U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-M- INC.

DATE: JUNE 28, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an "IT/Distribution" company, seeks to temporarily employ the Beneficiary as a systems analyst 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 California 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, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision relies on irrelevant factors and fails to address the Petitioner's primary claims regarding the Beneficiary's specialized knowledge. The Petitioner emphasizes that it established by a preponderance of the evidence that the Beneficiary possesses specialized knowledge as defined in the statute, regulations, and a 2015 U.S. Citizenship and Immigration Services (USCIS) policy memorandum.

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).

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, 8 U.S.C. § 1184(c)(2)(B). 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.

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).

II. BACKGROUND

The Petitioner is self-described as "the world's largest technology distributor and leading technology sales, marketing, and logistics company." It states that it has 30,000 employees and $46.4 billion in sales. The Petitioner's Philippines subsidiary has employed the Beneficiary as an "application developer II" since October 2015, and the Petitioner seeks to transfer him to its California headquarters to serve in the position of systems analyst at an annual salary of $90,000. The Beneficiary has a bachelor's degree in information technology.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director found that the Beneficiary's duties abroad and proposed duties in the United States appear to be similar to that of a software developer as described in the Department of Labor's *Occupational Outlook Handbook* (OOH). Further, the Director found that the Petitioner did not explain with sufficient specificity how the Beneficiary's familiarity with the company's products and processes equates to specialized knowledge, and had not shown how the Beneficiary's current and proposed positions require him to possess knowledge that is truly different, uncommon, or advanced compared to that possessed by similarly employed workers in the industry.

On appeal, the Petitioner asserts that the Director's decision improperly relied on information found in the OOH, lacked a detailed analysis of the specific facts of the case, and barely mentioned the "most critical component of the case – that the beneficiary was critical in the design, architecture and development of [the company's] ." The Petitioner emphasizes that the Beneficiary possesses both special and advanced knowledge of , and notes that, because the system was developed internally in the Philippines, the knowledge cannot be found in the United States and cannot be easily transferred to another employee.

The Petitioner further argues that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. Specifically, the Petitioner contends that the Beneficiary has been employed abroad in a capacity involving assignments that enhanced the company's productivity and competitiveness, possesses knowledge that can be gained only through prior experience with the petitioning organization and cannot be easily transferred, and that the Beneficiary's knowledge of the system is complex and of a highly technical nature.

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. Here, the Petitioner claims that the Beneficiary has both special and advanced knowledge.

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.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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 commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.

Here, the Petitioner asserts that the Beneficiary gained special knowledge of the company's web-based system as "part of the team" that developed the system. The Petitioner explained that its group of companies has previously used a LAN-based warehouse management system, and sought to convert it to the web-based system in 2015.[1] The Petitioner refers to the Beneficiary as an "initial" or "pioneering" developer of who "conceptualized, developed, and rolled out" the system.

The Petitioner emphasized that the Beneficiary, when hired, already had advanced skills in web-based applications and multiple "computer languages tools and development expertise," including and The Petitioner acknowledged that some of these technologies "may not be unique," but stated that "the combination of all of these skills and utilization of them in the development of web applications is especially unique." The Petitioner did not offer any support for its claim that this

[1] The Petitioner submitted a letter from the foreign entity indicating that it started the project in January 2015 and assigned the Beneficiary to that project when it hired him in October of that year. At the time, it had just rolled out the first version of with basic warehouse capabilities.

represents a "unique" combination of skills in third-party technologies in comparison to other IT professionals who work on business systems and web-based applications development. In fact, the Petitioner initially stated that the Beneficiary acquired skills in [redacted] and [redacted] "by completing his bachelor's degree in Information Technology" in 2012. The Beneficiary's resume also shows that he had more than two years of experience with an unrelated employer, where he developed [redacted] applications for [redacted] and payroll systems. Given the Petitioner's claim that the Beneficiary is one of the most advanced and experienced developers employed by the foreign entity and possesses a "rare" skillset with respect to web applications, it is reasonable to expect the Petitioner to explain how he brought an uncommon or highly advanced skillset to the development of [redacted].

Nevertheless, the Petitioner acknowledges that the Beneficiary's skills in third-party technologies alone "do not necessarily evidence specialized knowledge," but emphasizes that his knowledge is special because he used these technologies in conjunction with his knowledge of the company's internal warehouse and logistics processes to create the [redacted] system, and to see it through conceptualization, development, and successful roll-out. Therefore, the Petitioner claims that the Beneficiary gained his special knowledge, in large part, from his role in the development of the [redacted] system. The Petitioner claims that he has special knowledge of both the system and of the company's warehouse, supply chain, logistics, and efficiency requirements.

In terms of the Beneficiary's role in [redacted]'s development, the Petitioner noted that the Beneficiary served as a designer, code developer, unit tester, and functional/technical instructor on the system. However, the Petitioner did not explain with specificity how knowledge of the [redacted] system, even as a member of the development team, resulted in the Beneficiary having special knowledge that is truly different or uncommon compared to other web application developers working on business applications using [redacted] technologies. The record contains little technical information regarding the [redacted] system itself in support of the Petitioner's claim that the Beneficiary is one of only a few people who would be capable of understanding the system at the level required for the U.S. position.

In addition, we note that the Petitioner refers to the Beneficiary as a "pioneer developer" and at times attributes [redacted]'s concept, development, and rollout almost exclusively to him. However, the Petitioner indicates that the foreign entity hired him in October 2015, at a time when the first rollout of [redacted] had already occurred. The Petitioner did not support its claim that the Beneficiary "conceptualized" or "pioneered" the [redacted] system given that it already existed when he joined the foreign company.

