U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7605436

Date: MAR. 2, 2020

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a software design, development, and consulting services business, seeks to continue the Beneficiary's temporary employment as a lead consultant – technology under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) § 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that she was employed abroad in a capacity involving specialized knowledge, and that she would be employed in a specialized knowledge capacity in the United States. The Director also determined that the Petitioner did not establish that it is doing business.

On appeal, the Petitioner contends that the Director's decision did not properly apply the statute, regulations, and relevant U.S. Citizenship and Immigration Services (USCIS) policy guidance to the facts presented.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. 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 a publicly-traded software design, development, and IT consulting company with over 1700 employees in the United States and more than 20,000 employees worldwide. The record reflects that the Beneficiary was previously employed abroad by the Petitioner's Sri Lankan subsidiary from December 2009 until December 2017, where she started as an associate engineer and held the position of lead consultant – technology at the time of her transfer to the United States. The Petitioner has employed the Beneficiary in the United States since December 2017 and now seeks to continue her employment in the position of lead consultant – technology at an annual salary of $52,700. The Beneficiary will work primarily at the worksite of the Petitioner's client, The [redacted], in [redacted], Pennsylvania.

The Beneficiary's resume indicates that she received her bachelor's degree in information technology in 2010 and that she has been employed within the Petitioner's group for the entirety of her professional career.

III. SPECIALIZED KNOWLEDGE

The primary issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge, that she has been employed abroad in position involving specialized knowledge,[1] and that she will be employed in a specialized knowledge capacity in the United States.

In the denial decision, the Director found that the Petitioner did not establish that the Beneficiary's knowledge of the company's internal and proprietary processes, tools, and methodologies equates to specialized knowledge, and did not demonstrate how the Beneficiary's previous position abroad or current position in the United States require her to possess knowledge that is truly different, uncommon, or advanced compared to that possessed by similarly employed workers in the company or in the IT services industry.

On appeal, the Petitioner asserts that the Director's decision did not adequately consider the supporting statements and evidence submitted in support of the petition or properly apply the relevant law,

[1] The Petitioner did not claim, in the alternative, that the Beneficiary was employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

regulations, and policy relating to specialized knowledge. The Petitioner emphasizes that the Beneficiary possesses both special and advanced knowledge of its proprietary processes, tools and methodologies, as well as knowledge of the client project, and therefore possesses knowledge that 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 USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

A. Evaluating Specialized 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 she possesses specialized knowledge, then we cannot conclude that she has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

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 an employee is able to gain specialized knowledge within the organization, and explain how and when the individual beneficiary gained such knowledge.

For the reasons discussed below, the Petitioner has not established that the Beneficiary possesses specialized knowledge.

B. Special or Advanced Knowledge

Here, the Petitioner claims that the Beneficiary possesses both special and advanced knowledge of its proprietary processes, tools, and methodologies for delivering IT services to its clients.

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.

With respect to "advanced knowledge," 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. Knowledge that is commonly held throughout a petitioner's industry or that can be readily imparted from one person to another is not considered special or advanced knowledge.

The Petitioner emphasizes that it has invested considerable time and millions of dollars into the development of its proprietary processes, tools and methodologies, and has an extensive training, testing, and certification framework in place to ensure that its technical staff are well-versed in them. The Petitioner acknowledges that other IT service companies are capable of providing similar services and have their own internal processes, tools and methodologies for delivering projects to clients. It also recognizes that its engineers and consultants, like those employed by its competitors, possess expertise in third-party technologies that are common in the industry. However, it claims to have a "unique approach to the design, development, installation, testing and deployment process – much like a proprietary manufacturing process," and emphasizes that this unique approach is how the company differentiates itself from its competitors.

The Beneficiary is claimed to possess special and advanced knowledge of the company's [redacted], [redacted] methodology, [redacted] project management and tracking system, [redacted] code quality governance tool, and [redacted] API Accelerator, a cloud-based platform for rapid development of API-based banking solutions. Further, the Petitioner indicates that she uses these particular tools to perform her assigned duties for the [redacted] project.[2]

Therefore, the question before us is whether the Beneficiary's knowledge of these proprietary tools, processes and methodologies rises to the level of special or advanced knowledge. Knowledge that is proprietary or company-specific must still be either special or advanced. Accordingly, the Petitioner must establish that qualities of its proprietary tools, processes or methodologies require this Beneficiary to have knowledge beyond what is common in the industry. For example, if a Petitioner establishes that its proprietary tools and methodologies are sufficiently complex that all of its employees who work with them have to undergo considerable training in order to perform their assigned duties, this fact may support a finding that knowledge of the proprietary products and tools alone constitutes "special knowledge" of the company's services.

