U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D- CORP.

DATE: JUNE 25, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting company, seeks to temporarily employ the Beneficiary as a senior software engineer 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 Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity or that he would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner contends that the Director misunderstood, misconstrued, and did not consider the record in its entirety.

Upon *de novo* review, we find that the Petitioner has not provided sufficient evidence to establish that the Beneficiary possesses specialized knowledge and that he has been and would be employed in a specialized knowledge capacity. 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 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 140-employee provider of software services that rely on the Electronic Data Interchange (EDI) solution which enables the exchange of data between buyers and suppliers throughout supply chain networks within the automotive parts manufacturing industry. The Petitioner develops and markets a suite of supply chain applications for retailers and suppliers as well as IT products and solutions to businesses of all sizes. The Petitioner seeks to employee the Beneficiary as a senior software engineer at an annual rate of pay of $48,000. The Petitioner discussed the Beneficiary's knowledge of its proprietary automotive software and industrial supply chain software – Base2 – stating that he will use this knowledge to design a technical solution, which he will then demonstrate to its developers and clients. Pointing to the Beneficiary's "intimate familiarity" with company clients, the Petitioner claims that this element is critical to its continued success. The Petitioner stated that the Beneficiary will use his understanding of the current "non-functional" Base2 requirements and the new "integrated automotive solution" on the Petitioner's cloud interchange platform ("CIP") to offer expertise that will lead to the creation of software solutions for clients in the automotive parts manufacturing industry.

The Petitioner further claimed that the Beneficiary is the only employee within the organization "at the global level" who can perform his assigned duties because he possesses an expertise that is "unmatched" industry-wide. The Petitioner focused on the Beneficiary's longevity with the foreign employer, stating that the Beneficiary's nearly five years of "hands-on proprietary and uncommon experience" resulted in his specialized knowledge of the organization's EDI features, its research and technology protocols, and the Clarion platform, all of which he will use to make a "proprietary prototype and test applications" that will fill a "unique B2B niche in the global market." The Petitioner also stated that the Beneficiary has specialized knowledge of the company's processes and procedures, which he will rely on to troubleshoot "urgent issues," write "user cases and guides," and draw diagrams and guides to describe new software functions.

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. If the evidence is insufficient to establish that the Beneficiary possesses specialized knowledge, then we cannot conclude that he has been employed abroad in a specialized knowledge capacity.

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.

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 denial decision, the Director found that the record lacked evidence to 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.

On appeal, the Petitioner contends that the Beneficiary possesses knowledge that is both special and advanced, asserting that the Beneficiary's duties require the use of the company's proprietary products, processes, and methodologies that can only be attained after "many years" of employment with the organization. The Petitioner points out that the Beneficiary holds "advanced certifications in various third-party products" that his employer uses; it argues that the Base2 software, which the Beneficiary has and would continue to use, is different from any other tool within the industry and that its features are "more demanding, complex, highly advanced, specialized[,] and sophisticated."

We find that the Petitioner did not provide sufficient evidence to establish that the Beneficiary possesses specialized knowledge. Although the Petitioner provided evidence to show that the Beneficiary has years of experience working with its proprietary products within the automotive parts manufacturing industry and is therefore an asset to his current and proposed employers, it has not established that the Beneficiary has specialized knowledge or explained how he gained knowledge that is claimed to be specialized.

A. Special Knowledge

The Petitioner claims that the Beneficiary has "special" knowledge of its proprietary automotive and industrial supply chain software – Base2 – because of his ability to use company processes and procedures – '[redacted] and [redacted] methodologies" – to understand the current "Base2 solution" requirements and the integrated automotive solution on the CIP platform in order to design improvements for the company's various proprietary software products. The Petitioner claims that specialized knowledge is required to carry out the Beneficiary's assigned responsibilities, including designing software applications "based on Clarion architecture and requirements" and ultimately creating a marketable proprietary prototype and test applications. The Petitioner did not describe the "[redacted] and [redacted] methodologies" or point to any distinct or uncommon characteristics to explain how the Beneficiary's knowledge of these elements is "special" as compared to other senior software engineers within the automotive parts manufacturing industry. Likewise, the Petitioner did not explain what is "special" about the Beneficiary's knowledge of its proprietary software products or

state how his knowledge of these products is different when compared to the knowledge others possess with regard to similarly used products within the industry.

