U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-T- CORP.

DATE: JULY 25, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which provides information technology services to clients in the telecommunications industry, seeks to temporarily employ the Beneficiary as a technical support manager 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 petition, concluding that the record did not establish, as required, that: (1) the Beneficiary's prior education, training, and employment qualify him to perform the intended services in the United States; (2) the Petitioner will employ the Beneficiary in the United States in a specialized knowledge capacity; and (3) the Beneficiary's offsite placement would be in connection with the provision of a product or service requiring specialized knowledge specific to the petitioning employer. The Director also found that the Beneficiary's foreign employment did not involve specialized knowledge, but met an alternative requirement by being a primarily managerial position.

On appeal, the Petitioner submits additional evidence and asserts that the Director misconstrued the regulations and the Petitioner's supporting evidence.

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 specialized knowledge capacity, 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.

An individual L-1B petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, 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. THE BENEFICIARY'S PRIOR EDUCATION, TRAINING, AND EMPLOYMENT

A petitioner must submit evidence that, for at least one continuous year during the three years prior to the filing of the petition, the petitioner's multinational organization employed the beneficiary in a position that was managerial, executive, or involved specialized knowledge and that the beneficiary's prior education, training, and employment qualifies the beneficiary to perform the intended services in the United States. The work in the United States need not be the same work which the beneficiary performed abroad. 8 C.F.R. § 214.2(l)(3)(iv).

The Director found that the Petitioner had shown that its foreign subsidiary employed the Beneficiary in a managerial capacity, but not that the Beneficiary's prior education, training, and employment qualify him to perform the intended services in the United States. On appeal, the Petitioner contends that the Beneficiary's foreign employment also involved specialized knowledge, and that the Beneficiary is qualified for the U.S. position mostly through his years of experience, and also, to a lesser extent, several training courses he completed in 2006.

The Petitioner has not submitted documentation of the Beneficiary's claimed training courses, stating that the foreign subsidiary has not retained attendance logs from 2006. Nevertheless, the Petitioner has consistently indicated that the bulk of the Beneficiary's training took the form of on-the-job experience, as the Beneficiary has worked for the foreign subsidiary since 2002.

Questions regarding a beneficiary's specialized knowledge are separate from the requirement that a beneficiary must possess the proper education, training, and employment experience. Therefore, a beneficiary can be fully qualified for a given position whether or not that position involves specialized knowledge.

As we will discuss below, the Director found that the Beneficiary's intended U.S. position does not involve specialized knowledge. However, the Director did not specify what necessary qualifications the Beneficiary lacks with respect to his intended position. In fact, the Director concluded that the Beneficiary worked as a manager abroad, and his proposed U.S. duties "largely involve first-line supervisory duties." The Director concluded that "the position in the United States is substantially similar" to the foreign position.

Because the Beneficiary has years of experience in a position that "is substantially similar" to the offered U.S. position, we withdraw the Director's finding that the Beneficiary lacks the training,

education, and employment to qualify for the U.S. position. However, we agree with the Director's conclusion that the two positions do not involve specialized knowledge.

III. EMPLOYMENT IN A SPECIALIZED KNOWLEDGE CAPACITY

The Petitioner asserts on appeal that it has established, by a preponderance of the evidence, that the U.S. position involves specialized knowledge. The Petitioner contends that the Director selectively read the job description and overlooked other record evidence. We disagree, as explained below.

A petition for L-1B nonimmigrant status must include evidence that the petitioner will employ the beneficiary in a specialized knowledge capacity, including a detailed description of the services to be performed. *See* 8 C.F.R. § 214.2(l)(3)(ii). The 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).

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either subpart of the definition.

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. U.S. Citizenship and Immigration Services cannot make a factual determination regarding the specialized knowledge required for the position if the petitioner does not, at a minimum, articulate with specificity the nature of the its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the required 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.

As both "special" and "advanced" are relative terms, determining whether a given position requires knowledge that is "special" or "advanced" inherently requires a comparison of the knowledge required for a given beneficiary's intended position against that of others. With respect to either

special or advanced knowledge, a petitioner ordinarily must demonstrate that the required 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 position requires knowledge or expertise that is advanced or special.

In the present case, the Petitioner's claims appear to be based primarily on the first prong of the statutory definition, asserting that the position requires special knowledge of the company's products and their application in international markets. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and their application in international markets, the Petitioner may meet its burden through evidence that the Beneficiary has, and the position involves, knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

The Petitioner has developed a proprietary billing product, customized for each client. The Petitioner stated that the Beneficiary will work with two component modules, specifically the and the The Petitioner asserted that the Beneficiary "is one of only a few . . . employees across the globe, who possess the specialized knowledge required to support our proprietary and modules and the corresponding services associated with same."

