U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-A-, INC.

DATE: MAR. 13, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a design and engineering firm, seeks to temporarily employ the Beneficiary as a "senior technical designer" 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 that the Beneficiary possesses specialized knowledge or that he was employed abroad and that he would be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner provides a statement asserting that the Director either did not understand or did not consider all of the supporting evidence that was previously submitted. The Petitioner also resubmits this evidence to support its claims.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, 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 managerial, executive, or specialized knowledge capacity. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

> For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien 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.

Specialized knowledge is further defined as "[s]pecial 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 L-1B classification petition must be accompanied by evidence establishing that: 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; 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, the beneficiary's prior education, training and employment qualifies him/her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A. Evidence of Record

The Petitioner is an architecture and design firm with 1,500 employees worldwide and gross annual income of $183 million. It seeks to employ the Beneficiary as a senior technical designer in its [redacted] California, office. The Petitioner's initial evidence included a supporting statement, the Petitioner's tax return and annual statement for 2014, the Beneficiary's résumé and educational credentials – including a bachelor of arts degree in architecture, a postgraduate certificate in "architectural professional studies," a postgraduate diploma in architecture, and a postgraduate diploma in "architectural and professional studies" – and evidence of the Beneficiary's admission into the [redacted]

In its supporting statement, the Petitioner indicated that its subsidiary, [redacted] employed the Beneficiary as an architect in its United Kingdom office from 2008 until February 2015.[1] The Petitioner claimed that the Beneficiary is "experienced in laboratory and vivarium planning" and has "the ability to understand complex requirements of laboratory and bio-safety containment projects and . . . follow-through with the technical detailing" which is "critical to ensuring high quality project delivery for [the company]'s clients." The Petitioner stated that the Beneficiary "was a key component" in delivering the completion of "a complex project requiring

[1] The Petitioner stated that its subsidiary's [redacted] branch office has since closed. The Beneficiary was employed at an unrelated architecture firm at the time of filing in July 2016.

Category 4 bio-containment – the highest level of bio-safety design – to satisfy security and containment requirements for high-consequence animal disease research within a highly interactive environment." Although the Petitioner provided a list of projects that the Beneficiary worked on during his employment with the former branch office, it did not provide a list of the Beneficiary's specific job duties during such employment.

The Petitioner provided the following list of "[g]eneral duties" the Beneficiary would perform in his proposed position at its office:

- Establishing client and internal meetings and participating in reviews with various governing agencies for code compliance;
- Responsibility for reviewing architectural documents for sustainable criteria compliance and coordinating team review and verification of sustainable criteria;
- Reviewing architectural documents for areas of conflict with all disciplines as well as writing/editing architectural specifications; and
- Leading some projects in a dual management role and providing, on an as needed basis, construction contract administration.

The Petitioner claimed that performance of these job duties for science and technology facilities projects requires a bachelor's degree in architecture and 10 years of experience, including experience in laboratory and vivarium planning and bio-safety containment design, proficiency in a variety of software that is "used in the field," as well as "strong knowledge" of codes and skills in conceptual design and leadership. The Petitioner stated that the Beneficiary meets these criteria.

The Director issued a request for evidence (RFE) and asked that the Petitioner provide, in part, the following: evidence of the Beneficiary's prior training and employment and an explanation of how they relate to the claimed specialized knowledge; a more detailed description of the Beneficiary's knowledge or expertise; an explanation of why such knowledge is specialized; a comparison of the Beneficiary's knowledge to that of other employees and workers in the same field; evidence that the Beneficiary's knowledge of the foreign entity's operating conditions is not generally found in the petitioning organization; the minimum time required to obtain the specialized knowledge, including training and any experience gained after training. The Director provided a list of other evidence that would assist in establishing that the Beneficiary possesses specialized knowledge.

In response, the Petitioner provided a letter discussing the Beneficiary's positions with the foreign and U.S. organizations as well as his qualifications. With regard to the Beneficiary's former position with the foreign employer, the Petitioner stated that he was "one of the few [] employees with the specialized knowledge required" for the design and delivery of complex laboratory facilities. The Beneficiary was said to have "designed the master plan and sustainability upgrade" without incurring extra costs on one project, while managing the design on another project, which involved "effectively navigating challenges of team members" located in the United States and China. The Petitioner provided the following list of the Beneficiary's job duties in his former position:

- Providing full design and project leadership;
- Establishing and maintaining client relationships;
- Attending meetings and providing professional advice and design reviews;
- Preparing and presenting design and possible options to clients;
- Design and technical detail development from inception to project completion;
- Ensuring information (drawings, documents) delivery as per agreed program;
- Coordinating architectural drawings with consultants/engineering drawings;
- Ensuring design implementation on site by the Contractor as per approved drawings;
- Responding to any Requests for Information by the Contractor on site; and
- Reviewing drawings and documents and ensuring design was in compliance with required regulations and codes.

