U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-P-G-, LLC

DATE: MAR. 11, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a tile manufacturing company, seeks to continue the Beneficiary's temporary employment as a "Ball Mill & Spray Dryer Operator" 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary was employed abroad with the foreign parent entity for the requisite time period; and (2) that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner contends that the Beneficiary possesses knowledge that is both special and advanced and provides additional evidence to demonstrate that the Beneficiary was employed abroad for the required one year prior to coming to the United States to work for the U.S. entity.

Upon *de novo* review, we find that the Petitioner has not provided sufficient evidence to establish that the Beneficiary possesses specialized knowledge and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. Therefore, we will dismiss the appeal. However, we find that the Petitioner has provided sufficient evidence to show that the Beneficiary has the required period of employment abroad and we will therefore withdraw this issue as a basis for denial.

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).

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II. BACKGROUND

The Petitioner is a tile manufacturer that seeks to expand its existing U.S. manufacturing plant. It referred to proprietary manufacturing processes that include "raw materials, milling, production, quality inspections, and packaging" and claimed that its processes are "essential" to the creation of "top[-]quality ceramic tile." The Petitioner did not describe the manufacturing process or specify the proprietary characteristics that distinguish them from other processes in the tile manufacturing industry. Regardless, the Petitioner claimed that the foreign technicians have specialized knowledge of its proprietary processes and are therefore "integral" in providing technical training to new employees. It also stated that the foreign employees' specialized knowledge will allow them to offer "process support and stabilize production." The Petitioner noted three skill levels among the technicians and explained that employees are required to take aptitude tests to advance to the next technical level. It stated that the Beneficiary's skill level qualifies him to train new employees and that he will be paid $30,000 per year plus benefits.[1]

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter 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.

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.[2]

A beneficiary is deemed 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. A

[1] The Petitioner states in a letter submitted with the petition that it will also provide "an allowance of $9,600 for housing, $6,120 for food, $2,000 for transportation, and $1,916 for medical insurance."

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

petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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.

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 petitioning entity 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 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.

In the present matter, the Petitioner provided the Beneficiary's employment history showing that he worked for the foreign entity and its affiliate from July 2013 to May 2017 and that he assumed the position of "Ball Mill & Spray Dryer Operator" during his employment for each entity. Although the Petitioner listed the Beneficiary's job duties, it did not explain why specialized knowledge is required to perform them. The Petitioner also stated that the Beneficiary underwent training and obtained a certificate on spray dyer operation; however, it did not provide a copy of the certificate or establish that undergoing the training was a required step in the process of acquiring the Beneficiary's claimed level of specialized knowledge. The Petitioner went on to discuss the graduated skill levels among the operators in its tile manufacturing process stating that it would take

six to nine months to train "an unskilled worker to become a Level 1 operator in tile manufacturing" and that it would take another year for a technician at that level to attain "Level 3 technician status." However, the Petitioner provided a job description that does not indicate that the Beneficiary's job duties progressively changed to correspond with the increasing skill levels; it is therefore unclear when the Beneficiary attained the specialized knowledge he is claimed to have gained over the course of a nearly four-year period of employment. Despite claiming that specialized knowledge is required to understand and work with "the variable and dynamic differences in raw materials" and the "ambient conditions which affect the aesthetics of the product," the Petitioner did not state precisely when the Beneficiary gained knowledge of these elements, nor did it establish that such knowledge corresponds to the highest skill level.

In a request for evidence (RFE), the Director acknowledged the Beneficiary's training in spray dryer operations, but stated that the Petitioner's description of the Beneficiary's knowledge, education, training, and employment does not establish that he has knowledge that is either "special" or "advanced." The Director instructed the Petitioner to provide evidence of the knowledge required to carry out the duties of the foreign and U.S. positions, identify the products, processes, or procedures that require specialized knowledge, explain how the Beneficiary's knowledge is either "special" or "advanced," and discuss how that knowledge compares to others within the employer or others within the industry among others who perform similar type of work.