The Petitioner stated:

> The Technical Support Manager must have a deep understanding of [the Petitioner's] product offering and the relevant accompanying services. These products include, but are not limited to: [the Petitioner's] billing product (including the and modules), [the Petitioner's] product; and [the Petitioner's] . . . .
>
> [The Beneficiary's] knowledge is distinct and uncommon in the telecommunications operations management systems industry because when compared to other workers in the field, he has far more knowledge of [the Petitioner's] product offering and related services.

The Petitioner stated that the Beneficiary would work at a customer's business location, responsible "for the management of and applications product support and associated support services." The Petitioner stated that the Beneficiary would have the following duties:

- Leading in the client's Business Solutions Systems requirements and documentation efforts . . . ;
- Ensuring compliance with contract agreement . . . ;

- Identifying business issues specific to the telecommunications industry and applying product solutions . . . and thought leadership regarding the appropriate use and knowledge of maximizing [the Petitioner's] proprietary billing systems;
- Assisting with project planning . . . and communicating client projects to support organizations, providing overview where necessary;
- Supporting [the Petitioner's] change management . . . and product management procedures . . . ;
- . . . [W]orking with Tier 1 telecommunications clients, conducting weekly client support meetings; preparing, facilitating, documenting and distributing action items and follow-up, and occasionally performing product demonstrations for Tier 1 telecommunications clients as necessary . . . ; and
- Participating in drafting of training documentation specific to [the Petitioner's] proprietary and solutions.

An organizational chart indicated that the Beneficiary would report to the Petitioner's Senior Manager, Cable Accounts, and would have authority over The Petitioner did not specify the number of employees in

The Petitioner stated that "the Technical Support Manager is required to have a specialized knowledge of each . . . product, as well as a specialized knowledge of the delivery methodology and the deployed solutions" and "extensive experience working with Tier 1 clients." The Petitioner asserted that the Beneficiary "is the only such individual qualified for this role at this time." The Petitioner did not specify how many "Tier 1 clients" it has, or how many technical support managers it employs for each of those clients.

In a request for evidence (RFE), the Director stated that most of the listed duties appear to be supervisory, and that therefore the Beneficiary would not primarily work with the Petitioner's products. The Director also found that the job description lacked detail. In response, the Petitioner stated that the Beneficiary "will serve as a key expert on [the Petitioner's] proprietary billing product and corresponding . . . modules (particularly and ' and "will maintain responsibility for the management of these products and any associated product support issues or . . . services." The Petitioner submitted a somewhat reworded version of the above job description, and stated: "Technical Support Managers . . . must maintain specialized knowledge of the products, with which they work. It is only after an employee has developed this specialized knowledge, that they will be eligible to become a management-level employee with our company."

In the denial notice, the Director found that the Beneficiary's intended responsibilities "largely involve first-line supervisory duties" rather than tasks that require specialized knowledge. The Director also found that the Petitioner had not corroborated its claims that the U.S. position requires specialized knowledge.

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).

On appeal, the Petitioner asserts that it established eligibility by a preponderance of the evidence by submitting "an overwhelming amount of corroborating evidence," to which the Director applied "an inappropriate level of scrutiny" while imposing a higher "clear and convincing" standard of proof. Most of the first-hand evidence in the record consists of email messages, illustrating the Beneficiary's efforts to resolve various issues and problems. (Copies of more messages accompany the appeal.) Some of the messages concern technical aspects of the Petitioner's software, such as the Beneficiary's explanation that a particular software product could not perform multiple operations in parallel. Other messages deal with administrative issues, such as a travel budget. These messages demonstrate the Beneficiary's familiarity with the Petitioner's products and are consistent with the Director's finding of managerial or supervisory authority, but they do not show that the Beneficiary's past or present positions within the organization require special or advanced knowledge.

In this proceeding, the Petitioner has made various arguments and claims intended to establish that the Beneficiary possesses specialized knowledge. These claims have not been entirely consistent. Over the course of a single letter, the Petitioner's description of the Beneficiary went from "one of only a few . . . employees across the globe" with the required knowledge to being "unique within the field" and "unique within [the Petitioner's] own ranks." The key issue raised in the denial, however, is whether the U.S. position *requires* specialized knowledge, which is a separate issue from whether the Beneficiary *possesses* specialized knowledge. (The Director, in the denial notice, only indirectly addressed the latter issue.) Whatever qualifications the Beneficiary may bring to the job, it does not logically follow that the position requires those qualifications. To assert without elaboration or corroboration that the Beneficiary is the only employee capable of filling the position presumes, rather than establishes, that the position involves specialized knowledge.

