U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- & G-, INC.

DATE: JULY 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, planning to operate as a Lebanese restaurant, seeks to temporarily employ the Beneficiary as a chef in its new office[1] 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad as a manager or executive, or in a specialized knowledge capacity; and (3) will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner claims that the Beneficiary developed the [redacted] brand of Lebanese food and has the work experience and familiarity with the Lebanese culture to qualify as a specialized knowledge employee.

Upon *de novo* review, we find that the Petitioner has not overcome the basis for denial. Therefore, 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

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

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).

If a beneficiary is coming in a specialized knowledge capacity to open a new office, the petitioner must submit evidence that it secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi).

II. BACKGROUND

The Petitioner is seeking to operate a restaurant specializing in Lebanese cuisine. It plans to offer its customers "healthy fast food dining" as part of a dine-in, delivery, or take out experience. The foreign parent hired the Beneficiary as its head chef and "holder of [the] brand," which was claimed to have "transformed" the foreign entity by increasing its staff and expanding its menu options. In a supporting statement, the foreign entity's manager, asserted that the Beneficiary had "a well-recognized name and reputation" that attracted new customers, thereby expanding the company's customer base. He further stated that in the proposed U.S. position, the Beneficiary will use his "special skills and knowledge to prepare unique Lebanese food" employing recipes that he created during his employment abroad in keeping with the foreign entity's "existing menu and policies." In a separate business plan, the Petitioner stated that the Beneficiary's duties would also include hiring, training, and supervising cooks and other kitchen staff, developing recipes and food presentation, planning menus, controlling inventory, and ensuring freshness of ingredients. The Petitioner stated that the Beneficiary will be paid $3,500 per month.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

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.[2]

A beneficiary is deemed 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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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

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 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.

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.

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.

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.

In the present matter, the Petitioner provided a copy of the Beneficiary's résumé showing that he created the brand name [redacted] in 1998 and has continued using that name in his "food and dish sales" activities, which include attending "cookery courses under [the] supervision of [redacted] in 2007 and engaging in "fast food preparation" in his own grocery store in Beirut in 2010. The résumé also shows that the Beneficiary worked as a chef at various restaurants when he moved to Armenia in 2013 and started working as a chef for the Petitioner's parent entity in 2016. The only education identified in the Beneficiary's résumé is his attendance at [redacted] from 1981-1985.

In a request for evidence (RFE), the Director acknowledged that the Beneficiary develops recipes, plans menus, and makes decisions about food preparation, but determined that the Petitioner's

description of the Beneficiary's knowledge, education, training, and employment does not establish that he has knowledge that is either "special" or "advanced." The Director instructed the Petitioner to discuss the knowledge required to carry out the duties of the foreign position, identify the products, processes, or procedures that require specialized knowledge, explain how the Beneficiary's knowledge is either "special" or "advanced," and discuss how it compares to others within the employer or within the industry among others who perform similar type of work.

The Petitioner provided a response that did not adequately address the critical elements of the RFE. Among the Petitioner's submissions was the above-referenced letter from the foreign entity's manager, who referred to the Beneficiary as a "well-known cook" and broadly stated that the Beneficiary is "the holder of [the] brand." He did not, however, define the significance of the "brand" or relate it back to the Petitioner or to the foreign entity where the Beneficiary currently works. The Petitioner also provided a letter from , director of the foreign entity, who referred to the Beneficiary as "an exceptional cook," "gifted multitasker," and "perfectionist in terms of food quality," and pointed to the Beneficiary's "multicultural experience," which allows him to make food adjustments "based on geographic consumer preferences," and his "great relationships with all of our suppliers," which has allowed the foreign entity to meet various business needs "on short notice." Although both letters discuss the improvements that the Beneficiary made to the restaurant, including expanding the menu[3] and creating new recipes, neither stated how these attributes qualify the Beneficiary as someone who possesses knowledge that is either "special" or "advanced."

The Petitioner also provided two documents that pertain to the Beneficiary's education and training. One document was a letter from who identified himself as a chef at a in Lebanon and stated that he trained the Beneficiary in "medor catering" from March 1 through August 31, 2010. The letter did not define the term "medor" or explain the significance of this type of catering to the Beneficiary's claimed specialized knowledge or its relation to his proposed employment with the Petitioner and his current employment with the foreign parent entity. Another document was titled and appears to be a translation containing an illegible signature from "Administration"; it states that the Beneficiary was enrolled in a hotel food technology course at the on October 5, 2007 and "terminated" that course on June 9, 2009. We note, however, that this course and its dates of attendance were not included in the Beneficiary's résumé. We further note that the Petitioner did not state how this course is relevant to the Beneficiary's current employer or his claimed specialized knowledge. Moreover, the did not identify the translator of the document, which does not contain a certification from that translator certifying the English language translation as complete and accurate and establishing the translator's competence to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

[3] The Petitioner provided the original menu and the expanded menu that the Beneficiary is claimed to have expanded.

Lastly, the Petitioner provided two reference letters about the Beneficiary's prior work experience. The first was a certified translation of a reference letter that pertained to the Beneficiary's employment from April to November 2014 at [redacted] it stated that the Beneficiary was a creative chef who was "invaluable" and had full control of the kitchen, including menu selections, food purchase and preparation, and staff. The other letter pertained to the Beneficiary's employment at [redacted] restaurant in April 2015; it referred to the Beneficiary as [redacted] and stated that during his employment as chef he created recipes, designed menus, and trained the staff. Again, neither reference letter states how the Beneficiary gained "special" or "advanced" knowledge of the petitioner's products or services.

In the denial decision, the Director found that the submitted evidence did not demonstrate that the Beneficiary's foreign and proposed positions require either special knowledge of the company's products that is uncommon in the industry and could not be easily transferred, or an advanced level of knowledge or expertise of the organization's processes and procedures. The Director further found that the Petitioner did not establish the minimum time, training, and experience that is required to be able to perform the duties of the Beneficiary's claimed specialized knowledge position.

On appeal, the Petitioner does not distinguish the Beneficiary's knowledge as either "special" or "advanced" and does not offer new information to establish that the Beneficiary possesses specialized knowledge. Rather, the Petitioner refers to previously submitted evidence without explaining how the Beneficiary's prior employment and training relate to the petitioner or how they resulted in the specialized knowledge the Beneficiary is claimed to possess, particularly given that the training, which took place in 2009 and 2010, and the prior employment, which took place between November 2013 and March 2016, preceded the current employment by as much as seven years. The Petitioner also claims that the Beneficiary has a "well-established name and reputation" and has developed "unique recipes," which require approximately one year to train others to execute in the Beneficiary's absence. Although the Petitioner, like other restaurateurs, may have its own secret recipes, it has not sufficiently shown that its recipes are inherently more difficult to learn or prepare than those of rival companies. The Petitioner does not substantiate these claims. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on its statements regarding the Beneficiary's knowledge of Lebanese cuisine. However, the record lacks probative evidence demonstrating that extensive training is required to perform the Beneficiary's duties, either within or outside of the organization. While there may not be any employees with the exact same knowledge the Beneficiary possesses, the record does not demonstrate that the Beneficiary's knowledge is in fact significantly different from that generally held by workers in similar positions in the restaurant industry, or that it would require up to a full year to acquire the knowledge needed for the proposed position.

For the above reasons, the record does not establish that the Beneficiary possesses special or advanced knowledge.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge. The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.

Cite as *Matter of A- & G-, Inc.*, ID# 1420331 (AAO July 31, 2018)