U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-A- LLC

DATE: JULY 5, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a [redacted] software company, seeks to temporarily employ the Beneficiary as a "[redacted] DevOps Engineer" under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 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 and has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity. The Director also determined that the Petitioner had not established the Beneficiary's eligibility for L-1B employment at an unaffiliated employer's worksite.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director did not adjudicate the petition using the preponderance of evidence standard and did not follow the guidance set out in the United States Citizenship and Immigration Services (USCIS) L-1B adjudications policy memorandum.[1] The Petitioner contends that the Director did not examine all the documentation submitted and thus her decision was based on erroneous conclusions of fact.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, 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

[1] The Petitioner is referring to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. *Id.*

The relevant statute defines specialized knowledge as a special knowledge of the company product and its application in international markets or 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). Our regulations further define specialized knowledge as:

> [S]pecial 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 petition must be accompanied by evidence that: 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; evidence that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States; and a detailed description of the services to be performed in a specialized knowledge capacity in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the Beneficiary's foreign position is comparable to a computer systems analyst position and that the Petitioner did not demonstrate how the foreign position incorporated special or advanced knowledge. The Director determined further that the Petitioner did not establish that the Beneficiary has knowledge that is special or advanced compared to other similarly experienced persons within the company or in the industry. Further, the Director found that the Petitioner did not establish that the U.S. DevOps position involves a special or advanced level of knowledge in the computer and information technology field.

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 he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

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, a beneficiary is deemed 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.

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.[2]

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

The Petitioner states that it specializes in , a multi-component, distributed software system designed to optimize the work and increase the productivity of software engineers building applications.[3] The Petitioner references its Silver Membership in the since 2014, and indicates that its "team of experts" frequently speak and conduct training at industry trade shows. In response to the Director's request for evidence (RFE), the Petitioner describes its services as including design, preparation, and deployment of this platform to its clients' infrastructures, including re-platforming of the clients' legacy applications for deployment on this platform, as well as development of new applications to run on this platform. The Petitioner asserts that " is complex and unique and that "knowledge of this product should be classified as advanced and special." In that regard, the Petitioner notes that is rapidly growing, continuously evolving and includes large-scale components, and requires complicated tools that allow it to be integrated with the underlying infrastructure, storage systems, databases, continuous integration tools, and other third-party services.

The Petitioner also claims that it has accumulated an advanced level of knowledge of and that the Beneficiary played a key role in developing this knowledge. The Petitioner does not submit probative evidence of the Beneficiary's key role, but notes that he was

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

[3] The Petitioner further describes as a Platform-as-a-Service (PaaS) system deployed on top of lower-level software (Infrastructure-as-a-Service (IaaS). The Petitioner adds that this platform introduces the concept of developing, running, and managing applications using infrastructure with pre-configured settings which addresses productivity, scalability, security, high availability, and other production requirements.

one of the two engineers who laid the foundation for the company's development of [redacted] and who contributed to the Petitioner's achievements. However, other than mentioning that the Beneficiary is an active participant in industry conferences, contributed to and delivered DevOps training courses, and participated in projects with other companies, the Petitioner does not identify or explain the Beneficiary's key role within the petitioning organization. The Petitioner provides several examples to demonstrate its knowledge of this particular technology including that it "is a member of the working group of 12 experts undertaking preparation of a certification program for [redacted] engineers and DevOps engineers,"[4] that its team has participated in meetups and workshops, that it was the first company to launch interactive [redacted] training, and that it has entered into joint projects and partnerships with IBM, Pivotal, and other Fortune 500 companies. We recognize that the Petitioner specializes in a relatively new technology, however, the Petitioner must still establish that specialization in this technology requires [redacted] specialists to possess knowledge that is not generally known in the industry and cannot be easily transferred to other workers who are familiar with [redacted] technologies; or that it has created such specific tools, methodologies, processes, that are distinctly different than the tools, methodologies, and processes used by other companies in relation to this product. The Petitioner has not done so here.

The record includes numerous documents, some of which the Petitioner has submitted or referenced multiple times. Although we will not mention each document in our analysis, we have reviewed each one.

A. Special Knowledge

Special knowledge concerns knowledge of the petitioning organization's products or services and its 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.