The Petitioner claims its employees must undergo at least one year of formal training, mentoring and on-the-job training to acquire even a basic level of knowledge of and proficiency with the proprietary processes, tools, and methodologies needed to provide the company's services. On appeal, the Petitioner maintains that employees who complete this level of training have special knowledge. It further emphasizes that its training departments "have developed and provide advanced training, certification and mentoring on its advanced proprietary processes, tools and methodologies – which is advanced knowledge once accomplished." The Petitioner states that high performing employees such as the Beneficiary are selected for this advanced certification, and explains that such employees "are also assigned to certified specialists for months/years long mentoring in the methodologies and tools," noting that "it is this training/mentoring combination that really enables [the company] to select and place these high performing employees within the on-site teams." The Petitioner indicates that it typically requires two to three years for selected employees to obtain the advanced knowledge that the Beneficiary is claimed to possess. However, as discussed below, the Petitioner has not adequately supported its claim that the Beneficiary completed this extensive period of training and mentoring.

[2] The Petitioner has indicated that the Beneficiary has acquired specialized knowledge of other internal tools including [redacted] but it does not claim that she will be required to use any of these in her current role in the United States.

The Petitioner submitted a letter from its Sri Lankan subsidiary that listed both the specific training courses the Beneficiary has completed since joining the company, and the certification tests she has passed. As noted, the Petitioner indicates that the Beneficiary possesses special and advanced knowledge of [redacted] and [redacted] API. Based on the Petitioner's description of its training requirements, we would therefore expect the Petitioner to provide evidence that she has completed various forms of training, mentoring, and certifications in each of these areas.

The submitted letter indicates that the Beneficiary completed a basic, one day [redacted] Training" course on October 10, 2008.[3] It further shows that she completed 20 courses, totaling 71.5 hours, between October 2008 and October 2017. Although the letter indicates that many of the courses were in the "specialized" or "advanced" category, none of them, but for the one basic [redacted] course, were in the specific tools, methodologies or processes in which she is claimed to have specialized knowledge.

The subsidiary's letter also listed 19 certifications that the Beneficiary completed via online assessments. Fourteen of these certifications were categorized as "basic," and included six [redacted] assessments. Four of the certifications were categorized as "advanced," including one completed in January 2010 (only weeks after her start date with the foreign entity), and two [redacted] certifications. The Petitioner highlighted the [redacted] certifications but did not explain the significance of the Beneficiary's other certifications. None of them, except for the [redacted] certification, appear to relate to her claimed specialized knowledge of the above-referenced company tools, processes and methodologies.

We note that, while there is no requirement that an employee acquire specialized knowledge through formal training courses, the Petitioner here has emphasized its well-staffed training departments at all company locations and its reliance on proprietary training modules. Its statements consistently indicate that knowledge acquisition begins with such training and therefore it is reasonable to expect the Beneficiary to have completed some formal training in [redacted] and [redacted] API. In addition, the Petitioner's statements suggest that there is a [redacted] Advanced course that prepares employees for the advanced certification but the Beneficiary did not complete such a course. Although the Petitioner claims that the Beneficiary is among a small percentage of employees who have completed the advanced certification in [redacted] the record does not support the Petitioner's claim that the knowledge needed to pass it requires extensive training.

As noted, the Petitioner indicates that its employees acquire special and advanced knowledge not only through formal training courses, but also through mentoring. A letter from the foreign entity's Global Head of Logistics and Immigration, [redacted] describes the company's formal mentoring programs. [redacted] indicates that in addition to completing training courses, "identified high performers" are assigned to mentoring relationships. Specifically she describes a process in which such employees complete a six-month mentoring program known as the "Buddy Program," after which they participate in a "Mini Project Program" that requires another one to six months of mentoring. The next step in the process is to be a "shadow team member" on a client project to obtain additional mentoring in [redacted] and [redacted] explains that once an employee

[3] According to the Beneficiary's resume, she had an internship with the Petitioner's Sri Lankan subsidiary from October 2008 until April 2009.

has completed these steps, they can be assigned to a client team where they will continue to receive mentoring and gain more advanced knowledge and proficiency of the company's tools and processes for their first "few years."

