U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-L-NA, LLC

DATE: JULY 25, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Mongolian hot pot restaurant franchisor, seeks to temporarily employ the Beneficiary as a master chef 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that: the Beneficiary possesses specialized knowledge; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States, in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Beneficiary possesses "both special knowledge and advanced knowledge," and is one of only six employees with necessary knowledge of proprietary cooking techniques.

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 is a franchisor for restaurants specializing in Inner Mongolian cuisine, including hot pot and barbeque dishes. The Petitioner's parent company in China hired the Beneficiary as a chef in 2007, and promoted him to executive chef eight years later.

The Petitioner asserted that the Beneficiary "possesses . . . specialized knowledge to cook [the parent company's] hot pot, including hot pot broth, sauces, and seasonings . . . . [The Beneficiary] also contributed his knowledge of [the parent company's] hot pot broth into making Inner Mongolian flavor specialty dishes and barbeques." The Petitioner stated that the Beneficiary "will be working as a Master Chef" who "may occasionally work at the franchisee's site to provide on-site training but will be working at the Company's headquarter[s] most of the time." In addition to training local staff, the Beneficiary will "develop more specialty dishes that combine the uniqueness of Inner Mongolian cuisine taste as well as local flavor." The Petitioner stated that the Beneficiary's salary as a master chef will be $21,000 per year.

III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to others in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

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 the Beneficiary's past and intended future employment involve specialized knowledge.[1]

Under the statute, specialized knowledge consists of either: (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.

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

[1] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

petitioner ordinarily must demonstrate that the beneficiary's 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 knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.[2]

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 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 beneficiary gained such knowledge.

In this instance, the Petitioner claims that the Beneficiary's knowledge is both special and advanced.

A. Special Knowledge

Special knowledge concerns knowledge of the petitioning organization's products or services and its application in international markets. To establish that a beneficiary has special knowledge, the 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.

The Petitioner stated that the Beneficiary's familiarity with the original products and recipes will allow him to determine the best substitute products when it is not possible or practical to import ingredients from Inner Mongolia. The Petitioner initially asserted that "a limited number of Executive Chefs [have] been trained and entrusted with the [company's] secret recipes and special procedures." On appeal, the Petitioner makes the more specific claim that the Beneficiary is one of only six chefs ever to receive that training. The Petitioner also indicates, however, that the organization (including the foreign parent company and foreign affiliates) has over 200 franchises worldwide. The Petitioner does not adequately explain how these locations operate without knowledge of the recipes.

Initially, the Petitioner stated that the Beneficiary's "duties and responsibilities will focus on" developing and adapting recipes, selecting lamb products, and training franchisees. On appeal, however, the Petitioner states that the Beneficiary will "establish a central kitchen for [the company] in the U.S. He will be responsible for producing and processing all [the company's] products." This appears to be a substantial revision of the Beneficiary's primary responsibility.

[2] Although some aspects of the "special" and "advanced" knowledge definitions may overlap, we will address each element individually.

Earlier, the Petitioner stated that the Beneficiary would "take charge of . . . preparation and pre-treatment of the raw ingredients, and directing other staff for the remaining production . . . to ensure the confidentiality of the Special Knowledge." The Petitioner's organizational chart, however, does not show any employees who would package and ship these materials, and the Beneficiary's own job description does not include packing or shipping. Furthermore, the Petitioner has specified that the Beneficiary would work at the company's main office, comprising 650 square feet of sublet office space at a business park in [redacted] New Jersey. The Petitioner has not shown that this space is sufficiently equipped for storage, packing, and shipping of perishable ingredients.

The record refers to "[p]re-packaged . . . sauces, imported from China," but the Beneficiary, working in New Jersey, would not be involved in the preparation or shipment of those sauces.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. Thus, whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. The Petitioner, like other restaurateurs, may have its own secret recipes, but the Petitioner has not sufficiently shown that its recipes are inherently more difficult to learn or prepare than those of rival companies.

The Petitioner stated:

> [The Beneficiary] obtained the Special Knowledge through the half-year intensive training, which is offered only to a very limited number of top and senior Chefs who are to be bound by an indefinite confidentiality agreement with the Foreign Parent Company. . . .
>
> The Special Knowledge is specialized knowledge because it creates a unique . . . Inner Mongolian hotpot flavor that is distinguishable from all other hot pot flavors around China.