The Petitioner noted that the Beneficiary has "over 6 years of experience in Linux and Windows system administration and 5 years of experience in building for and working with enterprise-grade distributed [redacted] systems" as well as expertise in enterprise monitoring systems, security, and high availability of large-scale [redacted] deployments. To demonstrate that the Beneficiary's knowledge is distinct and uncommon, the Petitioner indicated that the Beneficiary had "2 years of continuous experience with [redacted]" and asserted that this experience "places him among the top 100 to 200 [redacted] experts in the world." The Petitioner contended that the lack of "experts stems from the fact that working with [redacted] requires

[4] The record includes a letter from the [redacted] indicating the Petitioner had been a member since [redacted] 2015, and had provided speakers in [redacted] conferences. The letter refers to another individual. The Petitioner does not include evidence that this Beneficiary contributed to the [redacted] certification and standards.

broad skill sets," and working with the [redacted] components, applications that run on the platform, and underlying infrastructure. The Petitioner noted that "[a]n engineer also integrates other services with [redacted] and secures its system." The Petitioner added that because of the highly technical and complex nature of this product only a few thousand engineers (including DevOps engineers) worldwide understand [redacted] technology and that the "total number of software engineers with experience in [redacted] does not exceed 700 worldwide."

The Petitioner's estimate of the number of experts in the [redacted] field is not supported with probative evidence. The [redacted] lists a number of members, at the platinum and gold level (21), as well as at the silver level, the Petitioner's membership level. *See* [redacted] The Petitioner also notes that [redacted] is the second largest [redacted] product in terms of innovation and release velocity. This appears to undermine the Petitioner's claim that there are only ten companies with a considerable pool of [redacted] experts. The Petitioner does not provide its research or any other objective standards it used to reach its conclusions. Although the Petitioner repeatedly states that there are a limited number of software engineers with knowledge of [redacted], without probative evidence to support the claim, the Petitioner's claim is insufficient.

The Petitioner states that the Beneficiary is "among the top 100 to 200 [redacted] experts in the world" and claims that "[g]aining this kind of knowledge is only possible through deploying, customizing, debugging, and otherwise working with the [redacted] PaaS for prolonged periods of time." The Petitioner noted that the Beneficiary has been working in the foreign company's R&D department since November 2014 and that his expertise in [redacted] by deploying [redacted] to various environments sets him apart from other engineers in the industry who typically only possesses elementary or basic knowledge of [redacted] The Petitioner noted that his specific duties at the foreign company included:

> Architecture design – 10 percent
> Proof of Concept deployment of [redacted] – 20 percent
> Production deployment of [redacted] – 25 percent
> Adapt IaaS platforms to work with [redacted] – 5 percent
> Collect initial requirements from clients and conduct a preliminary estimation of the amount of work to be performed at the pre-sale stage – 10 percent
> [redacted] security – 15 percent
> Training activities – 15 percent

The Petitioner also included a lengthy narrative providing examples of the work the Beneficiary performed or will perform as part of each of the duties above. The Petitioner asserted that it is the Beneficiary's experience performing [redacted] installations for two years that results in knowledge that is uncommon in the industry. The Petitioner also indicated that it had launched an interactive [redacted] training platform and that the Beneficiary had developed approximately 30 percent of the training courses for the platform and that he has delivered training courses to third

party companies, and that his knowledge contributed to the Petitioner's ability to obtain several third party contracts.

Although the Beneficiary gained experience during his employment with the foreign entity, the Petitioner acknowledges there are a number of companies that participate in the and that this product is the second largest product; thus, it is reasonable to believe that there are a number of companies that specialize in this particular technology. The Petitioner does not sufficiently explain the difference, if any, between the duties of a typical system/software engineer with experience in and its DevOps engineer with similar experience. Further, the Petitioner does not sufficiently articulate the specific nature of the knowledge and training required to perform the deployment of technology using its tools and methodologies. That is, the record demonstrates the Beneficiary's experience in deploying the platform and related software; however, the record does not establish that the knowledge gained while working at the foreign entity includes knowledge that is specific to the petitioning entity's organization. For example, the Petitioner did not provide sufficient detail regarding its services in providing installations to demonstrate that its services are substantially different or more complex than the services provided by other companies in relation to the product.

