U.S. Citizenship and Immigration Services

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

MATTER OF [redacted] DATE: JULY 5, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a firm engaged in the development and financial management finances indices, seeks to temporarily employ the Beneficiary in the position of senior systems support engineer for the [redacted] 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 Vermont Service Center denied the nonimmigrant petition concluding that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed by the Petitioner's foreign parent company in a position involving specialized knowledge, and that he will be employed in the United States in a specialized knowledge capacity. The Director also questioned whether the Beneficiary's assignment to an unaffiliated employer's worksite would require specialized knowledge specific to the Petitioner.

On appeal, the Petitioner asserts that the Beneficiary, an employee of its Sri Lankan affiliate, has three years of "company-specific specialized knowledge experience" as it relates to the company's proprietary trading platform technology, which was developed by the affiliate. The Petitioner contends that only the employees who are based in the Sri Lanka office have the specialized knowledge required to apply the company's proprietary technology to U.S. customers, and that this knowledge is required for the Beneficiary's assignment at the unaffiliated employer's worksite.

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

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a position involving specialized knowledge, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. 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.

The 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 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 filed on Form I-129, Petition for a Nonimmigrant Worker, must be accompanied by evidence establishing 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; the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; the beneficiary's prior education, training and employment qualifies him/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

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

In the denial decision, the Director found the record lacked evidence to demonstrate that the Beneficiary's foreign and proposed positions require either special knowledge of the company's products that is uncommon in the industry and could not be easily transferred, or an advanced level of knowledge or expertise of the organization's processes and procedures. Further, with regard to the Beneficiary's proposed position, the Director found that Beneficiary's assignment to the worksite of an unaffiliated employer would not necessarily require specialized knowledge that is specific to the Petitioner.

On appeal, the Petitioner contends that the Beneficiary is only one of the few employees who acquired knowledge of its proprietary trading platform, as he worked at the Sri Lankan office that was responsible for creating the proprietary automated trading system. The Petitioner restates the Beneficiary's job duties and the corresponding processes and tools used to execute those duties, and re-

states its claim that it would take approximately three years to transfer the Beneficiary's knowledge to another employee, thus making it critical for the Beneficiary to be transferred to the United States to provide services for the Petitioner's clients.

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 or would be employed in the United States in a specialized knowledge capacity.

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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

A. Special Knowledge

The Petitioner claims that the Beneficiary has special knowledge of a proprietary product – [redacted] – that was developed by the foreign affiliate in Sri Lanka. The Petitioner states that the Beneficiary acquired this knowledge through a combination of formal classroom training, on-the-job training, and experience working for the foreign affiliate. As noted above, the Petitioner also claims that it would take approximately three years to transfer this knowledge to another employee.

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.

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.

The Petitioner is a developer of trading platforms and manager of financial indices. In its supporting statement, the Petitioner stated that the Beneficiary will be employed as a senior systems support engineer and that he would use his specialized knowledge of the proprietary trading platform and

technologies to implement customized systems that are specifically tailored to meet customer needs. The Petitioner further stated that the Beneficiary would support a customer's ongoing operations by using "advanced technical, platform, analytical and troubleshooting skills" to respond to the customer's technical, performance, fault tolerance, and operational issues and to ensure "proper execution and monitoring operational tasks and events in the application environment." The Petitioner indicated that the Beneficiary would assume a "key position [which] relies heavily on a broad range of specialized knowledge and related experience with the Company's proprietary technologies that can only be acquired through previous experience with an affiliated entity."

In addition, the Petitioner provided the following statement regarding the Beneficiary's employment with the foreign entity:

> [The Beneficiary] has been responsible for working with end-users and engineers to provide support across multiple environments. He has been responsible with [*sic*] troubleshooting and resolving complex IT issues with users of our proprietary systems . . . . [H]e is also responsible for identifying ways to improve our processes. [The Beneficiary]'s primary duties have included providing accurate, timely, and consistent technical support to end users on a variety of issues; identifying, researching, and resolving technical problems; documenting and monitoring incidents to ensure timely resolutions; and informing users on progress when requested. [The Beneficiary] provides implementation and support to the [redacted] for various projects and clients . . . .

The Petitioner emphasized the Beneficiary's "first-line application support role," noting that he has been placed on-site with clients "to escalate, document, perform resolution steps and follow-up with [foreign entity] and client operations teams" and has been working closely "with customers, implementation team and engineering team to handle customer issues."

The Petitioner also provided evidence of the Beneficiary's education, which includes a baccalaureate degree in information and communication technology from a Sri Lankan university in 2010, various certificates in information, networking, and communication technologies awarded prior to 2010, and two certificates issued by [redacted] indicating that the Beneficiary was qualified as a System Administrator and as a Certified Engineer in [redacted] in 2013. The Petitioner did not mention or document any company-specific training in its original submission.