Based on [redacted]s statements, it is reasonable to determine that the Beneficiary would have completed at least seven to 12 months of mentoring prior to even being assigned to a client team in which she was required to use the company's tools, processes and methodologies. The Petitioner submitted a chart titled "Formal Mentoring received by the Beneficiary" which indicates that she received a total of 132 hours of formal mentoring between March 2013 and the end of 2017. This included 12 hours of mentoring in [redacted] in 2013, 28 hours in 2015, and 28 hours in October 2017, just prior to her transfer to the United States. During this four-year period, she also received 32 hours of mentoring in "API Exchange platform – [redacted]" which appears to relate to the [redacted] API Accelerator tool. Based on this evidence, we cannot determine that she completing the formal mentoring program described by [redacted] or that she was required to undergo extensive mentoring on the [redacted] or [redacted] Bank API Accelerator tools. Further, the submitted chart does not indicate that she received any mentoring with respect to advanced [redacted] skills, [redacted] or [redacted].

Overall, the evidence submitted does not support the Petitioner's claim that the Beneficiary was required to undergo two to three years of formal training, mentoring and on-the-job training in order to acquire proficiency with the proprietary tools, processes and methodologies in which she is claimed to have advanced knowledge. Nor has the Petitioner documented that she completed the one year of training and mentoring which the Petitioner claims results in an employee having "special knowledge." The Petitioner's evidence reflects that she received approximately 200 hours of training and formal mentoring over a period of seven or eight years. While this figure is not insignificant, it does not support the Petitioner's claim that its proprietary tools, methodologies and processes are so complex, and require such extensive training, that proficiency with them rises to the level of specialized knowledge. Because they are proprietary, we acknowledge that they cannot be learned outside of the company. However, the robust formal training, certification and mentoring program that the Petitioner claims to have in place, and the Beneficiary's completion of such program, is not adequately documented in the record. In fact, the Petitioner did not document the Beneficiary's completion of any formal training or mentoring in [redacted] or [redacted], two of the tools that are claimed to be critical to her current project assignment.

Given the limited amount of formal training and mentoring that the Petitioner was able to document, it is more likely than not that the Beneficiary learned many of the proprietary tools and processes on the job as necessitated by her assignments. For example, the record indicates that she was assigned to the [redacted] project's offshore team in December 2016, and that one of her key duties was to create and define customized architecture design and implementation models and APIs, as well as implementation frameworks, using the proprietary [redacted] API accelerator. The record reflects that she was assigned to this project in a technical lead role despite having no apparent training or prior experience with this proprietary tool, and was provided with 32 hours of mentoring in "API Exchange Platform" several months into the project. Proprietary knowledge that can be easily transferred to an employee with an appropriate technical background through completion of a short period of formal or informal training does not rise to the level of specialized knowledge.

Overall, while the evidence indicates that the Petitioner's group has its own proprietary methodologies, tools and processes for delivering IT services, it has not supported its claim that knowledge of these methodologies alone constitutes specialized knowledge. The Petitioner acknowledges that other companies providing the same types of services have their own comparable methods for delivering those services, and provides comparisons in an attempt to differentiate its own tools and methods from those used by its competitors. However it has not supported its claim that its own tools, processes and methodologies are so distinct and complex that it would take a significant amount of time to train an experienced information technology consultant who had no prior experience with the petitioner's family of companies.

The Petitioner also highlights the Beneficiary's existing knowledge of the ongoing [redacted] project, noting that she possesses knowledge that is not held by any other team member as a result of her previous assignment with the project's offshore team. Specifically, the Petitioner states that it would take at least six months to retrain another senior level professional from within the organization to undertake the role. An organizational chart provided for the on-site project team reflects that the Petitioner is one of three lead consultants assigned to the [redacted] project. Although requested by the Director, the Petitioner did not provide information regarding how the Beneficiary's knowledge, training and experience compare to that of similarly employed-workers on her team.

