U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8831516

Date: JULY 14, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, describing itself as an owner and operator of health spas, seeks to temporarily employ the Beneficiary as an "ayurvedic panchakarma technician" 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 Vermont Service Center denied the petition concluding the Petitioner did not establish that the Beneficiary was employed abroad in a specialized knowledge capacity or that she would be employed in the United States in this asserted capacity. The Petitioner later filed motion to reopen and a motion reconsider and the Director affirmed her previous denial of the petition. The Petitioner then filed an appeal which we dismissed. The matter is now before us again on a motion to reopen and motion to reconsider.

On appeal, the Petitioner contends we did not consider the preponderance of the evidence and asserts the submitted evidence establishes that the Beneficiary was one of only two employees in the company's worldwide organization who received "in depth and extensive training" in its proprietary health management treatments and programs.

Upon review, we will dismiss the motion to reopen and the motion reconsider.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

A. Motion to Reopen

In order to meet the requirements of a motion to reopen the Petitioner must have submit new facts supported by affidavits or documentary evidence. 8 C.F.R. § 103.5(a)(2). However, in support of this motion, the Petitioner only reiterates contentions provided in support of the previous appeal and resubmits documentary evidence already provided on the record. Therefore, the Petitioner has submitted new facts supported by affidavits or documentary evidence to meet the requirements of a motion to reopen.

B. Motion to Reconsider

With respect to the motion to reconsider, the Petitioner largely reiterates assertions it provided in support of the previous appeal. The issue before us is whether our previous decision to dismiss the Petitioner's appeal was a correct application of law or policy based on the evidence on the record at the time of that decision.

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).

In our previous appeal, we pointed to the fact that the Petitioner asserted only that the Beneficiary's knowledge was advanced, or greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the company's operations. We concluded the Petitioner did not sufficiently describe the claimed proprietary nature of its processes and procedures, why advanced knowledge was required, or how the Beneficiary's understanding the company's proprietary knowledge was greatly developed in comparison to her colleagues. We noted that the Petitioner did not explain how the Beneficiary reached the position of "Lead Ayurvedic Panchakarma Technician" while employed abroad, or in turn, how the "proprietary approaches" of the company were distinguished from those of other similar practitioners in the industry. Lastly, we discussed how the Beneficiary received an additional year of training after she was transferred to the United States as a nonimmigrant, suggesting she did not have advanced knowledge while employed abroad.

On motion, the Petitioner again states that the Beneficiary joined the foreign employer as an ayurvedic panchakarma technician in April 2011 "after completing a rigorous and extremely extensive twelve-month training program in Ayurvedic Massage & Panchakarma Therapy at the [company's] [redacted] Institute in India." The Petitioner further indicates that the Beneficiary received an additional twelve months of extensive theoretical and practical training in the company's "proprietary Health and Management Treatments and Programs and proprietary procedures for preparing the Company's herbal decoctions and herbal combinations for the treatment of various ailments and health issues." The Petitioner reiterates that the Beneficiary is "one of only two"

employees within the company who have received her level of training. In addition, the Petitioner states that "no other ayurvedic treatment organization in the world is providing these types of treatments." In short, the Petitioner asserts that the Beneficiary was employed abroad in a specialized knowledge capacity and that she would be employed in this capacity in the United States.

1. Advanced knowledge

We will first analyze whether we were correct in concluding that the Beneficiary's knowledge was not established as advanced. As discussed in our previous decision, as a threshold matter, if the Beneficiary does not possess specialized knowledge, then her position abroad and in the United States would not involve specialized knowledge as necessary to qualify her. Upon review, we affirm our previous conclusion that the Petitioner did not sufficiently demonstrate that the Beneficiary held, and holds, advanced knowledge.

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.

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.

First, the Petitioner has not provided additional insight on motion as to the issues directly addressed in our previous appeal decision. As discussed, we concluded that the Petitioner did not sufficiently describe the claimed proprietary nature of its processes and procedures, why advanced knowledge was required for the Beneficiary's positions, or how her understanding was greatly developed in comparison to his colleagues. On appeal, the Petitioner does not offer additional information or evidence as that provided on appeal to address these discussed insufficiencies. In fact, even if the Petitioner had established that its company's health treatments and programs and their related processes and procedures were proprietary, this alone would not be sufficient to demonstrate that the Beneficiary's knowledge is advanced. The Petitioner must establish that the Beneficiary's knowledge was greatly developed or further along in progress, complexity, and understanding in comparison to others within the company. Determining whether knowledge is "advanced" requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison. The Petitioner only generically asserts that the Beneficiary is "one of only

two" within the organization with her level of knowledge of the company's proprietary ayurvedic massage and panchakarma therapies and related processes and procedures. Indeed, the Petitioner does not even indicate who the other "one of the two" is and elsewhere on the record states in apparent conflict that the Beneficiary was the most knowledgeable. However, the Petitioner has not provided detailed comparisons of the Beneficiary against those within the organization to establish that her knowledge is greatly advanced in comparison.

