U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-, INC.

DATE: JUNE 29, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which provides software support for cloud computing systems, seeks to temporarily employ the Beneficiary as a software engineer 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: (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 submits additional evidence and asserts that the Director erred by not taking the nature of the Petitioner's products into account.

Upon *de novo* review, we will sustain the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. 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.

The statute defines specialized knowledge as a special knowledge of the company product and its application in international markets or an advanced level of knowledge of processes and procedures of the company. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). Our regulations define specialized knowledge as:

> [S]pecial 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).

An individual L-1B petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, evidence that the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States, and a detailed description of the services to be performed in a specialized knowledge capacity in the United States. 8 C.F.R. § 214.2(l)(3).

II. DISCUSSION

The sole issue to be addressed 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.

The Petitioner has developed a proprietary support platform, called [redacted] for use with cloud computing systems that use the [redacted] operating system. The Petitioner stated that the Beneficiary has been "a leading member of the proprietary [redacted] project team since its inception" and "[h]e is credited with the design and development of the initial architecture of the product and has since been actively developing and leading several essential parts of the project as our Lead Backend Developer." The Petitioner provided supporting evidence regarding the [redacted] product and detailed the Beneficiary's specific contributions to its development.

The Director denied the petition, finding that the Petitioner had not shown "that the beneficiary has knowledge or experience in the field of information technology that is significantly different from that possessed by similarly employed workers in the same industry." The Director stated that the Petitioner had not shown that the Beneficiary's knowledge of [redacted] "rises to the level of special or advanced" in comparison to others in his field.

On appeal, the Petitioner states:

> We are not merely personalizing [redacted] infrastructure to suit our company's needs. Instead, our goal is to make operating [redacted] more user friendly and bring dramatic efficiency into the current process . . . . Our company focuses on the problems faced and features lacking in the current Cloud computing world. It is important to note there are very few companies that are focusing on the operational aspects of [redacted] Clouds . . . . [O]ur company is doing something that no other company is doing.

. . . .

> [The Beneficiary] is building a very unique algorithm to process [redacted] logs in real-time to create alerts for any problems. This has never been done previously for [redacted] Clouds.

The record demonstrates that the Beneficiary is not simply familiar with one proprietary product in competition with other similar products throughout the field. Rather, the Beneficiary continues to play an instrumental role in developing a new type of product to fill a previously neglected niche in the field of cloud computing.

To establish that a beneficiary has special knowledge, 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. Here, the Petitioner has established that the Beneficiary, as a lead developer of a new technology in the Petitioner's particular industry, meets this threshold and possesses special knowledge of the company's product.

The Beneficiary's past employment abroad, and his intended employment in the United States, has been and will be focused on continued development of the [redacted] service platform, and therefore, specialized knowledge has been, and continues to be, integral to the Beneficiary's employment with the Petitioner and its foreign subsidiary. The record of proceeding, as supplemented by the Petitioner's submission on appeal, now contains sufficient evidence to overcome the basis for the Director's decision.

III. CONCLUSION

The Petitioner has established that the Beneficiary possesses specialized knowledge, and that his employment both abroad and in the United States requires specialized knowledge.

ORDER: The appeal is sustained.

Cite as *Matter of W-, Inc.*, ID# 446864 (AAO June 29, 2017)