U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30376052

Date: MAR. 12, 2024

Appeal of California Service Center Decision

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

The Petitioner, an information technology services company, seeks to employ the Beneficiary temporarily as a senior quality assurance analyst 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 record did not establish that the Beneficiary possesses specialized knowledge or that he was employed abroad and will be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal. 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

A petitioner seeking to employ an L-1B intracompany transferee must demonstrate that - for at least one continuous year in the three years before a beneficiary's initial U.S. admission in nonimmigrant status - the petitioner or its parent, branch, subsidiary, or affiliate employed the noncitizen abroad in a capacity that was managerial, executive, or involved specialized knowledge. Section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l)(3)(i), (iii), (iv). An L-1B petitioner must also establish that the beneficiary would be employed in a specialized knowledge capacity in the United States and that their education, training, and experience qualify them for the offered job. 8 C.F.R. § 214.2(l)(3)(ii), (iv).

II. ANALYSIS

The record shows that the Petitioner's parent company has employed the Beneficiary in India as an associate project manager since January 2021. According to the Petitioner, the Beneficiary has worked

on its proprietary technology product, [redacted] and is a core member of the [redacted] team. The Petitioner seeks to temporarily transfer the Beneficiary to the United States to serve as a senior quality assurance analyst, noting that he will implement the product's most recent version, [redacted] 3.0, for the company's direct-end clients. The Petitioner stated that the offered U.S. job entails many of the same duties the Beneficiary now performs for the foreign employer.

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.[1]

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). A 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 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.[2]

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.[3]

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

[1] The Petitioner does not claim that the Beneficiary was employed abroad in a managerial or executive capacity.
[2] *See generally* 2 *USCIS Policy Manual* L.4(B)(1), https://www.uscis.gov/policy-manual.
[3] *See id.*

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 a supporting statement, the Petitioner discussed its proprietary product, [redacted] which it described as an "integrated solution technology which stands to be the next generation reference architecture." The Petitioner explained that [redacted] is a "specialized product built and upgraded by [the foreign entity's] team in India through a lot of research, training and development" and that "the [redacted] team's specialized knowledge has come over years of experience and after undergoing a significant amount of training. . . ." The Petitioner claimed that since [redacted] is a proprietary product, "there is no talent available in any other market who have this knowledge" and "having [members of this team] in the U.S. will also enable to strengthen the U.S. team by providing experienced professionals to train local hires on this product."

Regarding training, the Petitioner claimed that "only a very small percentage of [the organization's] employees possess specialized knowledge using [redacted]" and explained that its quality assurance analysts receive a minimum of 160 hours of specialized training using [redacted] and integrating it with its proprietary development and implementation processes. The Petitioner stated that thereafter, more extensive training is offered to select employees who are designated as senior quality assurance analysts, and that once such training is transferred to an employee, "it takes more than 6 months of project experience to demonstrate sufficient performance." In conclusion, the Petitioner claimed that out of 3,900 global employees, only a select 11 hold specialized knowledge of [redacted][4]

In a request for evidence (RFE), the Petitioner was notified of several evidentiary deficiencies, such as the lack of evidence regarding the content and length of the Beneficiary's training and evidence of his actual completion of such training. The RFE also pointed to the distinction between "special" and "advanced" knowledge and instructed the Petitioner to specify whether the Beneficiary's knowledge is special, thus involving knowledge of the petitioning organization's products or services and their application in international markets, or whether the knowledge is advanced, thus involving knowledge of the petitioning organization's processes and procedures.

In response, the Petitioner reiterated much of the information that was provided in its original supporting statement, claiming that the Beneficiary "has distinct and requisite specialized proprietary knowledge and years of experience in [redacted]" that makes him uniquely qualified for the position. In support of this assertion, the Petitioner clarified that the Beneficiary had "special" knowledge, and submitted copies of the Beneficiary's training certificates, training itinerary, and a chart comparing the Beneficiary's knowledge to other IT professionals in the organization.

[4] According to the Petitioner, the Beneficiary and [redacted] Test Lead, received 560 hours of additional training over the course of a six-month period from February 2022 to July 2022. The remaining nine team members received only 160 hours of specialized training.

In denying the petition, the Director determined that the Petitioner had not demonstrated that the Beneficiary possesses specialized knowledge, or that his employment abroad and intended future employment in the United States involves specialized knowledge. On appeal, the Petitioner asserts that the Director's findings were erroneous, and again affirms that the Beneficiary's knowledge is specialized.