Because "special knowledge" concerns knowledge of the employing 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 commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered specialized.

In the present matter, the Petitioner provided a profile of the Beneficiary's employment with the foreign entity, including a summary of his education and certifications, a list of the technical skills he has developed, the scope of the Base2 project he has worked on since starting his employment with the foreign entity in March 2012, and the responsibilities and technologies associated with that project. The profile indicates that the Beneficiary has been a "key member" of an eight-person team that worked on the Base2 project since 2013. Although the profile indicates that training others to work with Clarion technology is among his listed responsibilities, it does not list any employer-specific training to explain how the Beneficiary acquired his claimed expertise to become a "key member" of the team.

In a request for evidence (RFE), the Director informed the Petitioner that the record lacked sufficient evidence to demonstrate that the Beneficiary's knowledge of his employer's proprietary automotive and industrial supply chain software is "special" and that it is different from the knowledge possessed by individuals in similar positions within the same industry. The Director also noted that limiting knowledge of a particular organizational tool to a relatively small group of people does not necessarily establish that such knowledge is "special." The Director identified several factors that we consider in order to determine whether a beneficiary possesses specialized knowledge, including the minimum time in training and work experience that is required to obtain the knowledge that the Beneficiary is claimed to possess, a comparison of the Beneficiary's knowledge to the knowledge of others who are similarly employed within the industry, and evidence of the Beneficiary's prior education, training, and employment along with an explanation of how these elements relate to the Beneficiary's claimed specialized knowledge.

In response, the Petitioner provided a statement explaining that the foreign entity hired the Beneficiary because of his "specialized and advanced knowledge of specific modules," which it claimed as "an integral part" of the foreign entity's proprietary Base2 platforms and systems. This information is inconsistent with the Petitioner's original statement, which indicates that the Beneficiary attained "special" knowledge of the Petitioner's proprietary software tools as a result of his years of direct hands-on experience with the foreign entity. If the Beneficiary was hired by the foreign entity based on his experience with Clarion-specific modules, which he obtained before being hired by that entity, then it is unclear how the Beneficiary's specialized knowledge relates to the Petitioner or its foreign subsidiary. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec.

582, 591-92 (BIA 1988). Further, although the Petitioner claimed that the Beneficiary has an "in-depth and uncommon expertise in Clarion," it did not point to specific information about the Beneficiary's knowledge of Clarion to explain what makes it uncommon and more in-depth as compared to the knowledge of others, nor did it draw a nexus between the Beneficiary's knowledge of Clarion and his claimed specialized knowledge of the Petitioner's proprietary systems and processes. Although the Petitioner claimed that the Beneficiary has "extensive experience in developing . . . these systems and processes," it did not point to actual contributions the Beneficiary made or specify any change(s) in functionality that resulted from those contributions. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also claimed that the Beneficiary's specialized knowledge "stems from years of training and specialized knowledge experience" dating back to 2004. However, the Petitioner did not catalogue the training and "specialized knowledge experience" in terms of dates, content, and origin, nor did it explain how the former training and experience, which predated the Beneficiary's current employment by approximately nine years, relate to his claimed specialized knowledge of the Petitioner's proprietary software. The Petitioner also referred to the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda, to support the position that the Beneficiary's knowledge does not need to be either proprietary in nature or narrowly held with the employing organization. However, this point weakens the Petitioner's eligibility claim, which is precisely premised on the assertion that the Beneficiary's knowledge is both proprietary and narrowly held within the organization.

