U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF 3-D-P-, LLC

DATE: JAN. 25, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which sells, rents, and installs dome projection systems, seeks to temporarily employ the Beneficiary as a projection system installation manager of its new office[1] 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 as a manager, executive, or in a specialized knowledge capacity.

On appeal, the Petitioner submits additional evidence and asserts that the Director did not sufficiently consider the complexity of the technology with which the Beneficiary works.

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

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

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. 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.

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 the Beneficiary's past and intended future employment involve specialized knowledge.[2]

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.

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

[2] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

The Petitioner owns dome projection technology used in planetariums, art installations, and for other immersive visual settings. The Petitioner stated that the Beneficiary will hold "the key position in the company" with "key knowledge in software installation and content preparation." The Petitioner stated that the Beneficiary would hold the same position in the United States as she did abroad. The Petitioner described the duties of that position:

- Coordinate internal resources and third parties/vendors for the flawless execution of fulldome projection installation;
- Ensure that all projects are delivered on-time within scope, budget and committed quality;
- Assist in the definition of project scope and objectives, involving all relevant stakeholders and ensuring technical feasibility;
- Ensure resource availability and allocation;
- Develop a detailed project plan to monitor and track progress;
- Manage changes to the project scope, schedule and costs using appropriate verification techniques;
- Report and escalate to company management if needed;
- Successfully manage the relationship with the client and all stakeholders;
- Perform risk management to minimize project risks;
- Supervise negative-pressure projection dome screen installation using [the company's] unique technology;
- Supervise and coordinate installation of multiple-projector fulldome mapping systems including projectors settings, projection scheme;
- Set up software for [the Petitioner's] unique . . . projection alignment (calibration) consisting of 5 stages:
  1) Geometric alignment;
  2) Edge blending;
  3) Brightness uniformity;
  4) Gamma matching;
  5) Black level calibration.
- Manage the encoding of commercial content and providing the appropriate licensing according to Content Protection System ([the Petitioner] is also a distributor of fulldome content from different production studios. Only several people in the company including [the Beneficiary] have access to original content files which are necessary for encoding the content for specific project[s]. Media server for each project requires specific encoding and licensing and [the Beneficiary] will be responsible for this).

At the time, the Petitioner did not state which of the above tasks require specialized knowledge, or explain the nature of that knowledge. Most of the listed duties appear to be routine elements

associated with handling projects for clients. Access to content files does not constitute specialized knowledge. As explained above, a petitioner ordinarily must demonstrate that the beneficiary's knowledge (1) is not commonly held throughout the particular industry *and* (2) cannot be easily imparted from one person to another. If access to content files is restricted, then such access may not be commonly held throughout the Petitioner's industry, but the Petitioner has not shown that it cannot be easily imparted from one person to another. From the Petitioner's description, the content files themselves appear to represent the intellectual property of customers, rather than the Petitioner. (The Petitioner's role is to present the content rather than to create it.)

The Director advised the Petitioner that the initial submission did not establish that the Beneficiary possessed specialized knowledge or used that knowledge in her work for the organization. In response, the Petitioner submitted the same list of duties and quoted from a patent application that the company filed. (The Beneficiary's name is not on the patent application.) The summary of that application reads, in part:

> The group of inventions relates to forming and displaying of the image on curved screens using projectors, also it can be used in domed multiprojector systems, fulldome theaters, planetariums, various simulators and virtual reality. The device consists of a server, a camera, a remote control module, [and] the switching. With the help of image separation devices . . . a single server can be connected to a plurality of projectors. Provided cross-linking of several display devices in a single synchronized image, [preventing] visible overlap, color differences, light intensity, ambient light between the fragments, created by various digital projectors or screens.