The Director issued a request for evidence (RFE), in which she asked for a letter from the Petitioner and from the foreign employer describing the Beneficiary's specialized knowledge duties along with the foreign entity's organizational chart reflecting the names, job titles, duties, education levels, and salaries of the members of the Beneficiary's department. The Petitioner was asked to explain how the Beneficiary's knowledge is different from that of others in similar positions in the industry; describe the product, service, equipment or process in which he has specialized knowledge; and to state the minimum time required to obtain this knowledge, including training and actual experience accrued after the completion of training.

The Director also asked the Petitioner to document the Beneficiary's training history by disclosing any training courses taken while working for the foreign entity, including the duration of the course, the number of hours spent daily taking the course, the course completion dates, and completion certificates for each course taken.

In response, the Petitioner provided a letter claiming that the Beneficiary has specialized knowledge of the company's trading platform and the proprietary tools used to customize that platform to meet clients' business needs. The Petitioner submitted a more detailed description in the form of a chart, which lists the Beneficiary's proposed U.S. duties and the "specialized knowledge processes/tool/product" used to carry out the listed duties, claiming that the Beneficiary gained "extensive experience" in the company's trading platform during the course of his employment with the Sri Lankan company.

The Petitioner explained that it needs the Beneficiary to successfully implement its proprietary trading platform with the client's system and claimed that the Beneficiary's completion of "in-depth and substantive training, exposure and experience with [the foreign entity's] business practices, processes, and proprietary platform tools and products" will enable him to more effectively address individual clients' IT needs using the company's proprietary tools. Although the Petitioner provided a list of 12 trainings it claims the Beneficiary completed in its various "technical processes," "functional procedures," and "operational methods," it did not provide the detailed information requested regarding the nature and length of the training, or evidence of his completion of specific courses. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also provided a "Letter of Agreement" outlining the onsite support services the foreign entity agreed to provide to its named client. The Agreement indicates the foreign entity contracted to provide two consultants at each of three worksite locations – for a total of six consultants – for the purpose of working with the client's personnel and its database administrators to assist with "[d]aily operations," "[e]vent[-]based operations," and "[o]ther activities." Although the Petitioner claimed that the Beneficiary is needed to help with "major system implementation projects," the agreement makes no mention of any "major projects," and outlines job duties that appear to involve routine support functions.

While we acknowledge the Petitioner's submission of a detailed job description delineating the job duties the Beneficiary has performed during his employment abroad and would continue to perform in his proposed position with the U.S. entity, we find that the Petitioner did not respond sufficiently to the RFE, which asked the Petitioner to provide the foreign employer's organizational chart reflecting the names, job titles, duties, education levels and salaries of the colleagues within the Beneficiary's department. The RFE also instructed the Petitioner to distinguish the Beneficiary's knowledge from that used industry-wide, to state whether the Beneficiary's knowledge is generally found in the industry and whether it can be taught only through prior experience with the organization, and to provide an explanation of the Beneficiary's training history, including any courses taken to acquire the specialized knowledge, the number of hours spent taking the course(s),

and the completion date(s) of such course(s). In other words, the Director sought an understanding of precisely how the Beneficiary gained the knowledge that the Petitioner deems as special. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As previously stated, determining whether a beneficiary's knowledge is "special" requires a comparison of that knowledge to the knowledge of others who hold comparable positions in the Petitioner's industry. The Petitioner bears the burden of showing that the Beneficiary holds knowledge that is noteworthy or uncommon compared to his colleagues outside the organization. By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. While training in the Petitioner's specific trading platform may not be available to those outside the Petitioner's group of companies and to those clients who have licensed it, the Petitioner must still establish that the knowledge itself is different from that generally known by software professionals working with similar technologies and not easily imparted to another professional who has the requisite trading systems' functional and technical knowledge. The Petitioner explained that its platform is "more flexible than other current trading systems," but did not otherwise attempt to differentiate the technology. Therefore, we cannot compare the Beneficiary's knowledge to that held by other similarly-employed professionals working in the Petitioner's industry.

We also look to the amount of training and experience required to perform the duties in order to evaluate whether the knowledge required is distinct from that commonly held in the industry and could not be readily transferred to a similarly employed worker. However, aside from the Petitioner's repeated claims that the Beneficiary's training and work experience with the foreign entity resulted in his acquiring specialized knowledge, the record contains only vague information and lacks evidence that consistently specifies what actual steps are required to obtain the knowledge that the Petitioner claims is specialized. Also, the Petitioner stated in its support letter that the Beneficiary possesses "a broad range of specialized knowledge," which he gained as a result of his "in-depth experience" with the foreign entity's proprietary technologies; however, in response to the RFE, the Petitioner added training as a prerequisite for the Beneficiary's positions with the foreign and U.S. employers.

