U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29853823

Date: JAN. 30, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an information technology enterprise, seeks to employ the Beneficiary temporarily as its "Sr. Technical Lead" 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 Texas Service Center denied the petition, concluding that the record did not establish that the Beneficiary possesses specialized knowledge and was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for the L-1B nonimmigrant visa classification, 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that 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. ANALYSIS

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

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.[1]

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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.

Special knowledge concerns knowledge of the petitioning organization's products or services and their application in international markets. To establish that a beneficiary has special knowledge, the 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.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity 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 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.

In a supporting statement, the Petitioner discussed a web-based application – [redacted] – that was purchased by its organization in October 2021 as part of the [redacted] The Petitioner discussed [redacted] functionality, stating that it offers "a comprehensive hiring solution that enables

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

faster time to productivity" and enables automation of various activities that are part of the new employee onboarding process. The Petitioner explained that the Beneficiary has been working with [redacted] in his position abroad and therefore has "extensive experience" and the required specialized knowledge to carry out his assigned duties. The Petitioner referred to the Beneficiary as a subject matter expert, pointing to his more than 15 years of experience in "product functionality as well as technical skills." The Petitioner also highlighted the Beneficiary's role as technical lead, as well as his involvement in "setting up best practices," performing code and peer reviews, maintaining "complete [o]wnership of the [sic] all the [d]evelopment [o]peration activities," and mentoring and managing team members. The Petitioner did not, however, explain how these attributes demonstrate that the Beneficiary possesses specialized knowledge.

The Petitioner also pointed out that the Beneficiary "is the only person who has required UI technical skills and process knowledge in both [d]evelopment and testing," explaining that the Beneficiary acquired such knowledge and skills "by working on the product right from the inception of his team several years ago." Further, the Petitioner claimed that to attain the Beneficiary's level of knowledge and expertise "requires numerous years of training . . . within the [redacted] proprietary software systems." However, this claim should be considered within the context of the Beneficiary's hiring date, which is listed as October 1, 2021; given that this petition was filed in January 2023, the Beneficiary had only been working for this organization – and with [redacted] – for approximately one year and three months at the time of filing. As such, the Beneficiary did not have "numerous years of training" working with the [redacted] tool. Thus, not only is it unclear when and how the claimed specialized knowledge was acquired, but it is also unclear that specialized knowledge was and would be required to work with and develop [redacted] given that the Petitioner did not identify specific [redacted] characteristics that would require specialized knowledge and given that the Beneficiary had been working with [redacted] from the start of his employment, without prior training or experience with that tool.

In a request for evidence (RFE), the Petitioner was notified of several evidentiary deficiencies, such as the lack of evidence regarding the content and length of the Beneficiary's training, if any, to support the Petitioner's claim that the Beneficiary's position "requires numerous years of training to successfully craft specific solutions within the [redacted] proprietary software systems." The Petitioner was asked to identify the Beneficiary's knowledge as special or advanced and to explain how that knowledge sets him apart from other employees within the organization and how it qualifies as specialized knowledge.

In response, the Petitioner reiterated much of the information that was provided in the original supporting statement, claiming that the Beneficiary has worked with [redacted] products "in a specialized knowledge position for a substantial period of time" and focusing on the Beneficiary's "key role" in product enhancement as well as his direct involvement in delivering product features and fixes to customers. To this end, the Petitioner listed the Beneficiary's responsibilities and accomplishments, such as becoming proficient in writing automation scripts and building certain tools or acquiring experience in certain functions and technologies; it also stated that the Beneficiary is "an expert" in its proprietary software systems. However, the Petitioner did not state that the Beneficiary underwent training to gain the knowledge that is claimed to be specialized, nor did it describe a path for gaining the Beneficiary's level of knowledge.