The Petitioner has asserted that the Beneficiary gained most of his knowledge through on-the-job training. The Beneficiary has considerable experience, having worked for the foreign subsidiary since 2002. Citing this experience, the Petitioner stated: "A new hire would need at least one year to begin managing [the Petitioner's] products to the degree sufficient to be allowed on client's site, and some additional time to become self-sufficient." The Petitioner has not established how long it took for the Beneficiary to become self-sufficient. All of his identified training courses took place within a two-month period.

The Petitioner claims nearly 600 employees in the United States, and has implied that formal classroom training amounts to only a small part of the training regimen. If these hundreds of workers all gained familiarity with the Petitioner's products mostly through working with those

products, then we cannot conclude that this knowledge is difficult to acquire or time-consuming to transmit. Looking more specifically at the Beneficiary's intended position of technical support manager, the Petitioner has not provided an objective basis by which to compare that position to others within the company or at other companies in the same industry. The Petitioner contends that the Beneficiary is the only available worker able to fill that position with its client, but the contract with that client dates back to 2003 and the Petitioner has not shown that the Beneficiary has worked with that client since that date. The Petitioner does not say who provided comparable services from 2003 to the present, or, if the position has been vacant, how it was able to provide effective service to that client.

Familiarity with the Petitioner's proprietary products would, as a matter of course, be rare outside of the petitioning organization, but this does not mean that the supervision of support staff involves knowledge that is distinct or uncommon in comparison to that generally found in the particular industry, because other companies also offer billing software. The different types of software may differ in their particulars, but it does not follow that knowledge of the Petitioner's product entails a different degree or level of knowledge than the knowledge required to work with comparable products. The fact that the knowledge is proprietary, without more, is not sufficient to establish that it qualifies as specialized knowledge. Here, the Petitioner has not provided sufficient evidence to establish that the knowledge could not be easily imparted to a similarly qualified professional with functional expertise in billing software.

The record as presently constituted is not sufficient in demonstrating that the Beneficiary has been or will be employed in a specialized knowledge position. Although the Petitioner asserts that the Beneficiary's position requires specialized knowledge, it has not sufficiently articulated the basis for this assertion. The Petitioner has only submitted a general description of the Beneficiary's job duties and has not identified the aspects of his position requiring special knowledge of the petitioning organization's product, service, research, equipment, techniques, management, or other interests. The Petitioner has not submitted evidence of the knowledge and expertise required for the Beneficiary's position that differentiates the employment from similar positions within the industry; instead, the Petitioner denies that there are similar positions in the industry, because the Petitioner's product is superior to those of its competitors. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 369.

For the reasons discussed above, the evidence submitted does not establish that the Petitioner will employ the Beneficiary in a specialized knowledge capacity in the United States.

IV. OFFSITE EMPLOYMENT

The Petitioner has stated that the Beneficiary will work primarily at the site of one of its customers.[1] If a petitioner seeks to station a beneficiary primarily at the worksite of an unaffiliated employer, then the petitioner must show that it will principally control and supervise the beneficiary. The placement must be to provide a product or service requiring specialized knowledge specific to the petitioner, rather than an arrangement to provide labor for hire for the unaffiliated employer. *See* section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F)

The Director found that the Petitioner met only the first of the two provisions above. On appeal, the Petitioner states that the Director disregarded a significant document in the record. We disagree. As shown below, the cited document does not resolve the issues that the Petitioner claims it does.

The Petitioner stated that "the in-depth customization inherent in our product lines often requires us to place our employees at our client sites." The Petitioner maintained, however:

> At no time will [the Beneficiary] work on systems that are not our own, nor will he take direction from anyone but [the Petitioner's] personnel . . . . The goal of such on-site work is to make our . . . products and solutions as functional as possible [for] our clients and never to outsource employees to our clients.

The Petitioner stated that "a full, executed version of [the Petitioner's] agreement with [the customer] (as well as a subsequent agreement covering a long-term extension of this project) has been . . . attached in full at Exhibit C." The petition's table of contents indicated that Exhibit C also included "Statements of Work, especially for the [customer's] Project."