We note the Petitioner's assertion that it conducted an online search for a DevOps Engineer and engaged a staffing agency to locate applicants for this position. The Petitioner noted that the online search resulted in 305 profiles of these specialists in the United States, but that all of the DevOps engineers had a very basic level of knowledge of and thus did not match the skillset required to work at the Petitioner. However, the Petitioner does not detail their deficiencies or sufficiently explain whether they could be trained or how long it would take to train these specific applicants. Additionally, although the record includes a one-page sheet from a job website listing titles of positions it does not include any information regarding potential applicants. Similarly, the Petitioner indicated that it interviewed 20 candidates provided by a staffing company, and only one individual partly matched their requirements who they hired. However, that candidate's experience was not in DevOps, but rather in software development. The Petitioner does not explain or otherwise substantiate why this individual or others could not be trained to perform DevOps duties.

The record shows that the Beneficiary was hired as a software engineer and when the Petitioner began working on services the Petitioner assigned the Beneficiary to this particular platform. The evidence does not support the Petitioner's claims that the Beneficiary acquired his specialized knowledge through his experience with the Petitioner's products, but rather that his work experience developed his knowledge of this third party product. We have also considered the Petitioner's claim that it would take "between 5 to 7 years to teach an outsider to perform the job duties [the Beneficiary] performs today," and that "it can take anywhere between 8 to 10 months to acquire the specialized knowledge and skills necessary to work with alone." However, the Petitioner does not offer a cogent explanation of how it arrived at these numbers. Although the Petitioner requires a number of years of experience in Linux and Windows

systems administration, and knowledge in integrating [redacted] and cloud infrastructure, any company performing work with the [redacted] technology would reasonably require its employees to have certain systems administration and software engineering skills, including knowledge of [redacted] technology. Some of this technology, Linux and Windows, for example has been around sufficiently long so that many individuals in the software/systems engineering field would have similar knowledge. The Petitioner also does not distinguish its services or methodologies from those of other companies within this industry. The Petitioner does not identify what is specific to its methodology or process that is distinct or uncommon in comparison to that found within this industry and thus would require lengthy training at the Petitioner. The record does not include probative evidence that it would take between 8 to 10 months to acquire the knowledge and skills to specifically work with the [redacted] platform as claimed by the Petitioner.

We note, for example, that among the several different [redacted] training programs currently available in the United States, the [redacted] website offers training for beginners which requires about 20-30 hours of training for an individual with a background in software engineering and an additional 40-50 hours for developers. *See* [redacted]. Thus, it appears that work in the [redacted] domain does not require specialized knowledge of the Petitioner's services or tools, but can be acquired by a similarly experienced systems/software engineer within a reasonable amount of time.

We observe further that the Petitioner initially stated that it would require only two months to train a U.S. software engineer in Belarus to obtain the initial knowledge of this platform for U.S. employment with the Petitioner. This undermines its claim that it would take between 8 to 10 months to acquire knowledge and skills to work on its [redacted] services. The record does not support the Petitioner's claim that there are a limited number of systems/software engineers who perform deployment, integration, and maintenance of [redacted] technology or that the use of the Petitioner's methodologies, if any, requires extensive training to deploy [redacted] in international markets.

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 a specific product. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other engineers, 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 position.

A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In

other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). For the foregoing reasons, the record does not establish that the Beneficiary, more likely than not, possesses special knowledge of the company's services and their application in international markets.

B. Advanced Knowledge

The Petitioner also asserts that the Beneficiary's knowledge is advanced when compared with its other employees, both at the foreign entity and in the United States. Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the Petitioner 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.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions. The Petitioner submitted the foreign entity's organizational chart depicting the Beneficiary's position in the research and development department. The Beneficiary is one of ten employees designated as DevOps Engineers. The department includes an additional four employees identified as Engineers. The record also includes a list of the employees in this department identifying their education and salary. A separate list identifies the duties of the foreign entity's employees in this department. The listed duties generally identify the different technologies, applications, and platforms the employees work with. Neither list indicates when the employees were hired or how long they have been employed within this department.