In a separate statement, the foreign entity's chief administrative officer ("CAO") stated that over the course of the Beneficiary's employment, his primary responsibility was to develop and maintain the Base2 software, which resulted in the creation of "various EDI [s]olutions and [e]nhancements and Automotive ERP integrations" that generated over $1.6 million in sales. The CAO did not, however, describe the new functionalities of the upgrades to explain precisely how the Beneficiary's contributions resulted in the additional revenue. Although the CAO claimed that the Beneficiary also performed maintenance functions on other "proprietary features and solutions," he/she did not establish that special knowledge of the foreign entity's products that was uncommon within the automotive parts manufacturing industry was required in order to maintain and upgrade the proprietary software.

Lastly, as evidence of the Beneficiary's claimed specialized knowledge, the Petitioner provided a Base2 sample user guide and two automotive solutions, claiming that the Beneficiary wrote the user guide and developed the solutions. The Petitioner did not, however, point to evidence verifying the Beneficiary's claimed integral role in these projects.

In the denial decision, the Director determined that the Beneficiary has experience using the foreign entity's software to carry out his assigned duties, but found that the Petitioner did not establish that the Beneficiary's knowledge is special in comparison to that of others within the same organization or industry. The Director also observed that the Petitioner did establish the length or type of training

required to acquire the type of knowledge the Beneficiary is claimed to possess. Accordingly, the Director found that the Petitioner did not demonstrate that the Beneficiary's current or proposed positions involve specialized knowledge.

On appeal, the Petitioner puts forth arguments that are similar to those made earlier in its RFE response. It claims that the Beneficiary's knowledge is not commonly found in the relevant industry and that his assigned duties have and would require the use of proprietary products. The Petitioner provides a list of the Beneficiary's job duties and states that he "holds advanced certifications in various third-party products."

We find that the Petitioner's arguments and supporting evidence are not sufficient to establish that the Beneficiary possesses specialized knowledge. Although the Petitioner provided evidence of the Beneficiary's education and certificates, it did not establish that either is a required element that led the Beneficiary to acquire specialized knowledge.

As previously indicated, a key element that factors into our determination of whether the Beneficiary has "special" knowledge is establishing precisely how and when the Beneficiary obtained the knowledge that is claimed to be "special." However, the Petitioner in this matter does not describe a path to or provide a particular protocol for acquiring the "special" knowledge that the Beneficiary is claimed to possess. Beyond broadly stating that the Beneficiary has over five years of hands-on experience with the foreign entity's proprietary products, the Petitioner does not outline a process for acquiring the knowledge that the Beneficiary is claimed to possess; without such information, it is unclear how the Beneficiary attained his current level of knowledge, which is claimed to be special and uncommon in comparison to others. Despite claiming that the Beneficiary had a pivotal role in writing a manual and developing product solutions, these products in and of themselves do not explain how the Beneficiary acquired specialized knowledge even if, *arguendo*, his role in the finished products was indicative of his possessing specialized knowledge. Here, the Petitioner listed the Beneficiary's education credentials and provided a certificate showing that he completed the requirements for a "Microsoft Technology Specialist"; it did not, however, establish a causal relationship between these credentials and the Beneficiary's claimed "special" knowledge. Moreover, as discussed above, the Petitioner has not provided corroborating evidence to support its claims about the Beneficiary's role as author of the manual and developer of two automotive solutions, as neither the manual nor the solutions identify the Beneficiary as an active participant in these finished products. As noted earlier, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Chawathe*, 25 I&N Dec. at 376.

The record is equally incomplete in drawing a connection between the Beneficiary's claimed "special" knowledge and his work experience with the Petitioner's foreign subsidiary. In certain instances, the Petitioner claims that the Beneficiary acquired specialized knowledge prior to starting his position with the foreign entity, although it does not specify the type of specialized knowledge he acquired, the steps he took to acquire it, or the connection between the knowledge he previously acquired and his current employment with the Petitioner's foreign subsidiary. Given this lack of a distinction between the Beneficiary's former experience and his current position with the foreign