The Petitioner also listed the various tools, systems, and processes the Beneficiary would use to carry out the above-listed job duties and claimed that the Beneficiary attended 12 proprietary trainings and "completed a lengthy series of internal/in-house training courses and on-the-job training which contributed significantly to his ability to obtain and apply an advanced level of specialized knowledge of [the Petitioner]'s [redacted] processes and procedures." In an effort to document the Beneficiary's acquisition of specialized knowledge, the Petitioner resubmitted the [redacted] certificates and evidence of the Beneficiary's education and vocational training, and added a lengthy informational pamphlet, which consisted of the foreign entity's manuals for application deployment and application operations, procedures manuals for "EOD" and "SOD" and system failure and recovery, a guide to market operations workstations, a release installation manual, an operations scripts configuration and usage guide, and various user manuals.

We find, however, that the Petitioner's submission of a lengthy informational pamphlet, which included the various tools and procedural manuals previously listed, does not provide evidence of the Beneficiary's completion of classroom and on-the-job training or establish the length of any training he received. While the Petitioner indicated that an informational pamphlet and certificates were submitted to corroborate the claim that the Beneficiary completed "numerous [redacted] specific courses" during his three-year employment with the foreign entity, none of the manuals in the informational pamphlet identify any courses by name, list the number of hours needed to complete each course, or include the Beneficiary's name to indicate that he completed the courses that the Petitioner previously listed. Again, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376. The Petitioner has not established the length of training and experience required to obtain the claimed specialized knowledge.

We acknowledge the Petitioner's submission of two 2013 certificates issued by [redacted] however, the Petitioner it did not explain how these widely available certifications establish his specialized knowledge of the foreign entity's proprietary trading platform. In fact, the Petitioner provided little information delineating the specific courses the Beneficiary needed to complete in order to gain the claimed proprietary knowledge of the trading platform, nor did the Petitioner list the specific on-the-job training the Beneficiary received to gain such knowledge. While the Petitioner provided a list of courses the Beneficiary is claimed to have completed in the process of obtaining the claimed specialized knowledge of the foreign entity's trading platform, it provided insufficient evidence of that training. We cannot determine when or how the Beneficiary gained the claimed specialized knowledge and therefore cannot determine that the knowledge can only be acquired through considerable training and experience.

In sum, while the Beneficiary may be a valuable employee of the company and an experienced senior systems support engineer, the evidence of record is insufficient to establish that the Beneficiary's knowledge is "special," as defined in the Act and regulations. The Petitioner has submitted little evidence to set the Beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. Due to these evidentiary deficiencies, the record does not establish that he possesses knowledge that is special and that he has been or would be employed in a specialized knowledge capacity.

B. Advanced knowledge

We have also considered whether the evidence establishes that the Beneficiary possesses advanced knowledge. 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 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. 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.

In the RFE, the Director asked that the Petitioner and foreign employer provide a detailed explanation of the processes and procedures in which the Beneficiary is claimed to have specialized knowledge and to support the explanation by specifying: how long it takes to train an employee to use the specific tools, procedures or methods; how many workers within the organization possess similar knowledge; and how the Beneficiary's training differed from the core training provided to other employees.

In the RFE response letter, the Petitioner stated that it would take another employee two years to learn the foreign entity's proprietary trading platform and an additional year to learn the organization's proprietary technologies. The Petitioner stated that there are few employees with the Beneficiary's level of knowledge and experience because "the platform technology has been created and serviced out of our offices in Sri Lanka, where [the Beneficiary] has been working for the past three (3) years."

A determination of whether a beneficiary's knowledge is "advanced" inherently requires a comparison of his or her knowledge against that of others in the petitioner's organization. Here, the Petitioner repeatedly claimed that the Beneficiary "is one of only few [foreign entity] employees with this level of institutional or specialized knowledge" in a proprietary application. The Director had requested an organizational chart identifying the Beneficiary's colleagues by name and position title and listing their respective duties, education histories, and salaries. However, the Petitioner did not provide this information, which is needed to effectively compare and differentiate the Beneficiary from others within the same organization. Although the Beneficiary's job description reflects that he is an experienced systems support engineer, the Petitioner has not specifically explained how his knowledge and experience sets him apart from his colleagues within the company, such that his knowledge would qualify as "advanced" for the purposes of the L-1B visa classification. Without appropriate explanations or evidence, the Petitioner cannot meet its burden of establishing that the Beneficiary's knowledge of the company's processes and procedures is advanced compared to others within the organization.

As the Petitioner has not meaningfully differentiated between the Beneficiary and other employees with similar knowledge of its Fixed Income trading platform, or sufficiently documented the amount of training or experience required to work with this product, we must conclude that, while the Beneficiary is a skilled employee, these skills have not been shown to constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and section 214(c)(2)(B) of the Act.

The record does not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Because the Petitioner has not met the threshold requirement of showing that the Beneficiary possesses specialized knowledge, we need not make a separate finding on the corollary issue of whether the Beneficiary's employment offsite at the customer's location would rely primarily on specialized knowledge of the Petitioner's products or processes.

## III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses specialized knowledge, that he was employed abroad in a position involving specialized knowledge, or that he would be employed in the United States in a specialized knowledge capacity.

**ORDER**: The appeal is dismissed.

Cite as *Matter of* [redacted], ID# 94404 (AAO July 5, 2017)