U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8775103

Date: JULY 13, 2020

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a designer and installer of proprietary roofing and facades, seeks to temporarily employ the Beneficiary as a project superintendent in the United States 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 Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish that the Beneficiary's foreign employer was doing business as defined by the regulations. On appeal, the Petitioner contends that the foreign employer performs numerous multi-million dollar construction projects around the world and asserts it has provided sufficient evidence to demonstrate the foreign employer is doing business.

Upon *de novo* review, the Petitioner has submitted sufficient evidence on appeal to establish that the foreign employer is doing business as defined by the regulations; therefore, we will withdraw the Director's decision and remand it for the entry of a new decision. Notwithstanding our withdrawal of the Director's decision, we find that the record as presently constituted is not sufficient to demonstrate that the Beneficiary possesses specialized knowledge. We note that as a threshold matter, if the Beneficiary does not possess specialized knowledge, then his position abroad and in the United States would not involve specialized knowledge as necessary to qualify him.

The Petitioner indicates that it and the Beneficiary's foreign employer and its other affiliates worldwide are part of a corporate group specializing in [redacted] used to build "several hundred projects throughout the world." The Petitioner noted that its group of companies is considered the "market leader" in [redacted] and that it "offers clients a complete design and construction service, from initial concept through to scheme design, production, installation and facilities management." The Petitioner indicated that the global company invented this construction technology over 25 years ago, that this technology has been adopted by leading architects and engineers around the world, and that they have completed numerous projects ranging from Olympic venues to corporate atriums.

The Petitioner stated that the Beneficiary has been employed by the foreign employer since 2005 as a construction/project manager, explaining he oversaw "major installation projects, including the

design, management and installation projects for [the foreign employer], and managed high[-]profile client relationships." The Petitioner stated that the Beneficiary "gained comprehensive and thorough knowledge of the proprietary and highly confidential [redacted] System, including both [its] installation and maintenance." The Petitioner indicated the Beneficiary would act in a similar role in the United States as a project superintendent. It emphasized that the Beneficiary "possesses in depth knowledge of the [company's] business processes, policies, practices and its proprietary [redacted] products" and that he is a "key player" in establishing business for the company holding a "thorough understanding of the operating conditions and environment of [the company] around the world."

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 special 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).

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence that establishes whether 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.

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.

Determinations concerning "advanced knowledge" require 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. Also, 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.

As a preliminary matter, the Petitioner has not clearly articulated whether the Beneficiary's knowledge qualifies as special or advanced, or both. Further, the Petitioner has not sufficiently described the Beneficiary's knowledge. For instance, it vaguely stated that the Beneficiary held "in depth knowledge of the [company's] business processes, policies, [and] practices." However, the Petitioner did not detail or describe these processes, policies, and practices. The Petitioner also notably did not specifically articulate how long it took the Beneficiary to gain his knowledge or indicate how long it would take another one of his colleagues, or someone similarly placed in the industry, to obtain his level of knowledge. Again, 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.

Further, the Petitioner did not sufficiently articulate how the Beneficiary gained his advanced knowledge when compared to his colleagues or how his knowledge was set apart from them. In turn, the Petitioner did not adequately explain how the Beneficiary acquired his claimed specialized knowledge when compared to similarly placed colleagues in the industry. Determining whether knowledge is "advanced" or "special" inherently requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison. However, the Petitioner provided no such comparisons to set the Beneficiary apart from his colleagues, both within the company and throughout the industry. The Petitioner only generically indicated that the knowledge held by the Beneficiary is proprietary; however, knowledge being proprietary does not alone establish that it is specialized, as companies commonly hold specific knowledge within their particular industries.

For instance, the Petitioner indicated that the company invented its [redacted] construction technology approximately 25 years ago and that it completed hundreds of projects around the world. It also stated that it has over 300 employees around the world and maintains over 1500 installations utilizing its technology. The Petitioner submitted an organizational chart related to only one project the Beneficiary worked among many others. The chart from this one project reflected numerous other employees who would likely have knowledge of the company's [redacted] technology as well as its processes and practices, including a design project manager, a project manager senior to the Beneficiary, a contract manager, a logistics manager, steel manager, [redacted] mechanical manager, erection manager, site engineer, amongst others. As noted, this chart was reflective of only one project, while the Petitioner provided a substantial list of the Beneficiary's prior projects and others completed by the company around the world. Therefore, without further detail and information, it is reasonable to conclude that these other projects included several other colleagues working in roles requiring high levels of knowledge in [redacted] Without detailed comparisons of the Beneficiary against his colleagues, it is not clear that his years of experience amount to special or advanced knowledge according to the regulatory definition.

For the foregoing reasons, we remand this issue to the Director for analysis of the relevant factors above and for a determination as to whether the Beneficiary possesses specialized knowledge; and in turn, whether he is employed in a specialized knowledge capacity abroad and would be employed in

a specialized knowledge capacity in the United States.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.