U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-, LLC

DATE: JULY 5, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which manufactures and customizes machinery used to manufacture precision metal parts, seeks to temporarily employ the Beneficiary as a manufacturing engineer 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 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director incorrectly applied the law and established guidance regarding specialized knowledge and made errors of fact by failing to consider all relevant evidence submitted in support of the petition.

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.* 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. BACKGROUND

The Petitioner's group, headquartered in Germany, designs and produces machinery and machining systems used for the manufacture of precision metal parts for the automotive, aerospace, and other industries. The Petitioner, established in 1994, has a staff of 90 employees and serves the group's North American customers. The Petitioner explained that machinery purchased by its U.S. and Canadian customers is manufactured in Germany, then customized in the United States before being installed, configured, and tested at customer facilities. The Petitioner's Canadian branch office, which has seven employees, hired the Beneficiary in January 2016 and currently employs him as a manufacturing engineer.[1] The Petitioner now seeks to transfer the Beneficiary to the United States on an intermittent, as-needed, basis to serve in the same role at an annual salary of $85,000.

The Beneficiary completed a four-year "Electro-mechanical Craftsperson" apprenticeship with a [redacted] Technical Training Centre in Wales, and has an Advanced General National Vocational Qualification in engineering. Just prior to joining the Petitioner's Canadian branch, he worked for one of the company's Canadian clients, an automotive precision parts manufacturer, in "various roles" for a period of seven years.

III. SPECIALIZED KNOWLEDGE

The sole issue to be addressed is whether the Petitioner established, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in position involving specialized knowledge,[2] and that he will be employed in a specialized knowledge capacity in the United States.

Under the statute, a beneficiary is considered to have specialized knowledge if he or she has: (1) a "special" knowledge of the company product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the company. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge.

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).

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

[1] As discussed further below, the record contains conflicting statements regarding when the Beneficiary assumed the position of manufacturing engineer.

[2] The Petitioner did not claim, in the alternative, that the Beneficiary was employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

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 an employee is able to gain specialized knowledge within the organization, and explain how and when the individual beneficiary gained such knowledge.

For the reasons discussed below, we conclude that there is insufficient evidence establishing that the Beneficiary possesses specialized knowledge.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, a petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.

Here, the Petitioner states that the Beneficiary possesses special knowledge of the Petitioner's proprietary machines (specifically [redacted] machines), automation systems, programming languages, manufacturing processes, and internal systems. The Petitioner maintains that this knowledge distinguishes him from other similarly employed workers in the industry "due to the complexity and distinctness" of the machinery.

The Petitioner emphasizes that its machines are proprietary and stated that "each machine requires weeks of training, at a minimum," and that "[t]his training can only be undertaken by an individual who already has a fairly sophisticated general knowledge of electrical and mechanical engineering, since the on-the-job training is highly specific to the particular [company] machine in question." However, the Petitioner did not describe or document its internal training program or indicate the amount and type of training its engineers and other technical specialists are required to undertake to perform their job duties in support of its claim that knowledge of its proprietary machines constitutes special knowledge that could not be readily transferred to others. Most companies that manufacture comparable machinery for precision manufacturing can likely describe their products as "complex" and distinct in some way from that produced by their competitors. The Petitioner did not elaborate with respect to what makes its products particularly complex or distinct. Further, the Petitioner has not explained why the "weeks of training" associated with each type of machine should be considered knowledge that could not be readily transferred to another engineer in the industry. Since the Petitioner did not specify the amount of training in any detail, we cannot rule out the possibility that the training could take as little as two weeks.