In response, the Petitioner explained that a tile manufacturer's success depends on its tile body formulation and preparation as well as its tile product development; it stated that each tile factory has its own secret tile body formula and processing parameters that are adjusted by an "experienced body prep technician." The Petitioner indicated that the body preparation process "requires extremely good coordination of the body prep operators trained by [the Beneficiary]," who will also adjust the viscosity and other production parameters to ensure efficiency and avoid loss of product; it claimed that the Beneficiary's experience and ability to adjust these parameters is critical to the company's productivity, competitiveness, and financial position. It did not, however, describe the company's specific processes or procedures or explain how they differ from the processes and procedures of other tile manufacturers. Further, although the Petitioner claimed that there are few operators like the Beneficiary in the U.S. tile industry, it did not explain how the Beneficiary's knowledge of its processes and procedures differs from those of other operators within the industry. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner also pointed to the Beneficiary's five years of experience in the foreign entity's body preparation department as well as his knowledge of relevant safety and environmental regulations and stated that the Beneficiary will use that experience to train new operators. It discussed training timelines specifying six months as the required period of training an operator must undergo to become "independent" at the level one skill competency and up to 12 months for level two competency, noting that an unspecified amount of additional time would be needed to train a "worker supervisor." However, the Petitioner did not specify the skills required to attain each level of knowledge or establish how each level corresponds to a progression in skill difficulty; it also did

not state how or when the Beneficiary obtained the knowledge that is claimed to be "special" and "advanced," beyond pointing to his years of employment with the foreign entity. Likewise, although the Petitioner provided the Beneficiary's job duty breakdown, it did not establish that specialized knowledge is required to perform the listed job duties.

In the denial decision, the Director found that the submitted evidence did not demonstrate that the Beneficiary's foreign and proposed positions require either special knowledge of the company's products that is uncommon in the industry and could not be easily transferred, or an advanced level of knowledge or expertise of the organization's processes and procedures. The Director further found that the Petitioner did not provide sufficient evidence of the Beneficiary's training for spray dry operation or establish that the Beneficiary acquired knowledge that is not generally found within the tile manufacturing industry.

On appeal, the Petitioner states that the Beneficiary's knowledge is both "special" and "advanced" and offers the opinion of , a consultant in the tile manufacturing industry. states that he was "directly involved with the personnel from the parent company operations and processes" and was employed by the Petitioner during building and start-up of its tile manufacturing facility in Tennessee. The letter offers an opinion that is based on employment with the Petitioner and a six-month period observing the Beneficiary. points to the Beneficiary's "specialized capabilities" and states that his knowledge of the Petitioner's ball mill and spray dryer is "unique and greatly developed" and "distinct" as compared to similar employees within the U.S. tile industry because the Beneficiary worked at two different factories in China within the larger organization and is familiar with the organization's ball mill and spray dryer procedures.

The letter also discusses the Petitioner's procedures with respect to its use of the ball mill and spray dryer noting that the Beneficiary plays a critical role in that process because of his understanding of the equipment and process testing that result in a quality finished product. does not, however, reference the terms "special" or "advanced" within the immigration law context, nor does he identify specific characteristics that demonstrate the Beneficiary's knowledge as being "unique and greatly developed" as compared to other employees within the same entity. He also does not elaborate or clarify how the Beneficiary's knowledge is distinct from others within the same industry.

Further, generally refers to "U.S. competitors" that use "pre-processed raw materials" as distinguished from the Petitioner's use of "crude bulk raw materials," but he does not clarify whether there are other competitors in the industry that use similar materials and employ individuals with knowledge that is similar to that of the Beneficiary. Although discusses a similar training timeline as the one previously mentioned in the Petitioner's RFE response and claims that there are practical and theoretical components to the training, his statement does not add to our understanding as to the types of practical and theoretical knowledge an individual must gain at each skill level, nor is it apparent how and when the Beneficiary himself was trained in these elements and when he is claimed to have attained a specialized level of knowledge.

We may, in our discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). Although [redacted] may be correct in his assessment of the logistical difficulties in starting an operation like the Petitioner's in an area where the necessary pool of personnel is lacking, such an assessment does not establish that the Beneficiary's knowledge is either "special" or "advanced."

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 ball mill and spray dryer and his use of this equipment in the tile manufacturing process. However, the record lacks probative evidence demonstrating how and when the Beneficiary gained the training that resulted in knowledge that is claimed to be "special" and "advanced" or evidence that the Beneficiary must possess specialized knowledge to carry out his listed duties with the foreign and U.S. entities.

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. The appeal will be dismissed for this reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of W-P-G-, LLC*, ID# 2254713 (AAO Mar. 11, 2019)