U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-Y- LLC

DATE: JULY 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a meat production company, seeks to temporarily employ the Beneficiary as its quality assurance/food technology 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 the Beneficiary possesses specialized knowledge, that he has been employed abroad in a position involving specialized knowledge for at least one year, or that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director incorrectly assumed that the Beneficiary possesses knowledge that can be easily attained and is commonly held by professionals in the field, and that he does not possess specialized knowledge specific to the petitioning organization. The Petitioner maintains that the Beneficiary meets all requirements for the requested classification.

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 managerial or executive capacity, or in a capacity involving 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 relevant statutory definition states that a beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary has a special knowledge of the company product and its application in international markets or has an advanced level of

knowledge of processes and procedures of the company. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B).

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).

An individual L-1B classification petition must be accompanied by evidence that: the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer, and, the beneficiary's prior education, training and employment qualifies the beneficiary to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the record did not establish that the Beneficiary acquired special knowledge of the Petitioner's products or production processes that is truly distinct or uncommon compared to the knowledge typically possessed by food production industry professionals, or knowledge of the company's processes and procedures that is advanced compared to other employees within the petitioning organization.

As noted, the Petitioner maintains that the Director overlooked the Beneficiary's extensive education and experience in the meat production and food industry, his role in developing unique products and production processes, and the fact that he developed processes and guidelines for safe food production for the Greek parent company which the Petitioner now seeks to implement at its U.S. subsidiary. The Petitioner further asserts that the Director's decision was based on incorrect assumptions.

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.

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. 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.

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 such knowledge is typically gained within the organization, and explain how and when the individual beneficiary gained such knowledge.

Here, the Petitioner claims that the Beneficiary possesses both special and advanced knowledge, based on his academic and professional qualifications, and further gained during his three years of employment with its Greek parent company, where he has held the position of quality assurance/food technology manager.

The Petitioner and its parent company manufacture prepared Greek-style meats including gyros, kebabs, and souvlaki, with production facilities located in Greece and New Jersey.

The Petitioner has offered the Beneficiary the U.S.-based position of quality assurance/food technology manager, the same title he currently holds in Greece.[1] The Petitioner stated the Beneficiary spends 50% of his time leading the food safety team and is responsible for oversight of food safety and quality assurance, managed through daily interaction on the plant floor and through meetings with the production manager and food technologies. An additional 20% of the Beneficiary's time is spent on ensuring that production staff receives all necessary quality and safety training. He allocates 20% of his time to research and development in conjunction with sales, customer service, food technologies, and the research and development supervisor, with the remaining 10% of his time spent on auditing activities.

In the United States, the Beneficiary would allocate his time as follows: 40% to "bringing the highly specialized methods developed in the Greek [company] relating to food safety while maintaining the company's high standards and specifications; 30% to "training senior staff in the company in adopting and following the methods required for the systematic and preventative approach to food safety and minimizing any exposure of the company's processes from hazards in the production process"; and 30% to "research and developing food products and processes by using specific patents which the company holds in order to reduce the microbiological exposure to company products."

A. Special Knowledge

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

[1] The Petitioner has also referred to the Beneficiary's foreign position as "Director of Quality Assurance."

commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered specialized.

The Petitioner claims that the Beneficiary's special knowledge is based, in part, on academic and professional training and experience he gained over the course of his career prior to joining its parent company.

At the time of filing, the Petitioner emphasized that the Beneficiary "is a highly educated professional with specialized knowledge in the food technology field with vast experience in the private sector." The Petitioner provided evidence that the beneficiary holds a bachelor's degree in animal production technology from the [redacted] in Greece, and a master of business administration in human resources management from the [redacted] The Beneficiary also earned an "Intermediate Certificate in Applied [redacted] Principles," and a "Level 4 Award in [redacted] both awarded by the [redacted]

The Petitioner stated that the Beneficiary "amassed significant specialized knowledge and experience, while excelling in the field of food technology and animal production," and listed some of his professional accomplishments, including participating in the restructuring of the fishery sector in [redacted] and "overseeing the [redacted] official inspections in all major Greek central markets (2007-2009)." It provided a letter from the general manager from the [redacted] a state-owned Greek organization, who states that the Beneficiary "within the framework of his authorities and using the subject of his knowledge and academic experience . . . was the main responsible [*sic*] for organizing and developing seminars in subjects like treating and handling final products and treating procedures by meat trading companies' personnel."

On appeal, the Petitioner emphasizes that its parent company recruited the Beneficiary based on the specialized education and training the Beneficiary acquired prior to joining the company and asserts that the Director incorrectly assumed that his "educational and working experience is easily attained and commonplace by professionals in the field." The Petitioner maintains that the "the unique combination of his specialized educational background and his specialized knowledge . . . made him the ideal candidate."