It is the Petitioner's burden to establish why the knowledge required to configure, program, install, and service its products is truly different or uncommon compared to the knowledge generally held by an experienced engineer in this industry. The Petitioner cannot meet its burden by claiming that the Beneficiary's knowledge is proprietary or unique. We acknowledge that the Petitioner submitted materials describing its products, a list of projects on which the Beneficiary has worked, examples of the Beneficiary's work product, and excerpts of machine language/coding that the Beneficiary uses in his position in support of its claims that the work is "inherently complex." However, we cannot determine how the type of work he performs would distinguish his knowledge from another employee in the Petitioner's industry, in which any engineer would be expected to perform technically complex work. The Petitioner did not, for example, explain the amount or type of internal training the Beneficiary completed, if any, in machine language/coding in support of its claim that the ability to perform this work requires special knowledge specific to the company.

The record also contains conflicting information regarding the Beneficiary's own employment history within the Petitioner's Canadian branch office, which makes it difficult to determine when or how the Beneficiary gained his claimed special knowledge of the company's proprietary products and related systems. The Petitioner initially stated that he has held the position of manufacturing engineer in Canada since January 2016. The Petitioner's engineering manager repeated this statement in a letter submitted in response to the Director's request for evidence (RFE). However, the Petitioner submitted a second letter in response to the RFE, from its human resources manager, which states that the Beneficiary was hired in Canada "to fulfill the role of machine setter" and that he "has been working in a role that explicitly relies upon his specialized knowledge since at least March 2017" when he assumed the "expanded role" of manufacturing engineer. Further confusing matters, the Petitioner submitted an organizational chart dated August 29, 2017, which depicts the Beneficiary as both a "manufacturing shop" employee in the United States and as a manufacturing engineer in Canada.

The Petitioner does not provide an explanation for these anomalies or any personnel records which would clarify which positions the Beneficiary has held or when he held them. This distinction may be important, however, because it appears that the Petitioner considers the manufacturing engineer position as one involving specialized knowledge, while this may not be the case with the "machine setter" role. On the other hand, if the Beneficiary was in fact initially hired as a manufacturing engineer, this would indicate that he was expected to fully perform the duties based on his existing background in precision manufacturing, while acquiring any proprietary knowledge on the job.

While the company letters referenced above consistently convey that it took more than one year for the Beneficiary to acquire specialized knowledge, the Petitioner has not adequately documented or detailed when or how this acquisition occurred. The Petitioner indicates that when he was first hired, the Beneficiary was already "well-versed in manufacturing engineering," and with "the process of installing, configuring, troubleshooting, and retooling precision manufacturing equipment." The Petitioner further explained that he "immediately began attaining specialized knowledge of [the Petitioner's] specific products, services, and processes, and he was able to begin on the most technical issues immediately." Based on this information, it appears that a new hire who is already trained and experienced in the Petitioner's industry can readily acquire knowledge needed to install, configure, troubleshoot, and service the Petitioner's own products.

Further, we note that the Petitioner has described the Beneficiary's own company-specific training in piecemeal fashion, and has not fully documented the nature, type, and scope of the training. The Petitioner highlights only two instances in which the Beneficiary received training since joining the company. The first is when he was "first hired by [the Petitioner] in Canada to fulfill the role of machine setter." The Petitioner noted that, at the time, it was experiencing a shortage of qualified personnel to configure 34 standard modular machines for a major client in Canada. It explained that it brought in three experienced machine setters from Germany to perform the work, and they provided the Beneficiary with "several months of high specialized on the job training . . . on our unique [redacted] machines." The Petitioner noted that, by working with the German employees side by side for three months, the Beneficiary was able to complete the project on his own.

The Petitioner again highlighted that "the complexity of just one of our machines is such that it requires extensive specialized, on-the job training in order to have an understanding of the machine sufficient to set it up at the customer site." The Petitioner noted that the Beneficiary "acquired knowledge of a broad range of [company] machines" during his first year and a half of employment in Canada, and "advanced knowledge" of the company's automation systems, but did not provide details or documentation of any additional training he completed during this time. Nevertheless, the Petitioner indicated that by the end of this period his knowledge was so advanced that he could advise other employees of "design issues, quality issues, installation, and setup." The Petitioner's conclusory claims that the Beneficiary gained special knowledge over the course of his first year and a half of employment are insufficient.

