U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-, INC.

DATE: MAR. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a healthcare application development company, seeks to temporarily employ the Beneficiary as its "Project Technical Lead" 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 Petitioner did not establish, as required, that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity or that he would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner disputes the denial asserting that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity. The Petitioner further argues that the Director did not follow the guidance set out in the United States Citizenship and Immigration Services (USCIS) L-1B adjudications policy memorandum.[1] The Petitioner contends that the Director did not examine all of the documentation submitted and thus her decision was based on erroneous conclusions of fact.

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 has been and would be employed in a specialized knowledge capacity. Therefore, 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

[1] The Petitioner is referring to USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

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.*

A beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary has a special knowledge of the company product and its application in international markets or has 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).

Specialized knowledge is 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).

An individual L-1B classification petition must be accompanied by evidence that: (1) the petitioner and the foreign employer of the beneficiary are qualifying organizations; (2) the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; (3) the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; and (4) 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).

II. BACKGROUND

The Petitioner is an IT company that designs and implements digital solutions for client companies that operate in the U.S. healthcare market. In a supporting cover letter, the Petitioner stated that the Beneficiary has been and is currently employed abroad as a "Senior Team Leader," which requires "a deep understanding" of the client's business domain – which in this instance is healthcare insurance – and the client's IT infrastructure, including its proprietary web portals and relevant IT technologies. The Petitioner claimed that during the Beneficiary's 12 years of employment with , the Petitioner's foreign subsidiary, he worked on multiple projects servicing a specific client, which resulted in the Beneficiary gaining a "deep understanding" of that client's "business processes and needs."

The Petitioner also noted that the Beneficiary was certified in a project management approach that is commonly used in the healthcare IT industry "as the method of choice" and pointed to the Beneficiary's "excellent technical knowledge" and eight years of work experience in IT healthcare systems and processes. The Petitioner focused on the Beneficiary's "exposure to the client's proprietary systems and processes" as a key element of the Beneficiary's work experience in the healthcare IT sector, claiming that his knowledge of the client's IT infrastructure combined with his "technical expertise" enable him to execute the duties of the proffered "specialty occupation"

position with the U.S. entity. The Petitioner claimed that the Beneficiary's knowledge "can only be obtained through extensive prior experience" with the foreign employer.

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. If the evidence is insufficient to establish that the Beneficiary possesses specialized knowledge, then we cannot conclude that he has been employed abroad in a specialized knowledge capacity.

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. In the case of a petitioner seeking to employ a beneficiary in a specialized knowledge capacity, eligibility may be established by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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.

A. Advanced Knowledge

In the present matter, the Petitioner claims that the Beneficiary has eight years of experience with healthcare IT "systems and processes," thereby indicating that the Beneficiary has knowledge that is "advanced."

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 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 ordinarily must demonstrate that a beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

Here, the Petitioner claimed that the Beneficiary's key function will be managing communications for one of its largest clients. The Petitioner stated that managing the client's communications will include the following elements: requirements clarification, progress monitoring, status reporting, incident resolution, and user assistance and support. The Petitioner focused on the fact that in his current position with [redacted] the Beneficiary leads the team whose work he will oversee and coordinate from his onsite position with the U.S. entity. The Petitioner stated that addressing its client's business needs would involve, in part, making changes to and enhancing the client's applications and "related business processes." The Petitioner noted that in addition to strong technical skills, the proposed U.S. position requires someone with more than three years of "extensive experience in software development," at least two years of experience "engaging with business owners and product managers" to manage risks and timelines, and at least two years of experience managing delivery of products and services to customers.

The Petitioner highlighted the Beneficiary's experience in working with one of its healthcare insurance clients for "a majority of his time," claiming that the Beneficiary gained a "deep understanding" of the healthcare insurance industry, the client's processes and IT infrastructure, and "strong technical expertise in relevant technologies." Although the Petitioner broadly referred to the Beneficiary's lengthy work experience with a healthcare client's "proprietary systems and processes," it did not identify any specific systems or processes, or establish a nexus between the Beneficiary's familiarity with the client's systems and processes and his gaining an "advanced" level of knowledge of the Petitioner's or the foreign employer's processes and procedures.

In a request for evidence (RFE), the Director informed the Petitioner that the record lacked sufficient evidence to demonstrate how the Beneficiary's knowledge is "advanced" and further noted that the Petitioner did not compare the Beneficiary's knowledge, education, or training to that of others to establish that his knowledge is not commonly held within the industry. The Director further noted that the Petitioner did not compare and contrast the Beneficiary's duties to others who perform similar work or explain why his duties require specialized knowledge.