In discussing the proposed position, the Petitioner restated the prior list of the Beneficiary's general job duties, asserting that the Beneficiary would perform those duties within the context of "complex laboratory buildings" in the science and technology sector and that designing such facilities "is a niche market" for which the required skills are "not commonly found in the industry." The Petitioner explained that the Beneficiary has been and would be involved in designing specific types of facilities that "differ from general architecture buildings in that the foremost concern is creating a safe environment" where potentially dangerous scientific experiments can be performed. The Petitioner went on to explain that the design process for these types of facilities differs from that of general architecture projects in that the former requires "a detailed risk assessment" followed by using "a layered approach" to design containment that corresponds to the level of assessed risk. The Petitioner claimed that "[i]ncorporating 'design' into projects requiring compliance with complex regulations is a rare skill" that requires someone with the Beneficiary's special knowledge of the organization's design processes and standards for "complex laboratory facilities." The Petitioner described its organization's design process as "highly participatory" and "collaborative" involving input from "multidisciplinary design experts to implement best practices from around the world."

The Petitioner further claimed that the Beneficiary's knowledge is specialized because it surpasses that of others within the industry and that of "typical designers" within the organization itself. The Petitioner noted that it took the Beneficiary approximately 15 years to attain his current skill level, which involved general architecture design experience gained in the work place and spending 3 years "shadowing" his former employer's company director, whom the Petitioner described as "a leading figure in designing complex science and research buildings at the time." The Petitioner claimed that the Beneficiary has "advanced knowledge of complex laboratory design" as compared to employees within the company as well as individuals within the architecture field and that it would "a number of years" to train someone with "an innate talent for technical design."

In addition, the Petitioner provided supporting evidence in the form of a company brochure and four statements from the Petitioner's director of design, a "retired architect/managing director" who worked for the Beneficiary's previous foreign employer, a program director at the [redacted] and the Petitioner's vice president/employment director, respectively.

The Director denied the petition finding that the Beneficiary's job duties abroad were similar to those of a typical architect. The Director also found that Petitioner did not provide evidence to distinguish the Beneficiary's knowledge or experience in the field of architecture from that possessed by other similarly employed workers in the same industry. The Director further noted that the Beneficiary's educational and professional credentials are commonly held in the field of architecture and determined that the Petitioner did not adequately articulate the nature of the Beneficiary's specialized knowledge or establish how and when the Beneficiary gained such knowledge. She went on to state that the Petitioner did not establish that the Beneficiary's training and experience resulted in specialized knowledge of the organization's tools, processes, and methodologies. Finally, with regard to the proposed position, the Director concluded that the Petitioner did not provide sufficient evidence to establish that its processes and procedures are different from those used by senior technical designers at other organizations or that similarly employed individuals within the field could not readily acquire the company-specific knowledge.

On appeal, the Petitioner asserts that it met its burden of proof and points to previously submitted statements that discussed the Beneficiary's qualifications and listed the "highly complex" projects the Beneficiary has worked on.

B. Analysis

The Petitioner has not established that the Beneficiary possesses specialized knowledge or that he was employed abroad and would be employed in the United States in a specialized knowledge capacity as defined in the statute and regulations.

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." Under the statute, 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.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether 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.

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 a 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 advanced or special, and that the beneficiary's position requires such knowledge.

In the instant matter, while the Petitioner states that the Beneficiary has special and advanced knowledge.

Because "special knowledge" concerns knowledge of the petitioning 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.

Here, the Petitioner provided statements indicating that the Beneficiary has experience and an in-depth understanding of the complexities involved in planning bio-safety containment facilities, some of which require "the highest level of bio-safety design." The Petitioner also provided a list of job duties that the Beneficiary performed for the foreign employer as well as a general list of job duties the Beneficiary would perform in the United States. However, other than stating that the Beneficiary's job duties have been and would be performed within the context of "complex laboratory buildings" in the science and technology sector, the Petitioner did not explain how the performance of such duties requires knowledge that would not typically be held or readily acquired by an experienced architect in the Petitioner's industry. Although the Petitioner indicated that there are additional layers of complexity associated with architectural design for laboratory and related facilities, it did not describe the actual knowledge required to perform duties in this field of architecture with any specificity, which makes it difficult for us to evaluate the Petitioner's claim that performance of the duties requires knowledge not typically held by an architect or technical designer.