The patent application and related documents show that the company uses technology involving multiple projectors which must be strategically placed and computer-coordinated, but they do not clarify the Beneficiary's role or show that she possesses or uses specialized knowledge. The Beneficiary did not develop the technology, and the Petitioner did not claim that the Beneficiary is deeply involved in building or maintaining the specialized equipment. The ability to operate complicated equipment such as a computer or a projection system does not necessarily constitute specialized knowledge of the technology underlying that equipment.

In the denial notice, the Director stated that the Petitioner did not sufficiently explain what knowledge the Beneficiary possesses, or how that knowledge is special or advanced. The Director also found that the Petitioner did not show that the Beneficiary's foreign position involved specialized knowledge.

On appeal, the Petitioner submitted certificates showing that it had applied for copyrights on a computer program which calibrates and controls the projectors in its projection system. The copyright applications show only that the Petitioner claims that program as its own.

The Petitioner submits certificates showing that the Beneficiary completed two training courses: " software installation" from November 1, 2013 to January 30, 2014; and "

from June 5 to August 30, 2014. The Petitioner did not submit copies of training materials, descriptions of the courses, or other materials that would corroborate the new claim that the Beneficiary's training took almost six months. The certificates do not specify whether this training was continuous and full-time, or periodical in conjunction with other duties performed for the company.

In a subsequent letter, the Petitioner states: "As [a] Project System Installation Manager has access to the core of secret [proprietary] software, he/she . . . should work more than 2 years in the company in order to undertake the in [the company's] solutions and courses." This new claim contradicts the certificates and a previously submitted employment agreement, which indicate that the Beneficiary began working for the company in September 2013 and began the identified training less than two months later.

The Petitioner asserts that the projection systems sometimes require calibration "during the event" because environmental conditions can distort the projection surface. The Petitioner states that the "Projection System Installation Manager [can] save several different calibrations during the installation and apply the correct one during certain period[s] of the day . . . without interrupting [the] working process." The Petitioner did not explain how special or advanced knowledge comes into play during calibration adjustment. The Petitioner's software includes an "Automatic Calibration" process, and the Petitioner has not shown the extent to which an operator must intervene during calibration.

The Petitioner submits two further letters on appeal. One letter, attributed to artist ' but not signed, indicated that the Petitioner's "revolutionary mapping program was unbelievable by the speed and precision of projection calibration," and that the Beneficiary's "holistic understanding of her managerial position" is responsible for the artist's ongoing collaboration with the company. The letter provides no further substantive information about the Beneficiary's role.

is the president of , which "develops large-scale immersive 360 theaters, mobile projection domes and live, interactive programming." states that he has "worked closely with" the Beneficiary, who "is highly experienced in the integration of innovative geodesic dome systems and visionary programming. From project development, support team facilitation, setup/breakdown coordination, to troubleshooting and problem solving, [the Beneficiary] has been the key player bridging all activities for [the Petitioner]." He adds:

> It can take a projector mapper/programmer a full day to calibrate the entire multiprojector system using several software applications. Yet with a team like [the Petitioner] led by [the Beneficiary], this time can be reduced to 15-20 minutes depending on the size of the dome. [The Beneficiary] uses the company's proprietary program to calibrate all systems at once saving hours and sometimes days of tedious work.

The above assertions concern the quality of the Beneficiary's work and the advantages of using the Petitioner's proprietary software, but the Beneficiary did not create the software. The Petitioner has not explained how *using* existing software involves special or advanced knowledge.

discusses the range of skills needed to build a geodesic dome and set up the projector system, but the Beneficiary does not perform these tasks. Rather, she appears to coordinate the activities of other workers, about whom the Petitioner has provided little information.