The Petitioner identified a second period of training that the Beneficiary completed after March 2017, noting that he was sent to its German parent company's facilities "for specific training on [company] machinery which had been sold to another major client" for the client's manufacture of disc brake systems. The Petitioner stated that this training was "appropriate only for somebody who already had specialized and advanced knowledge of [the Petitioner's] machines" but did not explain why this was the case. The Petitioner indicated that this client already had a number of facilities in Europe and the United States, but indicated that it was necessary for one of the Petitioner's Canadian personnel to acquire specialized knowledge of the manufacturing process particular to the client's brake disc system, as the client was setting up manufacturing operations in Canada. The Petitioner did not describe the nature, length, or scope of the training the Beneficiary received in Germany in support of its claim that this training contributed to his special knowledge. While the Petitioner highlights the fact that the Beneficiary was specifically chosen for this training, it also indicates that it needed a Canadian employee to complete it, and the record indicates that the Canadian branch was minimally staffed.[3] The Petitioner did not sufficiently explain why the Beneficiary's selection for the training reflected his status as a specialized knowledge employee.

Overall, while there may not be employees outside of the petitioner's organization with the exact knowledge the Beneficiary possesses, the record does not demonstrate how the knowledge the Beneficiary gained is significantly different from that held by workers in similar positions in the Petitioner's industry. The record does not establish that the Beneficiary possesses special knowledge of the company's products, systems, and techniques.

[3] The organizational chart dated August 2017 shows only four staff in the Canadian branch operations, although the Petitioner stated there were seven employees in Canada at the time this petition was filed.

B. Advanced Knowledge

Determinations concerning "advanced knowledge" require a review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given beneficiary has knowledge of or expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

In addition to claiming that the Beneficiary possesses knowledge that is uncommon in the industry, the Petitioner asserts that the Beneficiary "has knowledge of certain aspects of our manufacturing systems that is more advanced and further developed than that held by other employees." However, there is some ambiguity in the record with respect to the nature of the Beneficiary's advanced knowledge and with respect to the Petitioner's comparisons between the Beneficiary and other company employees.

The Petitioner initially emphasized the Beneficiary's work in Canada, noting that "he has gained specialized knowledge that no other U.S. employee holds regarding how this equipment must be maintained and designed in that market." The Petitioner also stressed the Beneficiary's previous work experience with one of its Canadian clients, noting that he is "the only employee who knows both sides of the work needed to be done, that of [the Petitioner] as well as that of [the client]." The Petitioner explained that it sought the Beneficiary's presence in the United States during setup and design prior to delivery, but noted that he would also assist U.S. staff with "other Canadian clients."

Therefore, based on the initial statement from the Petitioner, it appeared that the Beneficiary would be coming to the United States as needed to assist with the customization and set up of machinery that would ultimately be delivered to his former employer and other Canadian clients, and then return to Canada for the installation and servicing of the equipment. The Petitioner emphasized that the U.S. staff do not have experience working with end-users in Canada, although it did not identify how the Canadian market and client differs to the extent that setting up the company's equipment there requires specialized knowledge.

In addition to highlighting the Beneficiary's familiarity with the Canadian market and the Petitioner's clients there, the Petitioner also stated that the Beneficiary has "an ability to design, formulate and improve the manufacturing process" that is not held by any other company employee worldwide. The Petitioner did not elaborate as to how the Beneficiary alone, in an international manufacturing business with 1600 people, acquired this advanced knowledge. Given that the primary business of the Petitioner's group is to manufacture machinery and manufacturing systems that will help its clients achieve their manufacturing goals, it is unclear how this knowledge would be uniquely held by the Beneficiary, an employee who has been with a small branch of the organization for less than three years.