The Petitioner also states for the first time on appeal that the Beneficiary "directed the largest and most important food industry association in Greece, where he led the organization in adopting new and cutting edge food safety measures which fundamentally changed this very large organization as well as the overall food industry in Greece." The Petitioner states that upon joining the foreign

[2] The website of the U.S. Food and Drug Administration states that [redacted] is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product. *See* [redacted] (last visited July 24, 2017).

entity he implemented new food handling and raw material safety measures, as these protocols and frameworks were developed by him in his prior position as Managing Director of the largest food organization in Greece." The Petitioner explains that the specialized knowledge he brought to the company "had a transformative effect."

The Petitioner has not adequately supported its new claim that the Beneficiary was the managing director of Greece's largest food organization or that he transformed Greece's food production industry. It appears that the Petitioner may be referring to the Beneficiary's work with However, the letter from does not mention his role as managing director or support the claim that he was fundamental to developing current food industry standards in Greece. The Beneficiary's résumé indicates he was the "commercial supervisor in 19 meat and fish processing companies of the but does not state that he was the managing director of or any other organization. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Nevertheless, the Beneficiary's résumé indicates that he served as a scientific consultant for more than 100 companies in the food industry between 2006 to 2013, wrote 45 scientific memoranda and reports on matters of hygiene and food safety, has reviewed legislative matters on behalf of food production companies, and has served as a trainer on personal hygiene and food safety issues. He has extensive experience in the field to complement his academic credentials.

The question before us, however, is whether the Beneficiary's existing knowledge of meat production, food health and safety regulations, and related fields constitutes specialized knowledge that is truly distinct or uncommon in comparison to knowledge held by similarly employed professionals responsible for food safety, quality assurance, and staff training in the Petitioner's highly-regulated industry where all participants are expected to adhere to legislated standards to ensure consumer safety. Most professionals hired to manage food safety, quality and handling issues in a meat production facility would reasonably require an educational background in animal science or production, as the Petitioner states this degree provides "essential knowledge of the industry of meat processing." The Petitioner states that the Beneficiary's master's degree in human resources management was also based on the food production industry and safety standards, but without a transcript, this claim is not sufficient supported. The Petitioner has not established that the Beneficiary's educational background equipped him with special knowledge that is uncommon among similarly employed individuals in the industry.

Further, the Petitioner has not established that it is unusual for an individual hired as a quality assurance manager in a meat processing facility to have additional, post-academic industry training or experience. The Petitioner provided evidence that the Beneficiary has two certificates related to food manufacturing principles and management, but as noted, the Petitioner operates in a highly-regulated industry that must adhere to strict food safety guidelines. As such, we cannot conclude that the Beneficiary's industry certifications equate to specialized knowledge.

In addition, special knowledge must be specific to the petitioning organization's product, service, research, equipment, techniques, management, or other interests. For this reason, a given beneficiary's

prior education, training, and experience alone are typically insufficient to establish that they possess specialized knowledge. Here, the Director noted that the Beneficiary began performing the duties of a quality assurance/food technology manager immediately after the foreign entity hired him, thus suggesting that the job did not require special knowledge specific to the company. Rather, the Director found that the Beneficiary's existing knowledge of the industry provided sufficient preparation to carry out the duties.

On appeal, the Petitioner objects to this conclusion, noting that when the foreign entity hired the Beneficiary "the expectations were that upon him familiarizing himself with the inner workings of the company, he would then be able to bring his vast knowledge and work on developing and implementing these new protocols." The Petitioner states that the Beneficiary "did not start developing the food safety protocols and framework until well into his second year of employment." The Petitioner does not provide any further description of how the Beneficiary's duties progressed since joining the foreign entity. We agree with the Director's finding that the Petitioner's statements prior to the denial suggested that the Beneficiary had performed the same duties since being hired.

Regardless, the Petitioner has not explained specific aspects of its products, equipment, or techniques to establish that oversight of its meat production quality and safety protocols resulted in the Beneficiary possessing knowledge that is different from what is generally held by similarly employed workers in the industry, or knowledge that could not be transferred to an employee who is already familiar with meat production and the regulatory and safety standards imposed on this industry. Simply stating that the Greek company has "highly specialized methods . . . relating to food safety" is not sufficient to establish that the petitioning organization has implemented methods that involve or require specialized knowledge.

