted] and other third-party technologies or as a [redacted] security consultant constitutes "specialized knowledge," such that her knowledge is

distinct or uncommon in comparison to the knowledge of other similarly employed workers in the IT consulting industry.

The Petitioner claims that "[i]t would be unfeasible to train a US worker in the knowledge that [the Beneficiary] possesses, since the knowledge was gained overseas and required at least one year of experience on upgrade projects at [the foreign employer] in India to gain it." The Petitioner, however, does not explain the Beneficiary's ability to immediately begin work as a senior security consultant for the foreign entity without training in the petitioning organization's specific methods, services, and tools. The record also does not include evidence of required training in the Petitioner's own specific tools, methods, services, and procedures relating to this technology. Without detailed information on the Petitioner's internal tools and services relating to software and the required training to effectively use the software, the record does not establish that knowledge of Oracle's software, or more specifically the security component, is distinct or uncommon within the ERP software field. Based on the minimal information and evidence submitted regarding the system and the Petitioner's internal tools and services, and any associated training requirements, it appears more likely than not that the system is similar to other ERP software and requires limited or no training, relying instead on basic IT skills and ERP domain familiarity.

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 products and services. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other technicians, either within or outside of the organization. While there likely are no 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 professionals in the Petitioner's industry, or that it would require up to a full year or longer to acquire the knowledge needed for the U.S. position.

For the foregoing reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's services and their application in international markets.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

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, as with special 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 Petitioner acknowledges that it has over 200 employees who work with the technology after acquiring "the world's largest solution provider" in May 2011. The Petitioner also asserts that only around three to five percent of these employees have specialized or advanced knowledge of the technology.[6] However, the Petitioner has not clarified how it distinguishes these employees from other software professionals, either within or outside the Petitioner's group, who are trained and experienced in this third-party technology. It is reasonable to believe that an experienced software analyst who has worked with technology or other ERP software systems would reasonably be familiar with this type of technology and the functionalities and modules built into each system.

We have considered the Petitioner's implied claim that the Beneficiary's quantity of experience sets her apart from her colleagues. We also note that the foreign entity placed the Beneficiary's position over four other consultants. However, the Petitioner has not included evidence demonstrating when the Beneficiary's colleagues were hired, their specific training, and when they began working on specific projects. Nor has the Petitioner provided detailed information regarding the work they actually performed. The Petitioner does not specify if all of its technical employees are required to train on specific components of the petitioning organization's processes and procedures prior to working for it or prior to working on a specific project. Nor has the Petitioner identified how any of the Beneficiary's training differs from training received by the petitioning organization's other employees. It is not possible to ascertain from the record that the Beneficiary's duties at the foreign entity required advanced knowledge, greater than other workers implementing and upgrading systems, or greater than others within the petitioning organization.

Any client project executed by the petitioning company or any other technology consulting company is unique in that it reflects the particular technological needs and business requirements of the individual client requesting the consulting services. However, all information technology consultants within the petitioning organization would be familiar with the Petitioner's internal processes and methodologies for carrying out client projects. Similarly, most employees would also possess project-specific knowledge relative to one or more international clients. The Petitioner as a practical matter has many employees assigned to work on projects. The evidence does not support the Petitioner's claim that the Beneficiary is one of a few employees in the organization capable of implementing and upgrading for its clients. Rather, it is reasonable to conclude that many employees have one year of experience working in this domain. Without a more detailed

[6] The Petitioner also states that only "1% to 3%" of its 9000 employees worldwide hold specialized knowledge and that the Beneficiary fits within this class of special employees. However, the Petitioner's claim that certain employees are deemed special and advanced by their mere inclusion within a certain undefined class is insufficient. The Petitioner must do more than articulate that a few of its employees hold special and/or advanced knowledge within its overall organization to demonstrate that a particular beneficiary holds specialized knowledge. Merely asserting that the Beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the Petitioner's burden of proof.

explanation of the Beneficiary's specific knowledge and how her knowledge compares to others within the organization, the Petitioner has not established that her history working in this area offshore is sufficient to establish advanced knowledge.

The Petitioner has not submitted sufficient probative evidence demonstrating that the Beneficiary's combination of professional experience, project assignments, third-party software expertise, and knowledge of the Petitioner's project methodologies has resulted in her possession of knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company. The record also does not include evidence establishing that the Beneficiary's knowledge is greatly developed or further along in progress, complexity, and understanding than is generally found within the employer. For the foregoing reasons, the Beneficiary does not satisfy the requirements for possessing specialized knowledge.

## IV. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge. As the evidence does not establish that the Beneficiary possesses specialized knowledge, we also cannot conclude that she has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-I-, Inc.*, ID# 94710 (AAO Jan. 19, 2018)