The record as a whole does not indicate that setting up and installing the Petitioner's projection system involves specialized knowledge. Previously, the Petitioner had submitted a printout from its website, including the following information:

> FAST INSTALLATION AND SETUP
>
> [The Petitioner's] system installation and fine-tuning is quick and easy. Your venue can be converted into a fully-featured planetarium or digital fulldome theater in the shortest time possible without even altering the schedule! . . .
>
> . . . .
>
> EASY TO OPERATE, CONTROL AND MAINTAIN
>
> [The Petitioner's] projection systems are designed with the goal of providing a truly one-button solution in mind. You do not need a team of qualified technicians to operate and maintain the system. A lamp or projector can be replaced quickly and easily. Thanks to our revolutionary auto-calibration technology, you can resume the work in just a couple of minutes.

Whatever specialized knowledge may have gone into the creation of the Petitioner's technology, the Petitioner has not shown that operating or calibrating the equipment requires comparable knowledge. A considerable portion of the calibration process appears to be automated.

Whether proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. The Petitioner has its own technology, but is not the only company that provides dome projection services and equipment. It is reasonable to believe that other companies in the industry develop internal tools and methodologies. Without a substantive explanation or evidence, the Petitioner has not established that its activities are particularly complex or uncommon compared to similar companies in the field. The Petitioner has not sufficiently explained how the Beneficiary gained knowledge specific to only its organization, and has not supported a claim that the duties of the proffered position require a significant amount of training time.

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 those of others in the Beneficiary's field, either within or outside of the organization. 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, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

In sum, the record does not demonstrate that the Beneficiary's combination of experience, work assignments, and knowledge of the Petitioner's methods has given her knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company or that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

While the Beneficiary may be a valuable employee who is well-qualified for the proposed position in the United States, the record does not establish that the Beneficiary possesses special or advanced knowledge. If the Beneficiary does not possess special or advanced knowledge, then we cannot find that her position abroad *required* specialized knowledge.

III. NEW OFFICE

Beyond the Director's decision, we find that the record is deficient with respect to the Beneficiary's intended place of work.

The Petitioner, established in 2016, has identified itself as a new office as defined by 8 C.F.R. § 214.2(l)(1)(ii)(F). The Petitioner must establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(3)(vi)(A).

On the petition form, the Petitioner specified that the Beneficiary would work at [redacted] New York. The Petitioner has not subsequently identified a different work location for the Beneficiary. Initially, the Petitioner only submitted a rental agreement for a 300-cubic-foot self-storage space in [redacted] New York. The Director informed the Petitioner that a rented storage space was not sufficient evidence that the Petitioner had secured the claimed premises in [redacted] In response, the Petitioner submitted an August 2016 lease agreement for a space in [redacted] California. The Petitioner, however, has continued to claim the [redacted] address on other documents, including materials submitted in July 2017, nearly a year after the [redacted] lease agreement. Printouts from the Petitioner's website also show the [redacted] address, which amounts to an assertion that the Petitioner used to be at that address, whether or not it moved later. The Petitioner has not submitted a copy of a lease, a deed, or any other legal instrument to establish that the petitioning entity has ever rented, owned, or otherwise controlled the commercial space on the second floor of [redacted] (If the Petitioner simply used the [redacted] address to receive mail, then the site did not

house the new office. In such a case, identifying [redacted] as the address where the Beneficiary would work would represent misrepresentation of a material fact.)

Because the petition form specifically asks for the physical location of the Beneficiary's intended place of employment, and the regulations require evidence that the Petitioner has secured physical premises to conduct business, the address of the Petitioner's actual, physical place of business is material to the petition. The absence of evidence regarding the [redacted] address is, therefore, an additional deficiency.

Furthermore, a petitioner must meet all eligibility requirements at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner did not sign the lease on the Torrance site until six weeks after it filed the petition, and therefore the lease agreement for that location does not show that the Petitioner had already secured adequate physical premises at the time of filing.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge or that her past employment (which is essentially identical to her intended future employment) involved specialized knowledge. The Petitioner also has not shown that its new office had secured adequate physical premises at the time of filing.

ORDER: The appeal is dismissed.

Cite as *Matter of 3-D-P-, LLC*, ID# 917049 (AAO Jan. 25, 2018)