As noted, the Petitioner claims on appeal that the Beneficiary himself was instrumental in developing Greece's current framework and protocols for food safety in its industry. Even if it had adequately supported this claim, the Petitioner indicates that such protocols and framework have been adopted across Greece's food industry and therefore, we cannot conclude that they constitute "special knowledge" within that industry. The Petitioner indicates that the Beneficiary is needed to ensure that the same protocols and framework are implemented in its New Jersey factory, but the Petitioner's factory is already operational and presumably in compliance with all U.S. regulations applicable to its industry. Again, the Petitioner did not identify any aspect of its food safety, handling, quality, hygiene, or other standards that differ from those generally found in the meat production industry.

We agree that the types of duties the Beneficiary performs "are not easily satisfied and performed by an individual with basic business experience in the food industry." However, the Petitioner did not establish that "basic business experience" is the typical required qualification for a senior position in the food safety and handling area of meat production. Rather, it is reasonable to believe that any company would seek to hire an employee with an educational and professional background that involved the required scientific knowledge, industry training, and experience relevant to this type of business, and that such knowledge and experience would be common among professionals working in this sector.

The Petitioner also states that no other North American company offers the same Greek meat products, but it did not further elaborate on how this product specialization relates to the Beneficiary's claimed specialized knowledge. Without more information, the record does not establish that the food safety and production standards in place for these products would be significantly different from those applicable to other meat products.

The Petitioner did, however, address one unique food product developed by its company and stated that the Beneficiary contributed significantly to the product's packaging and production process. Specifically, the foreign entity had recently launched a [redacted] stuffed with feta cheese" which is sold in "the first recyclable ready-to-cook packaging tray in the market." An unrelated company designed the packaging tray and holds the patent for its design. The Petitioner explained that the foreign entity purchased a customized automatic machine to produce the product, and that the Beneficiary "developed and implemented all procedures in utilizing and incorporating these patented products through recipe implementation, packaging design, food safety, packaging safety and cooking instructions." The Petitioner stated that it had entered an agreement to sell and distribute the product in North America and requires the Beneficiary's specific knowledge and experience in working with this product.

The Petitioner did not mention this specific product, special production equipment, or special packaging at the time of filing. The Petitioner later provided evidence that the Beneficiary had approved the specifications of the third-party packaging, but it is unclear what additional work needs to be done with respect to this product, or the amount or type of training that would be required for the U.S. factory to begin manufacturing the [redacted]' product. If the U.S. staff can learn to manufacture the product with minimal additional training, that knowledge of this product or its production method would not constitute special knowledge.

Even though quality assurance and food technology professionals outside the organization do not have the Beneficiary's exact experience with the petitioning organization's products, protocols or productions methods, the record contains insufficient evidence to establish that the Beneficiary's knowledge is special. Again, the Petitioner must establish that the position requires this employee to have knowledge that is uncommon in the industry and knowledge that could not be readily transferred to a similarly employed professional in the Beneficiary's field.

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

B. Advanced Knowledge

We have also considered whether the evidence establishes that the Beneficiary possesses 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

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 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.

The Petitioner emphasized that "the members of [the Beneficiary's] department who he supervises and leads, do not possess the extensive specialized knowledge which the beneficiary has gained through his more than 10 years of education and experience prior to being hired by [the foreign entity]." The Petitioner has also stated that the Beneficiary transformed the company by implementing new food safety protocols and frameworks that were based on his previous work in the industry. A letter from the foreign entity indicates that the Beneficiary supervises a food safety leader and a research and development employee, along with three customer service employees, and is responsible for overseeing training and implementation of quality and food safety standards for the meat production, technical and warehouse departments overseen by the production manager. The Petitioner has not provided an organizational chart for the U.S. position, identified the educational or professional qualifications of the U.S. employees, or indicated who is currently responsible for food safety and quality assurance standards for its New Jersey plant.

As discussed above, we found that the Petitioner did not submit sufficient evidence to establish that knowledge of its products, techniques, and methods related to food safety and quality assurance could not be easily imparted to an experienced professional in the Petitioner's industry. Although the Petitioner states that it has its own internal "specialized methods," it has not distinguished its processes or procedures for food safety and quality assurance from those used throughout its industry. Even if we conclude that the Beneficiary has advanced knowledge of these procedures relative to co-workers in lower-level positions, the Petitioner must still establish that the Beneficiary's knowledge is different from that held by workers in similar positions in the Petitioner's industry. Again, given that food handling and safety protocols are regulated and implemented industry wide, the Petitioner must establish that its processes and procedures are somehow different or uncommon.

It is clear that the Petitioner considers the Beneficiary to be a valuable and highly productive employee who excels at his position, but it has not sufficiently shown that his knowledge is different from what is generally held in the Petitioner's industry.

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

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Y- LLC*, ID# 528699 (AAO July 27, 2017)