Further, the Petitioner spoke only broadly about the Beneficiary's knowledge progression, mentioning the start of his career as a "QA engineer," moving on to gain a "deeper understanding and expertise" as a software developer and "strong technical member in the team"; however, the Petitioner did not adequately discuss how the Beneficiary's knowledge progressed from the time he commenced his employment with the foreign entity in October 2021 to the point of achieving the specialized knowledge level, as claimed. As stated earlier, the Petitioner did not clarify when or how the Beneficiary obtained the knowledge that is claimed to be specialized. And although the Petitioner referred to the Beneficiary as having "advanced knowledge," this reference was not followed by a corresponding discussion where the Petitioner identified the organization's processes and procedures with respect to which the Beneficiary is claimed to have advanced knowledge and an explanation of how the Beneficiary's knowledge is greatly developed or further along in progress, complexity, and understanding compared to others within the organization. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

In addition, although the Petitioner stated that [redacted] has features that are "extremely complicated and require a deep knowledge," it did not identify or describe any such features or explain how they are complicated. The Petitioner also noted that working with [redacted] for over 15 years is uncommon, noteworthy, and not generally known by others in the field; however, as noted earlier, the Beneficiary was hired by the foreign entity in October 2021 and had only been working with [redacted] for approximately one year and three months when this petition was filed. Although the Petitioner's original supporting statement does contain a reference to the Beneficiary's 15+ years of experience, that reference was made with respect to his experience in "product functionality" and "technical skills" and thus it broadly spoke to the evolution of the Beneficiary's career in the IT field rather than his experience with [redacted]. The Petitioner's reference in the RFE response is not supported in the record and is inconsistent with the original claim. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies).

And despite providing an expert advisory opinion deeming the Beneficiary's knowledge to be specialized, the fact that the Petitioner did not establish precisely when the claimed specialized knowledge was gained precludes a favorable finding. As previously noted, the Petitioner must demonstrate that the Beneficiary held the claimed specialized knowledge position for at least one year at the time this petition was filed. 8 C.F.R. § 214.2(l)(3)(iv); *see also* 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication). Here, the record shows that the Beneficiary held a technical lead position during the entirety of his one year and three months of employment with the foreign entity; however, the Petitioner did not establish precisely how or when during his period of employment with the foreign entity the Beneficiary gained the knowledge that it claims is specialized. We therefore cannot determine that the Beneficiary worked in a specialized knowledge capacity for at least one year at the time of filing.

On appeal, the Petitioner further discusses the proprietary suite of software products, focusing on the [redacted] tool which has been the focal point of the Beneficiary's position with the foreign entity. The Petitioner maintains that the Beneficiary has been employed in a specialized knowledge capacity during the entirety of his employment with the foreign entity and reiterates the main contents of a previously submitted expert opinion as supporting evidence. The Petitioner also discusses some of

[redacted] key features, highlighting the proprietary nature of the entire of suite of products and the Beneficiary's "key role in analyzing, designing, and developing" product enhancements. The Petitioner also again references the expert advisory opinion, maintaining the claim that the Beneficiary's employment with the foreign entity involved specialized knowledge. We disagree and find that the record does not support the Petitioner's claim.

Although the Beneficiary's use of proprietary tools is relevant to this discussion, this factor in and of itself does not establish that the knowledge acquired to develop and enhance those tools necessarily rises to the level of being specialized. As previously discussed, to establish that the Beneficiary was employed in a specialized knowledge capacity, the Petitioner must establish when and how the Beneficiary gained the knowledge that it claims is specialized. The Petitioner must also support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although the Petitioner asserts that the Beneficiary meets the criteria for possessing specialized knowledge, it does not adequately address these critical points, leaving us to question how he could have gained specialized knowledge in the course of his employment with the foreign entity, where he had been employed for a total of one year and three months when this petition was filed.

Further, despite relying on the Beneficiary's previously listed job duties and key role in enhancing the functionality of the [redacted] tool, the Petitioner has provided no evidence or specifics about a path for gaining specialized knowledge within its organization. Thus, the Petitioner has not answered the critical question of how and when the Beneficiary gained the knowledge that is claimed to be specialized. Likewise, while the Petitioner has broadly discussed some of the beneficial features of using the [redacted] tool, it has not identified specific characteristics of the tool to explain why specialized knowledge is required to work on its design and development.

Accordingly, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.