In response, the Petitioner provided a statement listing the Beneficiary's duty breakdown, which indicates that the Beneficiary's current position involves reviewing and clarifying requirements, designing and implementing solutions, managing and delivering code, managing and training team members, and evaluating new technologies. The Petitioner stated that the senior development positions, like the Beneficiary, are responsible for "technical excellence and client-related specialized knowledge," and claimed that the Beneficiary has a "diverse background in numerous software technologies" and follows the Petitioner's "well established processes and methodologies" to define and design IT solutions to fit the client's needs. The Petitioner did not specify or describe any "processes or methodologies" that the Beneficiary used and will use in the course of his work with the current and proposed employers.

The Petitioner also claimed that the "combination of technical and business knowledge and experience held by [the Beneficiary] are very rare in the industry." We note, however, that the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of*

Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). Here, the Petitioner does not describe the type of knowledge, training, and experience other similarly employed individuals possess within the industry, nor does it provide other evidence to support the claim that the Beneficiary's combination of knowledge and experience "are very rare in the industry." Further, the Petitioner claims that among the members of the Beneficiary's team, only the Beneficiary has "special working knowledge" of the client's use of a specific platform – the IBM WebSphere Portal – and that in contrast to other team members, who have knowledge of a specific software tool, only he has "an overall knowledge and experience with the client's software architecture, setup and configuration." The Petitioner provided an organizational chart, a skills spreadsheet, two completion certificates showing that the Beneficiary was certified as an IBM solution developer in the "WebSphere Portal 8.0" and as a "ScrumMaster," and an opinion letter from an associate IT professor in support of its claims. The Petitioner also indicated that one of its supporting documents was a skills comparison that ranked each employee's specialized knowledge on a scale of 1-10.

In the denial decision, the Director reiterated that the burden is on the Petitioner to not only articulate the specific nature of the Beneficiary's claimed specialized knowledge, but to also explain how such knowledge is necessary to perform the duties assigned to the Beneficiary and to state how the Beneficiary gained the knowledge that is claimed to be specialized. The Director determined that the Petitioner did not adequately describe how the Beneficiary's knowledge is typically gained within the organization and concluded that the Beneficiary's familiarity with his employer's methodologies or projects does not equate to an advanced level of knowledge.

We find that the Petitioner's supporting documents are not sufficient to support the claims put forth in the petition. First, we note that the skills comparison spreadsheet, which the Petitioner used as a basis for demonstrating the Beneficiary's specialized knowledge, lists employee position titles, but does not specify employee names. As the Beneficiary's team has one other senior team leader other than the Beneficiary, it is unclear which rankings apply to the Beneficiary as opposed to the team's other senior team leader. Furthermore, while the spreadsheet lists rankings for each of nine fields, the Petitioner did not explain the ranking system. The two senior team leaders ranked "10" and "8," respectively, in four fields – "Leadership," "Client Interactions," "Healthcare IT," and "Hibernate"; however, the Petitioner did not describe the factors that contributed to the different rankings which would explain how each individual's ranking relates to his level of knowledge.

The Petitioner also provided an organizational chart, which shows a five-tier hierarchical structure with the Beneficiary alongside another senior team leader occupying positions in the second to lowest tier. While the number "5" is included in the square containing the Beneficiary's information, the Petitioner did not explain the significance of that number or clarify how, if at all, the number relates to his level of knowledge. The Petitioner also did not clarify why the Beneficiary's superior – the director of development – is ranked with a number "4," while a development team leader, whose qualifications are below those of the Beneficiary's position, has a ranking of "5," which is equal to the Beneficiary. Likewise, it is unclear why the other senior team leader, whose job qualifications are the same as those of the Beneficiary, is ranked with a "4," thereby indicating that his level of knowledge is below that of the Beneficiary.

Although the Petitioner claimed that there are no employees in the United States or abroad that acquired the Beneficiary's level of knowledge "of the company business," there is no evidence that the Petitioner's comparison includes senior technical leads within the industry, which likely contains similarly employed individuals whose levels of knowledge of their respective clients' processes and methodologies are similar to the level of knowledge possessed by the Beneficiary. Further, while the Petitioner repeatedly points to the Beneficiary's broad range of knowledge as compared to the subordinates in his team, the record does not establish that it is atypical for a senior technical lead within the same company or within the industry at large to possess a similar breadth of skills and knowledge.

As properly pointed out in the Director's decision, the Petitioner also did not establish how the Beneficiary attained his claimed "advanced" level of knowledge. Despite submitting the two certificates described above, the Petitioner did not establish that the certifications were components to or prerequisites on a path that led the Beneficiary to gain "advanced" knowledge of the employer's processes and procedures. In fact, the Petitioner did not describe the means for gaining "advanced" knowledge within the Petitioner's organization or list the specific steps the Beneficiary took to attain his claimed level of knowledge.