The lack of specific comparisons of the Beneficiary against her colleagues is particularly noteworthy since the Petitioner's assertions indicate that knowledge of the company's massage and other treatments and related processes and procedures is likely widely held within the company, since it represents the entire basis of its business. For instance, the Petitioner states that the Beneficiary's advanced knowledge is partly based on her completion of an "extremely extensive twelve-month training program in Ayurvedic Massage & Panchakarma Therapy at the [company's] [redacted] Institute in India." However, the Petitioner also indicates that it has been operating worldwide for over two decades and that it is a "household name" in India and the United Kingdom; yet, there is no indication as to how many others have completed the company's initial twelve-month training program. In fact, the Petitioner does not clarify how many technicians it employs abroad, individuals who would likely have knowledge of the company's massage techniques and other treatments. To illustrate, a submitted foreign organizational chart dated in April 2017 reflects three doctors abroad listed as "ayurvedic consultants" and that they oversaw an undisclosed number of "ayurvedic panchakarma technicians." The Petitioner provides no specifics as to these foreign employees, does not describe their levels of knowledge or training, how the Beneficiary gained more knowledge than apparent supervisory doctors, or how she compares to other technicians abroad.

In addition, the Petitioner contends that the Beneficiary completed another twelve-month training program abroad allowing her to obtain the position of lead technician. However again, there is no indication or specifics on how many other employees reached this level within the organization or received this training. As we also noted in our previous decision, the Petitioner does not describe this additional training in detail, how the Beneficiary reached the position of a lead technician, nor does it document this additional training.

Likewise, the Petitioner provides substantial documentary evidence indicating that it operates twelve locations throughout the United States and a U.S. organizational chart listed approximately 14 other technicians as well as supervisory level consultants and partners based at these various locations across the country. The Petitioner provides no details on these employees, how the Beneficiary's knowledge and training compares to theirs, how she gained more knowledge as compared to them, or how many of them completed the company's U.S.-based training program she is said to have completed. Without this level of detail, it is reasonable to conclude that many others have gained comparable levels of knowledge as that of the Beneficiary in order to provide its services throughout the United States since 2006. It is not sufficient to merely declare that the Beneficiary is "one of two" or the most knowledgeable or simply state that her knowledge is proprietary, the Petitioner must demonstrate that the Beneficiary's knowledge is greatly developed in comparison to her colleagues within the organization through detailed and credible comparisons. Here, the Petitioner questionably does not

provide this level of specificity or documentation to substantiate that the Beneficiary's knowledge is advanced.

Therefore, the Petitioner did not sufficiently demonstrate that the Beneficiary's knowledge was greatly advanced when compared to the many other employees providing its ayurvedic massage and panchakarma therapies both abroad and in the United States. As such, we affirm our previous decision as to this issue.

2. Special Knowledge

In the alternative, the Petitioner has not demonstrated that the Beneficiary holds special knowledge. Even though the Petitioner does not clearly articulate how the Beneficiary's knowledge qualifies as special, we will briefly analyze it, as it generally indicates on motion that her knowledge is specialized.

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.

Similar to our analysis of advanced knowledge, the Petitioner has not provided a detailed explanation or sufficient comparisons to establish that the Beneficiary's knowledge is distinct and uncommon in comparison to similarly placed workers in the industry. As discussed, the Petitioner only generally points to the proprietary nature of its methods and treatments, asserting that "no other ayurvedic treatment organization in the world is providing these types of treatments." However, the Petitioner provides little support for this statement or documentary evidence to establish that it is only the only organization in the world providing its type of ayurvedic massage and panchakarma therapy. In fact, there is little discussion of the industry in general, the Petitioner's competitors, nor detailed explanations as to how the Beneficiary's knowledge and training would be distinct and uncommon in comparison to similarly placed workers in the industry. It is not sufficient to only assert that its processes and procedures are proprietary, as it is reasonable to conclude that other ayurvedic massage and panchakarma therapy providers, about which we have been provided little, would also have individualized methods. For the foregoing reasons, the Petitioner did not demonstrate that the Beneficiary's knowledge is special in comparison to those similarly placed in its industry.

The Petitioner has not established that our previous appeal decision was based on incorrect application of law or policy based on the evidence in the record of proceedings at the time of that decision.

II. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen or to reconsider our previous decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.