entity, it is reasonable to question whether there is a link between the Beneficiary's current employer and the "special" knowledge he is claimed to have gained while working for that employer. Further, indicating that the Beneficiary worked with similar products during his prior employment indicates that the products he is currently working with are not uncommon within the industry; this undermines the claim that the Beneficiary's knowledge of his current employer's specific product is "special." Paradoxically, the Petitioner contends that the Beneficiary acquired specialized knowledge through his years of experience with his current employer without explaining the process or phases involved in the knowledge acquisition process. If the Beneficiary did acquire his knowledge through work experience as opposed to formal or classroom training, the Petitioner should still be able to articulate the various stages involved in acquiring the knowledge based on the assumption that a basic level of knowledge is necessary as a foundation upon which the higher levels of knowledge would be built. Here, the Petitioner does not articulate the process for acquiring the Beneficiary's current level of knowledge through his years of experience with the same employer and its products. Instead, the Petitioner makes sweeping claims about the Beneficiary's level of knowledge in comparison to others without distinguishing his knowledge at year one with his knowledge after five years of employment with the same organization.

Further, the Petitioner claims that the foreign entity's proprietary software "is entirely different from any other tool, product, or process used within the industry"; it does not, however, point to specific characteristics that distinguish the company's tools and products from those of other companies or provide sufficient evidence to support the claim that the products the Beneficiary is currently using require "special" knowledge that he gained in the course of his current employment with the Petitioner's foreign subsidiary. As previously noted, the Petitioner does not consistently state that the Beneficiary acquired his specialized knowledge through his experience with the current employer. Further, the Petitioner does not offer a layman's interpretation of the technical software specifications of the software that the Beneficiary uses to allow for a meaningful understanding of the difference(s) between the foreign entity's software products and those used by similar organizations within the industry, nor does it identify the Beneficiary's specific role and contributions with respect to the company's proprietary software, even though it claims that the Beneficiary has made improvements to the company's products.

We also note that determining whether a beneficiary's knowledge is "special" requires a comparison of that knowledge to the knowledge of others who hold comparable positions in the Petitioner's industry. The Petitioner bears the burden of showing that the Beneficiary holds knowledge that is noteworthy or uncommon compared to his colleagues outside the organization. However, the Petitioner did not expressly compare the Beneficiary's duties to those of other similarly employed professionals at similar organizations, nor did it establish that using and further developing software within the context of the foreign entity is different from and requires knowledge that is "special" as compared to similarly employed individuals within the same industry.

In light of the above, we find that the Petitioner has not established that special knowledge is required to perform the Beneficiary's assigned duties or that his knowledge is distinct and can be taught only through prior experience with the organization. The Petitioner does not adequately

specify how the Beneficiary's knowledge is "special" or establish how and when the Beneficiary gained such knowledge. While the Beneficiary may be an experienced IT professional and a valuable employee of the company, the record lacks sufficient evidence to establish that his knowledge is "special," as defined in the Act and regulations. The Petitioner has submitted little evidence to set the Beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. Due to these evidentiary deficiencies, the record does not establish that he possesses "special" knowledge.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given 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. Also, 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.

Here, the Petitioner broadly refers to the Beneficiary's knowledge of his current employer's processes and methodologies and claims that such knowledge is "more demanding, complex, highly advanced, specialized[,] and sophisticated." However, the Petitioner does not specify what those processes are or list any characteristics to support these general claims. The Petitioner also states that the Beneficiary's current team is comprised of eight members and of those eight members, there are four senior software engineers. This information does not allow us to compare the Beneficiary's knowledge of company processes and procedures to that of other employees within the petitioning company and its foreign subsidiary, nor does it lead to the conclusion that the Beneficiary's knowledge is greatly developed or further along in progress from others within the organization. Further, as discussed earlier in this decision, the Petitioner does not provide an adequate explanation to clarify precisely how and when the Beneficiary gained knowledge that is claimed to be "advanced." Therefore, the Petitioner has not supported the claim that the Beneficiary possesses "advanced" knowledge.

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 would be employed in the United States in a specialized knowledge capacity.

IV. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge, that he was employed abroad in a position involving specialized knowledge, and that he would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of D- Corp.*, ID# 1195821 (AAO June 25, 2018)