U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30239366

Date: MAR. 11, 2024

Appeal of Texas Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (L-1B Specialized Knowledge Worker)

The Petitioner is an information technology enterprise that seeks to employ the Beneficiary temporarily as its Senior Software Engineer 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 that the Beneficiary possesses specialized knowledge and was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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. ANALYSIS

The Petitioner is an IT consulting company that provides product development and software engineering solutions for client companies in various industries. Its clients then use those solutions to provide data and content to their customers. The Petitioner provided evidence that its Russian affiliate has employed the Beneficiary as a Senior Software Engineer since October 2013, and it now seeks to transfer him to its office in California to serve in the same capacity.

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

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 – knowledge that is either "special" or "advanced."

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 their 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

[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).

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 Petitioner's supporting letters, the Beneficiary is claimed to have gained specialized knowledge during his employment abroad "through a combination of sources." The Petitioner further stated that the Beneficiary gained knowledge that is both special and advanced and pertains, in part, to the organization's "proprietary systems and processes" as well as its products and their application in international markets. The Petitioner did not, however, specifically identify any "proprietary systems and processes" in which the Beneficiary is claimed to have specialized knowledge. Likewise, the Petitioner did not identify any of its organization's processes and procedures, despite claiming that the Beneficiary's knowledge is advanced. *See* section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). Instead, the Petitioner broadly referred to the Beneficiary's "advanced knowledge of software and tools and their specific use in the development of [the organization]'s software, modules, products, etc."

The Petitioner listed various tools and platforms its organization uses to develop software solutions, highlighting that the solutions are proprietary and are customized for its clients. The Petitioner pointed out that the Beneficiary participated in the development and integration of various tools and worked on a project from March 2015 until March 2021 in the course of which he "applied his specialized knowledge in software engineering in aspects of system implementation, including the analysis, design, building, implementing, testing and support." The Petitioner did not explain how the Beneficiary's claimed "specialized knowledge in software engineering" demonstrates that he has special knowledge with respect to the organization's product or advanced knowledge with respect to the organization's processes and procedures. *See id.* And while the Petitioner claimed that the Beneficiary used internally generated "approaches and techniques" and was responsible for "handling all development processes" while working on the assigned project, it did not describe the approaches and techniques or the processes to explain why specialized knowledge was required to work on the assigned project.

In a request for evidence (RFE), the Director determined that the record lacks evidence showing that the Beneficiary has specialized knowledge with respect to the Petitioner's product, if claiming that the knowledge is special, or with respect to the Petitioner's processes and procedures, if claiming that the knowledge is advanced. The Director requested further evidence demonstrating that the Beneficiary's duties abroad involved specialized knowledge, noting that skills required to perform the routine job duties of a Senior Software Engineer do not necessarily require specialized knowledge. The Director

also asked the Petitioner to specify the minimum time required to gain the Beneficiary's claimed knowledge and to provide the Beneficiary's training record, if any, listing course descriptions and dates, the length of time spent daily on each course, and the number of employees who completed the same training. The Director explained that such information is relevant for the purpose of distinguishing the Beneficiary's training from that of other employees in the same position and gauging whether his knowledge is commonly held within the organization or industry.

In response, the Petitioner provided the Beneficiary's job duty breakdown, indicating that the Beneficiary used his "proficiency" in various software tools and an Oracle-based platform and applied his "expertise in Java programming language" to develop software solutions and execute his "specialized knowledge duties." The Petitioner highlighted the Beneficiary's direct involvement in delivering new product features as well as his "[i]n-depth understanding of software development principles and practices," his "[d]eep knowledge of the software development system," his "familiarity" with code review processes and software development methodologies, and his "[u]nderstanding of common integration challenges" and "[k]knowledge of integration techniques."

In sum, the Petitioner focused more broadly on the Beneficiary's IT knowledge and experience, reiterating prior references to the Beneficiary's "specialized knowledge in software engineering" and stressing the Beneficiary's ability to enhance functions and technologies by using various customizable tools. However, the Petitioner did not explain how the Beneficiary's knowledge is special with respect to a company product or how it is advanced with respect to company-specific processes and procedures. And although the Petitioner offered "additional descriptions of the proprietary resources" it claims the Beneficiary used "in applying his specialized knowledge," it did not convey a meaningful understanding of these resources to explain why using them requires specialized knowledge.

The Petitioner also provided a list of internal trainings that the Beneficiary completed during his employment abroad. However, it is unclear what role, if any, the trainings had in imparting specialized knowledge of the company's product or its processes and procedures, particularly given that some of the trainings pertained to tools that are widely available in the IT industry, such as Oracle or Java. Furthermore, we note that some of the course descriptions, including the two courses the Beneficiary took prior to commencing work on his project in 2015, indicate that they conveyed "general concepts," as in the one-day training in July 2014, or that they were introductory in nature, as in the two-day course the Beneficiary took in November and December 2014. Likewise, the course description indicates that although the Beneficiary took other courses while he worked on the foreign project, many were one day in duration and contain descriptions that do not indicate that the content they conveyed can be deemed as specialized knowledge.