With respect to the Beneficiary's claimed special knowledge of the company's specific warehouse and logistics requirements, the Petitioner stated that the Beneficiary visited its "[redacted]" in [redacted] California to attend "knowledge transfer sessions at the warehouse" and to become familiar with and advance his knowledge of the company's warehouse and logistics processes. The Petitioner did not state or document the length of this training[2] or the number of

[2] USCIS arrival and departure records show that the Beneficiary visited the United States from June 24, 2016 until July 4, 2016.

employees who received it. Further, the Petitioner did not establish that the Beneficiary, as a brand new employee in October 2015, required an extensive period of time to become familiar with the company's warehouse operations, processes, logistics and supply chain, and existing LAN-based warehouse management system prior to being assigned to work on the web-based using his existing third-party web applications skills. In fact, it appears that this U.S.-based training in company processes occurred after the Beneficiary had already been working on for many months. The Petitioner did not identify or document any other company-specific training required for the Beneficiary's currently application developer II position abroad.

The Petitioner did not describe the Beneficiary's claimed knowledge with sufficient specificity. Instead, it relies on the fact that he has been assigned to since he was hired by the foreign entity and a broad claim that he possesses special knowledge because he contributed to the development of an internal company system. The fact that the system was developed internally for use at the petitioning organization's warehouses does not establish that all employees who worked on its development possess knowledge that is truly special and could not be transferred to an experienced web application developer through a short period of training. Knowledge that is proprietary or company-specific must still be either special or advanced.

Overall, the record contains insufficient evidence to establish that the Beneficiary's knowledge of third-party web application technologies and tools combined with his familiarity with the Petitioner's warehouse and logistics requirements and its system, constitute "special knowledge" that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained IT professionals in the Petitioner's industry. While we do not discount the possibility that the Beneficiary's role in the development of may have resulted in his acquisition of special knowledge, the Petitioner's claims are overly broad and not supported by sufficient evidence to meet its burden of proof.

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 has not sufficiently identified the number or types of employees involved in s development. The Petitioner has indicated that the system was developed in the Philippines

and therefore no U.S. employees have the knowledge necessary to implement it at the company's domestic warehouses. But the Petitioner also stated that "[f]or US counterpart there are some developers partly involved in the development of and added some to focus primarily on the project [*sic*]." This statement undermines the Petitioner's claim that knowledge of the system is limited to a team of developers based in the Philippines, and its claim, made elsewhere in the record, that no U.S.-based developers are familiar with the system.

As noted, the Petitioner has identified the Beneficiary as part of that team assigned to develop in the Philippines. The Petitioner states that, as a result of this assignment, he has advanced knowledge of the system requirements, concept, and development, as well as advanced knowledge of related processes needed for the continued development and deployment of the system. However, the record contains insufficient information regarding the size and scope of the team assigned to the project and the Beneficiary's exact role in its development. The Petitioner does not appear to claim that every employee assigned to the work on has specialized knowledge, as it claims that "even other developers" cannot perform the same duties as the Beneficiary. However, it has not shown how the Beneficiary's specific assignment resulted in his acquisition of advanced knowledge in comparison to his colleagues. The Beneficiary had less than two years of experience with the foreign entity at the time of filing, and, as noted, joined the Philippines-based project team well after the project began.

The foreign entity's organizational chart showed the Beneficiary as a member of a six-person team who reported to a "team lead, applications." The team members included three senior application developers, the Beneficiary and another "Developer Applications II," and a "business analyst – warehouse management information systems." In addition, the chart showed other applications team leads who each had their own development teams. The Petitioner did not provide information regarding the backgrounds or duties of other staff on the same or similar teams or those of the U.S.-based employees working on . The Petitioner broadly stated that the Beneficiary's skill set "is especially unique when compared with other developers on the team" but did not offer support for this statement. The organizational chart is insufficient to support the Petitioner's claim that the Beneficiary himself "virtually created the system" and possesses advanced knowledge of the system and related processes not held by the other application developers.

The Petitioner emphasized the fact that the Beneficiary provided application demonstrations and trainings for current and potential users of and "experienced" an in-house deployment at the group's warehouse in Sweden. The Petitioner also stated that he would provide "in-depth trainings" to U.S. employees, but did not include these duties among its detailed breakdown of the Beneficiary's proposed duties. The Petitioner did not document these demonstration, deployment, and training assignments or explain how they establish the Beneficiary's knowledge of the system as advanced compared to that of other persons assigned to the project in the United States and abroad. While the Beneficiary's knowledge of the system may be considered advanced compared to the warehouse personnel who are the system's end users, the Petitioner must still show that he possesses advanced knowledge in comparison to similarly employed workers and that the knowledge cannot be readily transferred to another employee with a similar technical skill set. The Petitioner did not provide the information needed to make such a comparison.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, for the reasons discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While we do not doubt that was developed to improve the company's productivity and competitiveness in the marketplace, and the Beneficiary is one of the employees who performs duties related to s development, this characteristic alone is not probative of the Beneficiary's specialized knowledge. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13. The Petitioner here has not submitted sufficient evidence to establish how the Beneficiary's knowledge qualifies as "special" or "advanced."

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further 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

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 I-M- Inc.*, ID# 1397220 (AAO June 28, 2018)