We further note that the Petitioner does not state that its organization offers a product or service or has equipment or techniques that are distinct or uncommon in comparison to that generally found in the field of architecture. Rather, the Petitioner relies heavily on the fact that it operates within a "niche market" within the architecture industry in that it specializes in the science and technology field. However, this factor alone does not establish that either the Petitioner or the foreign organization provides services that are uncommon when compared to architecture design firms that are similarly specialized. The Petitioner has not offered sufficient support for a claim that specialization in this field, which involves providing design work for private, government, and educational research laboratories and facilities, is so rare that any architects experienced in this field should be considered to have specialized knowledge. Likewise, while the Petitioner described the Beneficiary's ability to incorporate design into projects that require working within the limits of complicated regulations as "a rare skill," the Petitioner has not established that this skill was derived from knowledge of the Petitioner's or the affiliated foreign employer's product, service, equipment,

or technique. Rather, the Beneficiary gained his initial experience with science and technology projects while working for an unrelated foreign employer.

On appeal, the Petitioner asks us to review evidence that was previously submitted in response to the RFE. With regard to the brochure, the information contained therein generally describes the design services that the Petitioner provided to the in terms of creating an effective bio-containment facility. While the brochure impresses upon the complicated nature of the building's design aspects, it does not address the Beneficiary's specific role in the design project or establish that the Beneficiary's knowledge is special. Page 4 of the brochure lists the various individuals comprising the team that worked on the project. Based on the team composition, it appears that the Beneficiary's primary focus was on the architectural design aspect, given that the team included various engineers, a landscape architect, a building contractor, a laboratory planner, a containment specialist, and a project manager, the latter of whom presumably coordinated the work of all the team members. While we do not question the value of the Beneficiary's contribution to the project, there is no evidence to suggest that specialized knowledge was a requirement for his participation. In fact, the Petitioner has claimed that the ability to perform laboratory planning and containment-related duties are critical to the Beneficiary's claimed specialized knowledge, but this brochure shows that the foreign entity had assigned its specialists in each of those areas to the same project.

The Petitioner's evidence also included statements from individuals who are familiar with the Beneficiary's work and his level of expertise. First, we look to the statement from the Petitioner's director of design, who stated that he worked with the Beneficiary on a project and described him as "one of the world's foremost architectural designers working in biocontainments [*sic*], with technical design skills surpassing that typically found in the architecture industry." claimed that the Beneficiary used "his specialized knowledge of highly complex laboratory and biocontainment design." Despite high praise of the Beneficiary's work, his claims do not lead to the conclusion that the Beneficiary's claimed knowledge can be characterized as distinct or uncommon in comparison to knowledge generally held by other architects who, like the Petitioner, also specialize in the design of facilities in the science and technology sector. By own admission, "[t]here is no specific training program or curriculum for highly complex laboratory design." As such, it is unclear when and how the Beneficiary gained the claimed specialized knowledge of the Petitioner's services and techniques.

The Petitioner also offered a statement from a retired architect and former director of an unrelated foreign firm that employed the Beneficiary from 2002 through 2008. The Petitioner claims that the Beneficiary gained his specialized knowledge in architectural design for the science and technology sector, in large part, by shadowing over a three-year period while employed at stated that specialized in designing and managing projects that involved "complex research facilities for the containment of [d]angerous [p]athogens." Although stated that the Beneficiary was a senior architect on "a team of [a]rchitects and [t]echnicians" and that he was subordinate to in designing "[c]omplex buildings," did not corroborate the claim that the Beneficiary "shadowed" him

during the course of his employment; nor did [redacted] provide any details as to the specific knowledge the Beneficiary gained while serving as his subordinate. His statement does not sufficiently describe the Beneficiary's claimed special knowledge or how he gained it.

The two remaining statements – one from a program director at the [redacted] and the other from the Petitioner's vice president/employment director – similarly lack critical information about the Beneficiary's claimed special knowledge, as neither cite to an actual characteristic about the Beneficiary's knowledge that would lead us to the understanding that the Beneficiary has special knowledge of the Petitioner's design services or a method used to provide those services that is somehow distinct or uncommon in comparison to that generally found among architects or designers in this science and technology field of architecture.