Also, the Petitioner has not established that it is unusual or uncommon for a senior software engineer to obtain the type of training the Beneficiary received, nor is there evidence that the information conveyed in the training courses, while likely valuable and relevant to the services the company provides, constitutes "specialized knowledge" as defined in the statute and regulations. Ultimately, the record indicates that the software development skills that the Beneficiary possesses are relevant to the Petitioner's business and enable him to customize solutions based on platforms that are available in the industry. However, the Petitioner has not established that the Beneficiary's possession of this

skillset constitutes "special knowledge" among its own software engineers, or among software engineers working in the same field.

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. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws-and-policy/policy-memoranda. As discussed earlier, the record does not establish how the duties performed by the Beneficiary require him to possess knowledge that is uncommon or distinct compared to similarly experienced senior software engineers who work for consulting companies.

On appeal, the Petitioner states that the Beneficiary had the most years of experience with the organization as compared to members of his team and claims that the Beneficiary gained "specialized and advanced knowledge of [the company]'s proprietary tools and resources" because of his "extensive experience." However, the Petitioner has not discussed a path for gaining specialized knowledge within its organization nor stated when the Beneficiary is considered to have ultimately attained the level of knowledge that it deems to be specialized. As such, it is unclear that the Beneficiary's tenure with the foreign employer sets him apart from his peers in terms of possessing specialized knowledge. And although the Petitioner highlights an "expanded organizational chart" which it claims depicts the Beneficiary's team in the United States and abroad, it does not clarify the composition of the Beneficiary's team abroad or provide information about the team members and the knowledge they possessed.

The Petitioner also does not explain how the referenced document serves as evidence that the Beneficiary's position requires software development knowledge or skills that are uncommon among similarly trained and experienced software engineering professionals. For instance, the document lists each employee by name and position title and includes various IT terminology and abbreviations next to each employee profile. The following list appears adjacent to the Beneficiary's profile: "atg dynamo messaging systems, e-commerce, atg nucleus, atg bcx, java." The Petitioner did not explain the significance of the listed items to a determination of whether the Beneficiary possesses specialized knowledge, nor did the Petitioner clarify how or if these items relate to the Beneficiary's claimed knowledge of the Petitioner's "proprietary tools and resources." Without clarification of these ambiguities, we cannot determine whether the Beneficiary possesses specialized knowledge.

Further, the Petitioner contends that the Beneficiary's claimed specialized knowledge was "not acquired though a structured program over a predetermined period of time" but rather claims that his knowledge was obtained "through a variety of sources over the course of years." However, the Petitioner did not adequately demonstrate that the Beneficiary's education, experience with the foreign employer, and internal training courses resulted in his acquiring special knowledge that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained software engineers working in the Petitioner's industry. We note that the Petitioner did not outline a progression of the Beneficiary's knowledge during his employment abroad, thus making it unclear how his experience with the company and the trainings he underwent in the course of his employment resulted in the acquisition of specialized knowledge. For instance, the agenda for the training that took place in April 2015 states that it is an "[i]ntroduction to ATG" and involved working with the Oracle platform. It is

unclear how this course pertained specifically to the employer's product or service or how it contributed to gaining specialized knowledge given that introductory nature of the course content. Likewise, the agenda for a course offered in November 2015 states that it was an "[i]ntroduction to Spring Framework," and the focus of a course in December 2016 was a new programming language that was intended as a Java alternative. While we do not doubt that these courses conveyed valuable information that enabled the Beneficiary to better address the needs of the project he was working on, it is unclear how they contributed to the Beneficiary's acquisition of specialized. Thus, the Petitioner's claims that the Beneficiary possesses considerable proprietary or company-specific knowledge that can only be gained through extensive training or experience are not supported by sufficient evidence to meets its burden of proof.

Although the Beneficiary's use of proprietary tools is relevant to this discussion, this factor in and of itself does not establish that the knowledge acquired to develop and enhance those tools necessarily rises to the level of being specialized. As previously discussed, to establish that the Beneficiary was employed in a specialized knowledge capacity, the Petitioner must establish when and how the Beneficiary gained the knowledge that it claims is specialized. The Petitioner must also support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although the Petitioner asserts that the Beneficiary meets the criteria for possessing specialized knowledge, it does not adequately address these critical points, leaving us to question how he gained specialized knowledge in the course of his employment with the foreign entity.

Accordingly, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.