The foreign parent company stated:

> [The Beneficiary] is one of a limited number of Executive Chefs who has been trained and entrusted with the secret recipes and special procedures to make the [company's] hotpot broth, including but not limited to "Magical Broth," Hot Broth, Tomato Broth, Fungus Broth, etc. as well as the techniques of cooking Inner Mongolian Specialty Dishes . . . .

The foreign company indicated that, after eight years as a chef, the Beneficiary "was selected by our senior management . . . to be trained and entrusted with the Special Knowledge" as an executive

chef. The Petitioner indicated that the Beneficiary "started the half-year intensive training on or about January 26, 2015 and completed on or about July 31, 2015." When this training began, the Beneficiary signed a confidentiality agreement regarding certain meat handling and cooking techniques. A translated copy of the Beneficiary's "Advanced Techniques and Management Skills Training Plan" divided the Beneficiary's training into three sections:

- Ingredients Processing, 78 days
- Meat Slaughter and Processing, 62 days
- Function Department, 30 days

The document is inconsistent regarding the total number of days of training. The days attributed to the individual courses add up to 170, but the total at the bottom of the "days" column shows 135 days. (The schedule also showed six days of training during a five-day period in April.) The "Function Department" training concerned administrative matters unrelated to food preparation. Although the Petitioner had previously claimed that "[m]any years of experience [are] required to master the cooking and boiling skill to make the perfect broth," the schedule showed, at most, 43 days of broth-related training from March 1 through April 12.

The Director determined that the Petitioner had not established that the Beneficiary's knowledge of Inner Mongolian cooking "cannot be easily possessed by other professional chefs in the industry." The Director also noted that a substantial fraction of the Beneficiary's "Advanced Techniques and Management Skills Training Plan" involved general business practices not specific to chefs. On appeal, the Petitioner does not adequately address these concerns. The assertion that few chefs have received certain training does not establish or imply that only a few chefs are capable of absorbing and retaining that training.

The lack of consistency in describing the Beneficiary's intended duties raises additional questions and doubts. The Petitioner's new assertion that the Beneficiary will "establish a central kitchen" is incompatible with earlier descriptions which appeared to presume that the kitchen was already operational. The location of this kitchen is uncertain, absent evidence that the sublet office space can be converted into a kitchen.

When considering the claim that the Petitioner provides ingredients to its franchisees, we note that the Petitioner's 2016 tax return reported only $100,000 in sales. Without invoices or comparable documentation, we cannot determine whether this sum represented sales of food products, franchise fees, other expenses, or some combination thereof. Most of the company's income that year came from sales of business property. The Petitioner described itself as a "full service" restaurant on that tax return, but did not show that the sublet office space is a full service restaurant. The company did not declare depreciation on restaurant equipment; the only depreciation claimed related to the "company car."

For the above reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's services and their application in international markets.

B. 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 an 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 noted above, the Petitioner asserted that "[m]any years of experience [are] required to master the cooking and boiling skill to make the perfect broth," but the Petitioner also stated that, once in the United States, the Beneficiary "will deliver onsite training . . . regarding cooking techniques for [the parent company's] hot pot broth, specialty dishes, [and] barbeque marinades." The Petitioner did not provide further details about the training that the Beneficiary would provide. Therefore, the Petitioner did not show how this presumably short-term onsite training would differ from the training the Beneficiary himself received.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner does not claim to directly employ any other chefs, and it has not detailed the education or training possessed by its other employees or its franchisees' chefs. The Petitioner does not describe how this Beneficiary's work and responsibilities differ from other employees or how other employees gained their knowledge of the petitioning organization. The Petitioner has not established that the Beneficiary's knowledge is advanced within the petitioning organization's own operations. (The assertion that the Beneficiary received further training after eight years does not establish that a chef must have eight years of experience to be ready for that training.)

In sum, the record does not demonstrate that the Beneficiary's combination of experience and knowledge of the Petitioner's recipes and methods has given him knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company or that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

While the Beneficiary may be a valuable employee who is well-qualified for the proposed position in the United States, the record does not establish that the Beneficiary possesses special or advanced knowledge.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the Petitioner in the United States. *See* Section 214(c)(2)(B) of the Act.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge

ORDER: The appeal is dismissed.

Cite as *Matter of L-L-NA, LLC*, ID# 1296470 (AAO July 25, 2018)