With respect to the Beneficiary's education, training, and work experience, the Petitioner provided evidence showing that the Beneficiary has a bachelor's degree in architecture, a postgraduate certificate in "architectural professional studies," and postgraduate diplomas in architecture and "architectural and professional studies." The Petitioner also claimed that the Beneficiary gained 10 years of experience in laboratory and vivarium planning and biosafety containment design. However, the Petitioner provided no further information regarding the Beneficiary's training and did not provide sufficient supporting evidence to corroborate the claim that the Beneficiary "shadowed" someone in the field to gain knowledge that is specific to the Petitioner's particular type of architectural design. The Petitioner did not provide a description of any on-the-job or other company-specific training the Beneficiary or other architects are required to complete. Nor did it describe how other architects and designers working in the company obtained their knowledge specific to performing design work in the laboratory and containment field of architecture. As the Petitioner does not claim to offer a specific training or mentoring program in this field, it is reasonable to believe that other members of its staff, like the Beneficiary, gained knowledge of laboratory planning and related skills by working at other firms that provide similar design services.

We have also considered whether the evidence establishes that the Beneficiary possesses advanced knowledge. 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.

As noted earlier, the Petitioner described its organization's design process as "highly participatory" and "collaborative" involving participation from "multidisciplinary design experts" and further claimed that the Beneficiary's knowledge is specialized because it surpasses that of others within the industry and that of "typical designers" within the organization itself. However, the Petitioner did not describe its processes with sufficient detail such that would convey a meaningful understanding as to the specific characteristics that distinguish its processes from those employed within the industry. The Petitioner also claimed that its design process, which is focused on biosafety

containment facilities and involves "a detailed risk assessment" followed by "a layered [design] approach," differs from that of general architecture projects. However, the Petitioner neither claimed nor provided evidence to establish that its process differs from those used by other companies that are similarly engaged in the design of facilities in the science and technology sector.

Further, we cannot determine that the Beneficiary's knowledge of its processes is advanced in relation to the Petitioner's other employees, given that we have no information regarding those employees' relative knowledge and experience. The Petitioner did not provide evidence of any training the Beneficiary completed in company processes upon being hired by the foreign entity or explain the processes or procedures in which he possesses advanced knowledge. Without evidence that the Beneficiary possesses advanced knowledge of the foreign entity's processes and procedures, we cannot conclude that the Beneficiary's expertise in the organization's processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the organization.

Finally, we acknowledge the Petitioner's submission of the expert opinion of Ph.D. states he is familiar "with the types of services rendered by [the Petitioner] and similar organizations, and the specialized and unique knowledge acquired by individuals who are significantly involved in the engineering and development of complex and proprietary technologies for these companies." However, it is unclear that familiarity with the Petitioner and the services it provides is a sufficient basis for determining that the Beneficiary possesses specialized knowledge. First, it is uncertain how reference to "engineering and development of complex and proprietary technologies" applies to the Beneficiary given that he is an architect rather than an engineer and the Petitioner made no claims as to any specific "proprietary technologies" that the Beneficiary may have developed or used during the course of his employment with the foreign entity, despite claim that the Beneficiary assumed "his critical role in the engineering and development of the proprietary software solutions for [the Petitioner]."

Second, there is no indication that opinion was based on a review of the immigration statute or the applicable regulations pertaining to specialized knowledge, nor evidence that educational credentials and work experience resulted in his gaining an understanding of the term "specialized knowledge" and its particular relevance and meaning within the context of this nonimmigrant visa classification. We may, in our discretion, use opinion statements submitted as expert testimony in an advisory manner. 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 International*, 19 I&N Dec. 791 (Comm'r 1988). Since the opinion offered here is not based on the critical statutory and regulatory provisions, we find its probative value to be limited.

In sum, we find that the Petitioner has provided credible evidence, which establishes that the Beneficiary's educational credentials, employment experience, and work on award-winning design projects in the Petitioner's industry make the Beneficiary a suitable candidate for the proposed U.S.

position. However, evidence does not establish that the Beneficiary has specialized knowledge or that his duties require specialized knowledge.

III. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he was employed abroad, and will be employed under the extended petition, in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of H-A-, Inc.*, ID# 205653 (AAO Mar. 13, 2017)