Upon review, we agree with the Director's determinations. Preliminarily, the fact that the Petitioner did not establish precisely when the claimed specialized knowledge was gained precludes a favorable finding. As previously noted, the Petitioner must demonstrate that the Beneficiary held the claimed specialized knowledge position for at least one year at the time this petition was filed in February 2023. 8 C.F.R. § 214.2(l)(3)(iv); *see also* 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish eligibility for the requested benefit *at the time of filing* the benefit request and continuing until the final adjudication). The Petitioner claims that the Beneficiary received additional [redacted] training beyond the standard 160 hours of training given to all quality assurance analysts. Although the Petitioner provided the Beneficiary's training record, training certificates, and summary for this additional training, the training is shown as having taken place over a six-month period from February 2022 to July 2022, and thus only preceded the filing of this petition by approximately seven months. As such, the training record does not establish that the Beneficiary acquired specialized knowledge beyond other team members that he then used during his employment abroad for at least one year prior to the instant petition's date of filing.

Moreover, the Petitioner asserted that the [redacted] team's specialized knowledge "has come over years of experience and after undergoing a significant amount of training." In addition, the Petitioner's assertion that "it takes more than 6 months of project experience to demonstrate sufficient performance" once such training is transferred to an employee implies that it takes an additional six months of project experience upon completion of additional training before an individual would achieve specialized knowledge of the [redacted] product. Here, the Beneficiary did not have "years of experience" working with the [redacted] product. Thus, not only is it unclear when and how the claimed specialized knowledge was acquired, it is also unclear that specialized knowledge was and would be required to work with and develop [redacted] given that the Petitioner did not identify specific [redacted] characteristics that would require specialized knowledge and given that the Beneficiary had been working with [redacted] from the start of his employment, without prior training or experience with that product.

On appeal, we note the Petitioner's assertion that "[the Beneficiary] is the only professional at [the Petitioner's organization] who has completed 560 hours of training in [redacted], making him the most highly trained and singularly qualified expert in [redacted] at [the Petitioner's organization]." In its initial supporting documentation, however, the Petitioner claimed that both the Beneficiary and [redacted] Test Lead, received 560 hours of additional [redacted] training. This assertion, therefore, is not supported in the record and is inconsistent with the Petitioner's original claim. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies).

Moreover, despite asserting that the Beneficiary's specialized knowledge of [redacted] singularly qualifies him for the proffered position, the Petitioner previously asserted that eleven individuals hold specialized knowledge of [redacted] And, as previously noted, the Petitioner did not adequately discuss

how the Beneficiary's knowledge progressed from the time he commenced his employment with the foreign entity in January 2021 to the point of achieving the specialized knowledge level, as claimed. In sum, the record does not establish that the Beneficiary completed training that resulted in specialized knowledge that he then used in the course of his employment foreign employment and which he would use in his proposed U.S. position.[5] The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner further discusses the proprietary nature of the [redacted] product which has been the focal point of the Beneficiary's position with the foreign entity. The Petitioner maintains that the Beneficiary has been employed in a specialized knowledge capacity during the entirety of his employment with the foreign entity and reiterates the main contents of its previously submitted documentation as supporting evidence. The Petitioner also highlights the proprietary nature of the [redacted] product and the Beneficiary's ability to implement the [redacted] product, noting he performs project delivery and management tasks in addition to technical duties. The Petitioner also again maintains that the Beneficiary's employment with the foreign entity involved specialized knowledge. We disagree and find that the record does not support the Petitioner's claim.

Although the Beneficiary's use of proprietary tools and products is relevant to this discussion, this factor in and of itself does not establish that the knowledge acquired to develop and enhance those products 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. at 376. 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 could have gained specialized knowledge in the course of his employment with the foreign entity, where he had been employed for approximately two years when this petition was filed.

Further, despite relying on the Beneficiary's previously listed job duties and key role in enhancing the functionality of the [redacted] product, the Petitioner has provided no evidence or specifics about a path for gaining specialized knowledge within its organization, particularly since nine of the 11 [redacted] team members are deemed to have specialized knowledge of the product without undergoing additional training beyond the standard 160 hours of training initially provided. Thus, the Petitioner has not answered the critical question of how and when the Beneficiary gained the knowledge that is claimed to be specialized. Likewise, while the Petitioner has broadly discussed some of the beneficial features of using the [redacted] product, it has not identified specific characteristics of the product to explain why specialized knowledge is required to work on its design and development.

[5] Despite claiming that the Beneficiary completed advanced [redacted] training between February 2022 and July 2022, we acknowledge the Director's observation that the training certificates submitted in response to the RFE are undated, contain identical signatures, and appear to be generated all at once as opposed to contemporaneously with the Beneficiary's completion of each claimed training module. Therefore, this raises additional questions regarding the integrity of the documentation submitted and the timeframe of the Beneficiary's training. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591; *see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021) ("by submitting fabricated evidence, the appellant compromised the integrity of his entire claim") (cleaned up).

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.