U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-USA, LLC

DATE: MAR. 6, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a business software consulting firm, seeks to temporarily employ the Beneficiary as an [redacted] under the L-1B nonimmigrant classification for intracompany transferees. *See* 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 Vermont 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. The Director also found that the Beneficiary's intended offsite work appears to be labor-for-hire, unrelated to the Petitioner's business.

On appeal, the Petitioner asserts that it has met its burden of proof, and that the Director erred by relying on an incomplete and inaccurate reading of the record.

Upon *de novo* review, we will dismiss the appeal, but we will withdraw the specific finding that the Beneficiary would apparently perform labor-for-hire.[1]

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

[1] The record shows that a core function of the petitioning company is to install and configure a third-party banking platform for its customers. The customer named in the record has engaged the Petitioner's services for this purpose. The work order in the record calls for specific functions to be performed during a limited period of time. The Beneficiary would not be simply an outsourced IT worker performing the customer's business functions while nominally employed by the Petitioner.

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. . 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. UNRELATED INFORMATION

Before we turn to the merits of the petition, we will address the Petitioner's allegation that the Director "has conflated the petitioner's case with the case of another petitioner, and therefore not performed a good faith analysis of the information and evidence submitted." The decision included references to "[redacted]" and "the various agreements and amendments with [redacted]"

While the Director's references to [redacted] are erroneous, they are also isolated and do not invalidate the entire decision. The remainder of the decision includes numerous correct references to the Petitioner; the Beneficiary's foreign employer; and exhibits in the record. The decision includes quotations from record materials. Whatever the origin of the very few incorrect references to [redacted] there are many more correct references which make it clear that the adjudicator was examining the correct record of proceedings when rendering the decision now under review. There is no indication that the occasional appearances of the name "[redacted] altered the outcome of the decision.

Also, in the denial notice, the Director stated: "In the initial submission, you state that the beneficiary created your proprietary products." The Petitioner states that "this false claim is evidence that . . . the adjudicator did not . . . review the initial submission." This appears, however, to be an oversimplification rather than an erroneous or "false claim" on the Director's part. As the Director correctly noted, the Petitioner stated in response to the RFE that the Beneficiary "played a critical role in the development . . . of SAP-based business intelligence solutions," which can be interpreted to mean that he had a hand in their creation. In light of the Petitioner's claim that it is "false" to credit the Beneficiary with the creation of the Petitioner's methodologies, we will assume that the Beneficiary's role in their development was minimal.

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 the Beneficiary possesses specialized knowledge, then we cannot conclude that his past and intended future employment involves specialized knowledge.[2]

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. 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.

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.

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.

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

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.

The Petitioner stated:

> [The Beneficiary], through his tenure abroad, has become one of [the Canadian affiliate's] experts regarding [the company's] proprietary technologies and methodologies. Specifically, [the Beneficiary] possesses specialized knowledge of [the company's] intellectual property such as [its] [redacted] [its] Banking Reference Models, and [its] Banking Reference Architecture . . . . [The Beneficiary's] temporary presence is now being sought in conjunction with a major project . . . [which] seeks to implement [redacted] as its commercial online channel application. The client has engaged [the Petitioner] to provide implementation services to install, configure, and enhance the [redacted] platform through application of its proprietary [redacted] As a key part of this project (which entails a full systems-level overhaul of the company's tracking and financial management software), [the Beneficiary] will provide technical expertise on the implementation of the SAP product that leverages the [petitioner's] technologies and methodologies, including the [redacted]

A separate letter provided more details:

> The [Petitioner's] international family of companies specializes in the development and implementation of proprietary software interface systems which allow for customized access to and use of the SAP platform of business software . . . . Specifically, our unique software interface solutions provide clients with user-friendly methods for increasing efficiency and capability throughout all critical operational functions . . . .
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> The [petitioning organization's] international . . . family of companies specializes in banking platforms, implementations, upgrades and services that enable financial institutions to run their day-to-day operations and improve their technologies. [For] large banking transformation projects . . . [the Petitioner] customizes the SAP banking modules to integrate with the customer's existing architecture systems, executes the migration of old system data to the new system, and reduces the complexity of outdated systems where possible . . . .

. . . .

> . . . [The petitioning organization's] products and services have only recently been introduced into the United States market, making it inherently necessary for [the Petitioner] . . . to require the temporary services of our most talented international . . . employees, such as [the Beneficiary], to assist in further developing [the Petitioner's] presence in the North American market. Indeed, these foreign . . . employees are currently the only individuals who possess the highly unique specialized knowledge combination of SAP product expertise and [redacted] implementation methodology experience required to handle, install, customize, and navigate our Company's proprietary solutions.