In response to the RFE, the Petitioner also appeared to change its claims regarding the purpose of the Beneficiary's temporary transfer and the need for his advanced knowledge in the United States. The Petitioner's initial statement indicated that he would come to the United States to work on early stages

of projects that would ultimately be installed in Canada, and which would rely on his knowledge of the needs of those clients. In response to the RFE, however, the Petitioner stated that the Beneficiary "will visit the U.S. to work on U.S. projects only when they are beyond the current expertise of [the Petitioner's] U.S. employees so that he can directly assist and impart his knowledge to these employees."

When instructed to submit information that would allow USCIS to compare the Beneficiary's knowledge with that of other company employees, the Petitioner ultimately made comparisons between the Beneficiary and certain U.S.-based employees. In support of its claim that the Beneficiary has advanced knowledge, the Petitioner noted he is "fully knowledgeable of multiple phases of installing and launching [the Petitioner's] automation systems for customers, including the manufacturing process, machine setup, NC programming, and service." The Petitioner stated that most employees can perform only one of these phases while the Beneficiary can perform all four functions.

The Petitioner submitted two tables comparing the Beneficiary to other employees within the U.S. engineering and manufacturing departments. According to the Petitioner's engineering manager, each table "compares our most advanced employees from different departments and demonstrates that the skills [the Beneficiary] holds are internally more advanced than any other professional."

One of the submitted tables compares the Beneficiary's position title, salary and a set of specific skills to those of other employees, including a "supervisor, tooling, & workholding design," an NC (numerical control) programmer, an electrical commissioning supervisor, a process set-up supervisor, and two CNC (computer numerical control) setters. The specific skills or characteristics listed include NC programming; using internal systems to verify bill of materials and drawings; making adjustments to machine geometries; debugging and verifying manufacturing cells and automation systems; having "good working relationships" with engineers and process technicians in Germany; recognizing and resolving tools and work holding related difficulties during setup; developing solutions to improve manufacturing processes; and "experience working with various parties to reach equipment and qualification acceptance."

The Petitioner indicates that the Beneficiary possesses all of these skills, while the other listed employees possess between zero and four of the eight listed items. Notably, none of the employees to whom the Petitioner compared the Beneficiary have the job title "manufacturing engineer" nor do any of them have "engineer" in their job titles. Further, it is unclear why possession of the identified skills would be considered "advanced" within the company. Rather, it appears that the Beneficiary's particular skillset would be gained by any employee with experience installing and setting up machines at customer locations. Given that the Petitioner's business model is to receive machinery from its German parent, customize it, and install and set it up at customer locations in North America, the Petitioner's claim that the Beneficiary, after less than three years of experience with the small Canadian branch, is the only employee in North America, or within the international organization as a whole, with the skills to carry out many of these functions requires additional explanation. As noted, the Petitioner was established in 1994 and has over 90 employees.

The Petitioner submitted a second table comparing the Beneficiary's knowledge of specific company products to that possessed by other company employees, including an NC programmer, two process engineers, a process set-up supervisor, and two CNC setters. The specific machines the Petitioner identified include: [redacted] The Petitioner indicates that the Beneficiary has experience with all of the listed machines, while the other employees have knowledge of only one to four of the listed machines. As noted, the record does not identify with specificity the amount or type of training the Beneficiary completed with respect to any one machine in support of its claim that simply having experience with a breadth of different equipment constitutes advanced knowledge within the company; in fact, the Petitioner did not originally claim that the Beneficiary has specialized knowledge with respect to several of the machines listed in the chart, such as [redacted] and [redacted] The other listed employees may very well have experience with machines that the Beneficiary has never used and we cannot determine based on this selective comparison that the Beneficiary's knowledge is advanced compared to his peers. Further, the Petitioner has not submitted information that would allow us to compare the other employees' relative training and experience within the company.

It is clear that the Petitioner considers the Beneficiary to be a valuable and productive employee, but it has not sufficiently shown that his knowledge of company products, processes, and procedures is advanced compared to other similarly employed-workers within the company, or that he possesses special knowledge that is different from what is generally held in the Petitioner's industry.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether the Beneficiary has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of E-, LLC,* ID# 4058883 (AAO July 5, 2019)