U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-A- INC.

DATE: JUNE 28, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an importer of lighting products manufactured by its parent company in China, seeks to temporarily employ the Beneficiary as a senior business development manager 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 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 submits additional evidence and asserts that the Director erred by not considering materials that the Petitioner submitted in response to a request for evidence.

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 part of a multinational organization that manufactures and sells low-energy lighting products. As it expands its presence in the United States, the Petitioner states that its marketing staff

needs to be "familiar with USA lighting products market" and the organization's "structure, function, [and] operation." The foreign parent company hired the Beneficiary as an account executive in 2014, promoting him to senior business development manager in 2017. The Petitioner stated that the Beneficiary's duties in the United States would include sales, marketing, customer service, and establishing a "reasonable development plan." The Petitioner intends to pay the Beneficiary $28,235 per year. The Petitioner asserted that the Beneficiary possesses specialized knowledge regarding the company's products, research and development, and sales.

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 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.

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

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 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.

The Beneficiary holds a bachelor's degree in China Studies and a master's degree in Chinese Culture and Philosophy; these academic degrees do not relate to his work for the petitioning organization.

An official of the foreign entity claimed that the Beneficiary has "specialized knowledge and skills" in 18 areas, which can be roughly grouped together as follows:

- Knowledge of the company's history, structure, processes and tools
- General knowledge of the lighting industry and the "Internet of Things"
- Knowledge of various types of lighting and fixture products
- "Specialized R&D product knowledge (for example: part manufacturing processes and surface treatment processes, optical design, electrical design, heat dissipation design and theories, assembly processes, etc.)"
- General skills such as project management, sales, and fluency in Chinese

Some of the listed items, such as Chinese language skills and general knowledge of the industry, plainly do not relate with any specificity to the petitioning organization's product, service, research, equipment, techniques, management, or other interests, or to its processes and procedures.

The foreign entity asserted that the Beneficiary requires specialized knowledge of the company's products and manufacturing processes in order to provide accurate information to existing and potential customers. The foreign entity stated: "Only a professional who ha[s] completed [an]

extensive training process and gained ample experience about our products and services, will be qualified to contribute to our business operations."

Regarding the above claim, the Petitioner submitted copies of certificates for three training courses that the Beneficiary completed during his employment with the company: Research & Development Specialized Knowledge (March 2016), Sales Skills (June and July 2016), and Products Knowledge (November 2016). This training all took place in 2016, more than a year after he started working for the company as an account executive in December 2014. The Petitioner's evidence indicates that an account executive's duties include "customer business development," "related products marketing analysis," and "project management & control." Like senior business development managers, account executives have marketing and customer service duties, albeit at a lower level. The Beneficiary was evidently able to perform these functions throughout 2015, before he had any of the training documented on his certificates from 2016.

It therefore appears that the Beneficiary was able to market the company's products and deal with customers before receiving the training documented in the record.

The dates on the training certificates indicate that the three training sessions each lasted a month or two, but the Petitioner did not establish how much training time occurred during those periods. A course that takes place over a span of two months does not necessarily consist of two continuous months of training time.

An accompanying transcript shows four courses (Product Knowledge, R&D Specialized Knowledge, Position Knowledge, and Sales Technique), each subdivided into sections. Next to each section title is a number from 1 to 3; the total is 44. The numbers are in a column labeled "课时数." The Petitioner did not provide a certified translation of the heading. The regulation at 8 C.F.R. § 103.2(b)(3) requires a *full* translation of any document containing foreign language. The Director concluded that "each training course was completed in three hours or less," and the Petitioner did not dispute that conclusion in its appeal. We find that the Petitioner has documented only 44 hours of training – just over a week of work time – that the Beneficiary received while employed abroad. This is consistent with copies of training materials in the record, which appear to be printouts of electronic slide presentations.

The Director denied the petition, stating that, while "the beneficiary has a wide range of skills, experience and training" regarding the company's products and processes, the Petitioner had not shown that the Beneficiary's knowledge "is significantly different from that possessed by similarly employed workers in the same industry." The Director concluded that the Petitioner had "not adequately established how the Beneficiary's knowledge rises to the level of special or advanced."

On appeal, the Petitioner asserts that the Director "did not closely review the brochure, powerpoint slides, training course materials, [and] product catalogs, that we have submitted. [The Beneficiary] completed training courses that are highly advanced and technological." As worded, this passage

implies that the Petitioner submitted "training course materials" other than "powerpoint slides," but the Petitioner does not specify what those other materials are, and they are not evident in the record.

As for the slides in the record, the Petitioner acknowledges that "some of the training materials are in Chinese but not translated." Without certified translations, the Director had no basis to conclude whether or not their subject matter is "highly advanced and technological." The Director did not err by failing to consider these materials; the Petitioner does not explain how the Director could have been expected to consider them beyond acknowledging their submission. The English-language training slides address market trends, prices, sales techniques, and comparisons of products from the Petitioner and its chief competitors. The Petitioner does not explain how this information is "highly advanced and technological."

The Petitioner asserts that the training period for a senior business developer is commonly "6 to 12 months." The Petitioner does not address or rebut the Director's conclusion that "each training course was completed in three hours or less." With respect to the product catalogs and documentation of the company's patents, the products themselves may involve sophisticated technology, but it does not follow that a sales-level grasp of product specifications constitutes special or advanced knowledge.

It is to a company's advantage for sales staff to understand the company's products, so that the staff can address customer questions about product selection and follow-up service issues. The knowledge that comes from sales experience, however, does not necessarily amount to specialized knowledge as the regulations define that term. The Petitioner has not shown that familiarity with its product specifications meets the threshold of specialized knowledge. The fact that the Beneficiary is familiar with the Petitioner's products, rather than the products of a different manufacturer, does not make the Beneficiary's knowledge specialized.

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 has not sufficiently explained how the Beneficiary gained knowledge specific to only its organization, and has not supported a claim that it would take a significant amount of time to train a qualified sales worker to perform the duties required of the proposed position.

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 its organization. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other sales and marketing personnel, 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 industry, or that it would require up to a full year or longer to acquire the knowledge needed for the 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.

ORDER: The appeal is dismissed.

Cite as *Matter of L-A- Inc.*, ID# 1400442 (AAO June 28, 2018)