The Petitioner asserted that workers "with deep, hands-on experience in SAP products and modules, as well as nearly three years of experience working with and training on [the Petitioner's] [redacted] methodology," "are very limited in number." The Petitioner asserted that the Beneficiary "is clearly distinct or uncommon in the SAP banking industry" due to his "extensive knowledge of [redacted] technologies and applications, as well as [the petitioning organization's] specific methodologies."

The Petitioner stated that the Beneficiary worked with "SAP applications and technologies" for several years before he began working at the Petitioner's affiliate in Canada, which then gave him "unique specialized knowledge of [the organization's] proprietary implementation methodology." The Petitioner's Canadian affiliate asserted that, during his employment abroad, the Beneficiary "utilized his knowledge of [the organization's] proprietary methodologies and intellectual property" named above.

After the Director requested further evidence about the Beneficiary's work, the Petitioner asserted that the Beneficiary "has a clear expertise in [redacted] and most importantly, [the Petitioner's] methodologies." The standard for eligibility, however, is *special* or *advanced* knowledge, rather than "clear expertise."

By statute, specialized knowledge constitutes "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. The Petitioner acknowledged that "[redacted] is not a product that is specific to" the petitioning entity. The Petitioner stated that "the true distinction [the Beneficiary's] duties . . . and the duties that a similarly situated worker could perform, is [the Beneficiary]s in-depth knowledge of, and experience with, [the Petitioner's] proprietary methodology, framework, and architecture for integration of [redacted] with [each] client's existing systems." The Petitioner states that other software engineers "would lack the knowledge of [redacted] in the finance sector *as it is applied through* [the Petitioner's] *methodologies*" (emphasis added). The Petitioner did not establish, or explain how, the Beneficiary's knowledge of

the Petitioner's methodologies permitted him to install and configure [redacted] in a way that could be meaningfully distinguished from the work of others in the field.

This is significant because the Petitioner's role, as shown on a work order submitted with the petition, is "to install, configure and enhance the [redacted] to meet the Customer['s] requirements." The work order also indicates that the purpose of the enhancements is to integrate [redacted] into the client's existing systems and "to match [the] look and feel" of "the layouts and designs provided by the [customer's] team." The Petitioner did not explain how its methodologies affect the end result for its customers, in terms of their ability to use the third-party [redacted] system after installation and configuration. The Petitioner acknowledged that the Beneficiary had "two years of directly applicable experience with [redacted]" distinct from his "sixteen months of experience working directly with [the Petitioner's] proprietary . . . methodology." Other companies are able to install and configure [redacted] even if they do so without the Petitioner's proprietary methods. The Petitioner has provided background information about its own methods, but has not established the difference between those and the methods of their competitors.

The Petitioner listed the Beneficiary's training between 2008 and 2014. Most of this training took place while the Beneficiary worked for employers unrelated to the Petitioner. The Petitioner does not explain how this third-party training gave him special knowledge of the Petitioner's product and its application in international markets or an advanced level of knowledge of the Petitioner's processes and procedures. Much of the training related to [redacted] but if that product is used throughout the industry, then the Beneficiary's familiarity with it does not inherently constitute specialized knowledge.

The Beneficiary listed four "trainings completed" during his time at the Petitioner's foreign affiliate:

- [redacted] certification (December 2015)
- Digital Remote Training (October 2016–January 2017)
- Digital Training – Austria (January 2017)
- [redacted] certification (January 2017)

The Beneficiary stated that he has misplaced the documentation of this training, and the record contains no further information about it. The Petitioner and the Beneficiary did not specify whether the above training was continuous or intermittent, which is relevant to the question of how much time the training actually took (and therefore how difficult it would be to provide the same training to other workers). The Petitioner also did not indicate whether the training is routine for the organization's employees. The [redacted] certification involves training in a third-party framework, rather than the Petitioner's own products, processes, or procedures.

The Petitioner stated that a new employee would require 28 months of experience, plus "additional trainings," before the Petitioner "is ready to assign them to a US client." We note that the Beneficiary worked for the Petitioner's foreign affiliate for less than 29 months at the time the Petitioner filed the petition, which would imply that the Beneficiary had only been client-ready for

only a few weeks at the time of filing. This is not consistent with the Petitioner's description of the Beneficiary's work history with the company.