In response to the Director's RFE, the Petitioner stated that it had developed an advanced level of knowledge within the company and "the Beneficiary played a key role in developing this knowledge." The Petitioner noted that it participated in frequent meetups and workshops, that the Beneficiary has spoken at industry-leading conferences, and that he has provided trainings to several major companies. However, the record does not include probative evidence supporting the Petitioner's claims. The Petitioner also asserts that the Beneficiary's knowledge was instrumental in obtaining a number of contracts with major companies. We observe that any company with skilled employees would tout their experience to obtain contracts.

The Petitioner also listed nine of the DevOps engineers and asserts that only the Beneficiary and one other DevOps engineer possess an "Advanced" level of knowledge of . The Petitioner describes the remaining seven employees as having a "Medium" level of knowledge of The Petitioner does not advise on how it determined the seven employees have only a medium level of knowledge when compared to

the Beneficiary. For example, the Petitioner does not compare the length of time these employees have been with the company or otherwise explain why it ascertained their knowledge was at an intermediate level. The Petitioner does not explain how the DevOps engineers knowledge of applications, tools, and technology is distinguishable; rather, all the DevOps engineers appear to participate in work relating to Technology.

The fact that the petitioning organization delegates limited responsibilities to some of its engineers and assigns more responsibilities to others does not establish that the Beneficiary possesses special or advanced knowledge or that he was employed in a position involving special or advanced knowledge. Although the Petitioner asserts that the Beneficiary's knowledge is greatly developed or further along in progress, complexity, and understanding than that generally found within the Petitioner (or the foreign entity), it does not provide the underlying basis for this claim. The Petitioner does not provide any reasoning on why these other individuals could not, with a minimum amount of training if any, gain additional knowledge of . The record does not include sufficient evidence to conclude that the Beneficiary's knowledge is more advanced than the foreign entity's other DevOps engineers.

Although we recognize that the other DevOps engineers may focus on different portions of the services, their knowledge of the applications and platforms, as well as the petitioning organization's processes, procedures, tools, and methodologies when configuring, integrating, and maintaining the product would likely be similar. The Petitioner has not submitted sufficient evidence distinguishing the Beneficiary's experience from other similarly employed engineers and that the Beneficiary's knowledge is more advanced than its employees in similar positions.

The Petitioner notes that was new when the Beneficiary was assigned to this technology and that there was no training available. Thus, he acquired his knowledge through practice. However, the Petitioner does not specifically identify when the Beneficiary's "practice" was sufficient to develop into specialized knowledge. Thus, it is not possible to ascertain from the record, when the Petitioner is claiming that the Beneficiary's knowledge of the Petitioner's processes, procedures, tools, and services as they relate to the technology became more advanced than other engineers, or other DevOps engineers within its employ. Accordingly, the record is also insufficient in establishing that the Beneficiary's position involved advanced knowledge of the Petitioner's processes, procedures, and services for at least one continuous year in the three years preceding the filing of the petition.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the Beneficiary may fill a role beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his specialized knowledge. As noted in the memorandum, the "characteristics" listed by

the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13. It is clear that the Petitioner considers the Beneficiary a valuable employee who excels at his position. However, the record does not sufficiently distinguish the Beneficiary's knowledge from that of other similarly employed workers within the petitioning organization or within the Petitioner's industry. For the foregoing reasons, the record does not establish that the Beneficiary possesses special or advanced knowledge.

III. VISA REFORM ACT

Finally, the Director determined that the Beneficiary's proposed off-site assignment at the worksite of an unaffiliated employer was not in compliance with the terms of the L-1 Visa Reform Act of 2004 (Visa Reform Act). The Visa Reform Act requires, among other things, that any prospective L-1B beneficiary who will be primarily located at the worksite of an unaffiliated employer must be: (1) controlled and supervised principally by the petitioning employer or a qualifying organization; and (2) provided in connection with the provision of products or services for which specialized knowledge specific to the petition employer is required. *See* section 214(c)(2)(F) of the Act.

As the record does not establish that the Beneficiary possesses specialized knowledge as required by this visa classification, we do not need to discuss the section 214(a)(2)(F) issues. Accordingly, we do not reach the question of whether the Beneficiary's work is at an unaffiliated employer's worksite or whether that work requires 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 he 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 A-A- LLC*, ID# 421315 (AAO July 5, 2017)