On appeal, the Petitioner asserts that the Beneficiary possesses specialized knowledge of technologies, methodologies, and processes and points out that the Director did not cite to published decisions, such as *Matter of Penner*, I&N Dec. 49 (Comm'r 1982), to support the denial decision. We note, however, that the definition of "specialized knowledge" that was in effect at the time of *Penner* was superseded by the 1990 Act. Moreover, the reasoning behind *Penner*, while still applicable, would only serve to weaken the Petitioner's claims. The *Penner* decision noted that during the course of sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. *See* 1970 House Report, H.R. No. 91-851. In response to the Chairman's questions, various witnesses responded that the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner*, 18 I&N at 50 (citing H.R. SubComm'r No. 1 of the Jud. Comm'r, *Immigration Act of 1970: Hearings on H.R. 445*, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)). Reviewing the congressional record, the Commissioner declined an expansive reading of the specialized knowledge provision to include skilled workers and technicians. In the present matter, the Beneficiary's placement at the second to the lowest tier in the foreign entity's organizational chart indicates that the Beneficiary was not a top-level employee, but rather, that he was more likely a skilled worker. The Petitioner's own reference to the Beneficiary as a "specialty occupation" further undermines the claim that the Beneficiary's knowledge rises to an "advanced" level such that would merit the visa classification of a specialized knowledge employee.

The Petitioner also emphasizes the length of time the Beneficiary has dedicated to working with a client that "has multiple proprietary web portals." However, it is unclear how these characteristics differ from other senior team leaders whose employers similarly service clients in the healthcare

industry. Despite relying on the Beneficiary's certification as an "Agile Project Management Scrum Master" to establish that the Beneficiary attained an "advanced" level of knowledge, the Petitioner's claim is undermined by its own acknowledgement that the Agile approach to project management is the "[c]urrent trend" among companies in the healthcare IT industry, thereby indicating that other similarly employed senior project leaders likely obtained comparable certifications.

In addition, the Petitioner submitted an opinion letter written by Ph.D., an assistant IT professor at the who determined that the Beneficiary possesses specialized knowledge. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Id.* Here, while we do not question finding that the Beneficiary is an experienced employee with knowledge of his employer's proprietary platform, he does not reference the statutory or regulatory definitions of "specialized knowledge" or explain how the Beneficiary's knowledge and experience qualifies him under those definitions. For the reasons described above, we find that the Petitioner has not adequately specified the nature of the Beneficiary's specialized knowledge or established precisely how the claimed specialized knowledge was obtained. opinion letter does not cure these deficiencies.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is advanced. While the Beneficiary may fill a role that is beneficial to his foreign employer and may be beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his 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. It is clear that the Petitioner considers the Beneficiary a valuable employee who excels at his position. However, as explained above, the record does not sufficiently distinguish the Beneficiary's knowledge from that of other similarly employed workers within the employing organization or within the Petitioner's industry. For the foregoing reasons, the record does not establish that the Beneficiary possesses an "advanced" level of knowledge.

B. Special Knowledge

On appeal, the Petitioner claims that the Beneficiary has "special" knowledge based on the length of time the Beneficiary spent "in a lead technical position" developing the Petitioner's "healthcare industry software products."

Because "special knowledge" concerns knowledge of the employing 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. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered specialized.

Here, the Petitioner does not identify the products it claims the Beneficiary has developed or specify the Beneficiary's contributions towards product development. As the Petitioner has not met these basic criteria, we cannot conclude that the Beneficiary possesses "special" knowledge of his employer's products or services.

In light of the above, we find that the Petitioner has not established that special knowledge is required to perform the Beneficiary's assigned duties or that his knowledge is distinct from that of other IT professionals in the healthcare industry and can be taught only through prior experience with the organization. The Petitioner does not adequately specify how the Beneficiary's knowledge is "special" or establish how and when the Beneficiary gained such knowledge. While the Beneficiary may be a valuable employee of the company and an experienced IT professional within the healthcare industry, the record lacks sufficient evidence to establish that his knowledge is "special," as defined in the Act and regulations. The Petitioner has submitted little evidence to set the Beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality. Due to these evidentiary deficiencies, the record does not establish that he possesses "special" knowledge.

IV. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge, that he was employed abroad in a position involving specialized knowledge, and that he would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of V-, Inc.*, ID# 1005610 (AAO Mar. 12, 2018)