After the filing of the petition, the Petitioner stated that it "has just released a proprietary platform," which "is an actual platform, and not an implementation methodology like . . . ' The Petitioner stated: "in order to integrate this product, our employees must have in-depth knowledge of [the Petitioner's] methodologies, Reference Model, and as well as of processes."

For a beneficiary without qualifying managerial or executive experience, a fundamental requirement for the L-1B classification is at least one year of experience abroad in a capacity that involved specialized knowledge. The Beneficiary was not using the new proprietary platform a year before the petition's filing date in April 2017; he underwent "remote training from October 2016 – January 2017 and . . . 2 weeks of dedicated training in February 2017." We need not decide whether or not the Beneficiary's training gave him special or advanced knowledge of that platform, because he had, and used, that knowledge for less than a year before the filing date. Therefore, eligibility rests on a showing that the Beneficiary already had specialized knowledge in April 2016, a year before filing and six months before he began training in the Petitioner's new platform.

The Petitioner submitted printouts of electronic slide presentations and "High-Level Design document[s]" drafted by the Beneficiary, as evidence of his "Development of Qualifying Specialized Knowledge." The Petitioner also indicated that the Beneficiary "Perform[ed] His Specialized Knowledge Role" by updating and editing other "High-Level Design document[s]" for the foreign affiliate. These materials provide highly technical details about the nature of the Beneficiary's work, but they do not show that the knowledge required to work with the information qualifies as "special" or "advanced."

In the denial notice, the Director acknowledged that the Beneficiary has acquired detailed knowledge of the Petitioner's processes and procedures. Nevertheless, the Director concluded that "longevity, hours on the job, work experience, and knowledge of a firm's technically complex products alone do not equate to 'special' or 'advanced' knowledge." The Director noted that the terms "special" and "advanced" are inherently comparative, and the Petitioner has not sufficiently compared the Beneficiary to others working in the field. The Director found that the Petitioner had not shown that the Beneficiary's knowledge "is knowledge not possessed or easily obtained by others in [the petitioning] company or in [its] industry."

On appeal, the Petitioner states that the Director issued a "vague and overbroad" decision that did not give full consideration to the Petitioner's credible and detailed information. The Director quoted at length from the Petitioner's statements over the course of a nine-page decision, and listed the exhibits that the Petitioner had submitted. The decision indicates that the Director took the full record into consideration.

The Petitioner repeats and expands upon the assertion that, while the Petitioner "specializes in implementation projects involving SAP software" from a third-party source, the Beneficiary has specialized knowledge of the Petitioner's "methodologies *and how they are applied in international markets*." The Petitioner asserts that its "customized solutions allow for our clients to utilize SAP banking software in a manner that is directly tailored to their specific needs and operations," resulting in "a far more efficient system than any 'off the shelf' product can offer." The Petitioner maintains that it has established, by a preponderance of the evidence, that "the beneficiary's knowledge of [the Petitioner's] proprietary methodologies is not ordinarily found, or does not appear frequently, amongst similarly situated [redacted]"

The Petitioner, however, has not shown that use of its proprietary methodologies has a significant impact on the client's results in comparison to other means of installing [redacted] software. The Petitioner also does explain how the ability to customize and configure SAP software translates to specialized knowledge—the Petitioner provides no basis for comparison to show that this ability is not widespread in the industry, or that only workers with special or advanced knowledge are able to serve clients in this way. In the absence of such evidence, we must conclude that other workers are able to produce comparable results, simply using different means to do so.

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 those of others in the Beneficiary's field, either within or outside of the organization. While it is possible that there are no other employees with exactly the same knowledge and skill set 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.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner has not provided evidence to allow such a comparison. The Petitioner does not describe how this Beneficiary's work and responsibilities differ from other employees or how other employees gained their knowledge of the petitioning organization. The Petitioner has not established that the Beneficiary's knowledge is advanced within the petitioning organization's own operations.

In sum, the record does not demonstrate that the Beneficiary's combination of training, experience, work assignments, and knowledge of the Petitioner's methodologies has given him special or advanced knowledge. While the Beneficiary may be a valuable employee who is well-qualified for the proposed position in the United States, the record does not establish that the Beneficiary possesses specialized knowledge.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge

ORDER: The appeal is dismissed.

Cite as *Matter of A-USA, LLC*, ID# 1056331 (AAO Mar. 6, 2018)