There is no document in the record with the title "Statement of Work." Exhibit C consists of a partial organizational chart; a copy of a Master License and Support Agreement from 2003, between the customer and [redacted] (which the petitioning organization later acquired); and a post-acquisition 2015 amendment extending the agreement until 2020. The Petitioner highlighted this passage from the 2003 agreement:

> [redacted] will assign two dedicated support persons to Licensee's account ("Client Advocates"). The Client Advocates will be responsible for tracking resolution status of any Licensee reported problems, communicating such status to Licensee on an ongoing basis, and providing consulting services to Licensee regarding use of the System.

[1] As the record does not establish that the Beneficiary possesses specialized knowledge or that the offered U.S. position is in a specialized knowledge capacity, it was not necessary for the Director to make a separate finding regarding the nature of the Beneficiary's off-site employment. However, as the Director discussed this issue at length in the denial notice, we will address it here.

In the RFE, the Director stated that the submitted evidence did not establish that the Beneficiary would work primarily, rather than incidentally, with the Petitioner's products. To establish the nature of the Beneficiary's intended role, the Director requested:

- Copies of press releases, if any, that discuss the product or service to be provided by the petitioning organization to the unaffiliated employer/client.
- A detailed description of the specific job duties that will be performed by the beneficiary at the unaffiliated employer's site.
- A detailed explanation, in layman's terms, of exactly what product or service the petitioning organization will provide to the unaffiliated employer, and why the activities the beneficiary will perform are not just labor for hire.

The Petitioner responded by stating that the Beneficiary's "role . . . is to provide his expertise in connection with [the client's] contractual agreement with [the Petitioner], as detailed in the agreement and Statements of Work." The Petitioner stated that it "provides [the client] with a proprietary billing software product and [the Beneficiary's] services are required as he is the only employee, at [the petitioning company] or elsewhere, who has both the technical knowledge of this software in addition to the people skills required to deal with a high-value client." The Petitioner did not submit the requested press release, even though the 2015 amendment specifically requires the parties to issue one.

In the denial notice, the Director noted that the Petitioner had not submitted any document called a Statement of Work (to which the Petitioner consistently referred with capital letters, implying a formal title). The Director acknowledged the Master License and Support Agreement and its amendment, but found that "[t]he agreement and the amendment do not specify what products will be used other than the fact that [the customer] has licensed your product."

On appeal, the Petitioner resubmits the portion of the agreement regarding client advocates, and states that the Director "did not consider this evidence" when submitted previously.

The Petitioner did not explain whether the Beneficiary would be one of the client advocates or would supervise the client advocates. The petition materials do not refer to the Beneficiary by name as a client advocate or explain the relationship between a client advocate and a technical support manager. The brief discussion of the role of a client advocate does not indicate that the client advocate would work at the client's work site, only that the client advocate would be dedicated to the client's account. The Beneficiary's job description does not appear to boil down to "tracking resolution status of any Licensee reported problems, communicating such status to Licensee on an ongoing basis, and providing consulting services to Licensee regarding use of the System."

Furthermore, the 2003 agreement indicates that the customer was already using at the time; part 7 of the agreement concerns the planned "Migration from to ' under which "the code base will be fully replaced with the on November 15, 2006. Because the Beneficiary is not involved in replacing

with [redacted] we cannot determine how much of the 2003 agreement still applies to the Petitioner's relationship with the customer, or how much the role of the client advocate has changed (or if that position still exists at all). The 2015 amendment does not clarify the issue, and the Petitioner did not submit the earlier amendments which might have shed light on matters such as the decision to reinstate [redacted] after [redacted] entered into a contractual arrangement to remove and replace it.

The agreement refers to "on-site support," but only "[d]uring [a one-month] Beta Production period." The agreement also refers to product training, but the 2015 amendment deleted that paragraph of the agreement. The agreement further provides for testing support, but only during a 105-day "acceptance period" following each [redacted] product release. These provisions do not show a need or a plan for long-term placement of the Petitioner's workers at the client's site.

The Petitioner has not established that the Beneficiary's intended position is identical or comparable to the client advocate position very briefly described in the 2003 agreement. The Petitioner has indicated that the Beneficiary will work with modules of the Petitioner's [redacted] system, but the Petitioner has not provided a sufficiently complete or consistent picture of the Beneficiary's duties to show that the Beneficiary will primarily work with the Petitioner's systems rather than those of the client with whom he would work. Therefore, the Petitioner has not overcome this basis for denial.

V. CONCLUSION

The Petitioner did not establish that the U.S. position involves specialized knowledge, or that the Beneficiary's placement at the worksite of an unaffiliated employer is in connection with the provision of a product or service requiring specialized knowledge specific to the petitioning employer.

ORDER: The appeal is dismissed.

Cite as *Matter of N-T- Corp.*, ID# 454898 (AAO July 25, 2017)