U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32655660

Date: JUL. 31, 2024

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as a "senior software engineer L2" 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 the Petitioner did not establish that the Beneficiary was qualified to perform the intended services in the United States. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 their 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 them to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3)(iv).

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D).

Special knowledge concerns knowledge of the petitioning organization's products or services and their 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.[1]

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity 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.[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 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.

The Petitioner filed the petition in July 2023. The Petitioner described itself as "a software development company that specializes in Big Data Analytics" involving the use of computer systems to mine and process massive amounts of data for the purpose of identifying patterns, correlations, market trends, client preferences, and other information that . . . allows companies to make more informed and strategic business decisions." The Petitioner indicated that it "develops and integrates software for medium and large corporations that manages, mines, processes, and analyzes those corporations' data." One of the Petitioner's proprietary tools, a "cloud accelerator" called [redacted] helps customers to migrate large volumes of data.

The Petitioner explained that the Beneficiary joined the foreign employer in June 2021 as a senior software engineer. The Petitioner stated that once the Beneficiary was transferred to the United States he would continue to be assigned to a [redacted] project on the [redacted] account" where he would apply "specialized knowledge of [redacted] a proprietary technology available only through the company's professional services. The Petitioner indicated that he gained experience working with [redacted] and other integrated tools by working on the [redacted] project in India, asserting that "this knowledge and experience is not easily transferred or taught to another individual without significant economic cost and inconvenience." The Petitioner further stated that they have "invested significant time and money to train [the Beneficiary] in the technologies and tools required to work on Big Data projects that use [redacted] pointing to his over 400 hours of training at the company. The Petitioner asserted that only approximately 400 engineers had his level of training on [redacted] and reasoned that this made the Beneficiary "part of only 0.0004772% of software engineers" with his level of [redacted] knowledge in the United States. The Petitioner contended that

[1] *See generally* 2 *USCIS Policy Manual* L.4(B)(1), https://www.uscis.gov/policy-manual.
[2] *See id.*

this sufficiently established that the Beneficiary held special knowledge, or knowledge that was distinct and uncommon in the industry.

The Director later denied the petition, concluding that the Beneficiary was not "qualified to perform the intended services in the United States." Despite this conclusion, the Director also appeared to analyze whether the Petitioner demonstrated that the Beneficiary's knowledge was advanced or special as defined by the regulations within the section of the decision discussing whether he was sufficiently qualified. The Director concluded that although the Petitioner established that the Beneficiary had a wide range or skills an experience with [redacted] it did not establish that this knowledge was "significantly different from that possessed by similarly employed workers in the industry." The Director further concluded the Petitioner did not demonstrate that his knowledge and expertise was greatly developed or further along in progress, complexity and understanding than other workers within the company. In addition, the Director stated that the Petitioner did not sufficiently explain how the Beneficiary's knowledge was gained within the organization.

On appeal, the Petitioner contends that the Director erroneously applied the standard of advanced knowledge, rather than special knowledge, and incorrectly concluded that the Beneficiary is not sufficiently qualified to perform the intended services under the petition. The Petitioner also asserts that the Director erred in determining that the Petitioner did not sufficiently explain how the Beneficiary gained knowledge of the proprietary [redacted] tool. We agree.

First, the Director improperly focused on whether the Beneficiary was qualified to perform the intended services, not whether his knowledge was special as defined by the regulations. Upon review, we conclude the Petitioner established by a preponderance of the evidence that the Beneficiary is qualified to perform the intended services based on his education, work experience, and over 400 hours of training, including in the company's proprietary tool [redacted] Further, we agree with the Petitioner that they provided a sufficient explanation as to how the Beneficiary gained his knowledge within the organization and that the Director focused too much on whether the Beneficiary's knowledge was advanced within the organization. The issue before the Director was whether the Petitioner properly established that the Beneficiary's knowledge was special, or distinct or uncommon in comparison to the knowledge of other similarly employed workers in the industry.

The Director's erroneous conclusions appear to have heavily influenced the outcome of the decision. We will therefore withdraw that decision and remand the matter for a new decision that properly considers the evidence of record.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.