On appeal, the Petitioner asserts that "the recent trend by the USCIS to demand comparisons to other employees within the organization are [*sic*] incorrect" with respect to special knowledge, and states that such comparisons are "not mandated" when evaluating whether a given beneficiary has advanced knowledge.

However, 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. Further, it is the petitioner's burden to establish a favorable comparison.[4] Here, the Petitioner states that the Beneficiary's special knowledge is based, in part, on her possession of knowledge that is not held by any other member of her project team, and which would require six months to transfer to another similarly experienced company employee. Therefore, it was reasonable for the Director to seek information regarding the duties by other members of the team and to inquire about their relative training, knowledge, and experience.

We also acknowledge the Petitioner's claim that specialized knowledge need not be narrowly held within a petitioning organization. As noted by the Petitioner, USCIS policy recognizes that multiple employees within a company may have obtained the experience, training, or education necessary to possess the same type of specialized knowledge, and even acknowledges that some companies may use technologies or techniques that are so advanced or complex that nearly all employees working on the relevant products or services possess specialized knowledge.[5] As discussed, the Petitioner claims that employees within its organization deemed to have special knowledge have completed one year of formal training and mentoring, while employees it deems to have advanced knowledge have completed two to three years or more of training, mentoring and advanced on-the-job training.

[4] *See* USCIS Policy Memorandum PM-602-0111, *supra*, at 7.
[5] *Id.* at 10.

The Petitioner claims the Beneficiary possesses advanced knowledge of its proprietary tools, processes and methodologies despite the fact that it was able to document her completion of only 200 hours of training and formal mentoring. While we do not doubt that she has the knowledge required to perform her job duties, the Petitioner has not supported its claims that its employees must undergo extensive training in order to gain knowledge of and proficiency with its proprietary tools, methodologies and processes. As a result, the Petitioner did not establish that such proprietary knowledge is "special knowledge" or that the Beneficiary's own level of knowledge is greatly developed or further along in progress, complexity and understanding than that generally found within the company, such that it can be considered "advanced."

We note that the Petitioner provided a chart indicating that the Beneficiary herself conducted a few training sessions between 2013 and 2017, prior to her transfer to the United States, as additional evidence of her "advanced knowledge," including training in [redacted] and [redacted]. This evidence does not overcome the lack of documentation supporting the Petitioner's claim she herself was required to undergo extensive training in order to acquire advanced knowledge of these tools.

We also acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the above-referenced L-1B Adjudications Policy Memorandum. 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 the Petitioner's internal tools, processes and methodologies for delivering client projects are critical to the company's productivity and competitiveness in the marketplace, and the Beneficiary is skilled in providing services that rely on these methodologies, 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."

For the reasons discussed, the Petitioner has not established that knowledge of its proprietary tools and methodologies alone is sufficient to establish "specialized knowledge" because it has not shown that this proprietary knowledge is sufficiently distinct or uncommon or that it could not be readily transferred to another IT professional with the requisite functional and technical background. The Petitioner's claim that it would require up to three years to acquire the knowledge needed for the U.S. position is simply not supported by the record.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether she has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

IV. DOING BUSINESS

The Director also denied the Petitioner based on a finding that the Petitioner did not establish that it is a qualifying organization that is doing business as defined in the regulations. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H).

Specifically, the Director determined that the Petitioner was not registered to do business in Pennsylvania and stated that it is "legally required to be authorized to conduct business as a foreign corporation in the State where the job is located before it is recognized as a valid business." The Director also found that "no employment opportunity exists because there is no legally authorized employer" in Pennsylvania.

We will withdraw the Director's determination with respect to this issue. As noted, the Petitioner is a publicly trading U.S. corporation with headquarters in Massachusetts. The Petitioner indicated on the petition that the Beneficiary will work at a client site located in Pennsylvania in addition to working at its headquarters. There is no requirement that the Petitioner maintain a registered and active office in the state where the Beneficiary will engage in off-cite employment, and the record contains ample evidence that the Petitioner is doing business as defined by the regulations.

V. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.