U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-N-A-, INC.

DATE: MAR. 14, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of packaging equipment for the snack food industry, seeks to extend the Beneficiary's temporary employment as a regional sales manager 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 California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he was employed abroad in position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision reflects an incorrect understanding of the L-1B visa category and does not give adequate consideration to the Petitioner's claims regarding the Beneficiary's special and advanced knowledge.

Upon *de novo* review, 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 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. BACKGROUND

The Petitioner's group, headquartered in Australia, is a manufacturer and global supplier of packaging systems for the production and distribution of snack foods. The Petitioner's Mexican affiliate hired the Beneficiary in 2008 and employed him in the positions of field service engineer (2008-2009), sales representative (2009-2011), and regional sales manager (2011-2015). In October 2015, he was transferred to the United States to work for the Petitioner as a regional sales manager. The Petitioner seeks to continue his employment in this position at an annual salary of $116,000. The Beneficiary earned an undergraduate degree in computer science in 2001.

III. SPECIALIZED KNOWLEDGE

The sole issue to be addressed is whether the Petitioner established, as required, that the Beneficiary possesses specialized knowledge, that he was 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 he has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity. Here, the Petitioner claims that the Beneficiary's knowledge is both special and advanced.

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.

[1] The Director correctly observed that 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).

For the reasons discussed below, we find insufficient evidence to establish that the Beneficiary possesses specialized knowledge.

A. Special Knowledge

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special knowledge.

In a letter submitted in support of the petition, the Petitioner described the Beneficiary's duties as regional sales manager, noting that he is charged with developing business opportunities, meeting sales targets, developing written quotations, maintaining a library of sales proposals, building customer relationships, working with project management on pricing and specifications, liaising with service engineers, maintaining knowledge of competitors' products and pricing, and demonstrating "sound knowledge" of the Petitioner's products and services.

The Petitioner provided a letter from its Mexican affiliate which stated that, during his employment abroad, the Beneficiary developed "substantial expertise and knowledge" relating to the company's packaging machines, its sales support and services, the products sold by its competitors, the pricing of the company's products, its sales strategies and methodologies, the preparation of customer proposals, its sales presentation techniques, and the company's core values.

In addition, the Petitioner has submitted two declarations with similar content from its vice president, [redacted] and its divisional sales manager, [redacted] currently the Beneficiary's direct supervisor. In addition to the Beneficiary's claimed specialized knowledge of products, sales strategies and procedures referenced in the Petitioner's letter, [redacted] highlighted the Beneficiary's experience in Latin American markets and his existing relationships with customers who have operations in both the United States and Latin America. He stressed that the Beneficiary has knowledge of "the ins and outs of doing business in Latin America, including local sales methods and regulations" and is fluent in Spanish, which gives the Petitioner an advantage with cross-border clients.

In sum, the Petitioner claims that the Beneficiary possesses special knowledge of the Petitioner's proprietary products and the company's techniques for selling those products, knowledge of its industry and competitors in that industry, and knowledge of the Petitioner's Latin American market and Spanish language skills, all of which are required for his U.S. position.

Turning first to the Petitioner's claims regarding its products, [redacted] initially explained that there are "a limited number" of equipment manufacturers for the snack food industry and emphasized that the Petitioner's group manufacturers and supplies complete equipment lines for the full production process, including raw ingredient handling, frying, seasoning and packaging. In her statement, [redacted] noted that the Beneficiary's knowledge of the petitioning group's equipment, processes and products is "not generally found in the snack food industry as a whole" because the equipment is "different from the equipment manufactured by our competitors." She noted that "no other company in the world is able to provide "a complete snack line" and further stated that it would take "substantial industry experience, technical expertise and years learning the [group's] equipment and methods" for another employee to reach the Beneficiary's level of specialized knowledge.

However, the Petitioner did not sufficiently identify or describe the claimed specialized knowledge beyond stating that its snack food production and packaging products are proprietary, and it did not explain how the claimed specialized knowledge is typically gained by sales employees within the organization. Nor did the Petitioner explain how the Beneficiary's regional sales manager position requires him to apply highly technical proprietary knowledge in the performance of his assigned duties. The record reflects that the Petitioner's regional sales managers coordinate with engineers, project management and technical support, but does not indicate that the position requires a great deal of technical product knowledge.

In fact, the Petitioner submitted what appears to be its official description of the regional sales manager position, which includes the job's scope, key responsibilities and duties, desired qualifications, work experience, knowledge, attributes, and skills. According to this document, the position does not required any particular academic qualifications, but the company will consider qualifications in sales, business, marketing, commerce, or engineering. The Petitioner indicates that candidates should have a "sales management history with proven results of consistently driving the sales process." However, the Petitioner indicates that exposure to the food or packaging manufacturing industry is "advantageous" while previous experience in machinery sales or engineering roles is "desirable."

Based on this information, it is evident that the Petitioner recruits experienced sales managers and professionals for the regional sales manager role, but does not require that new employees have industry or technical experience, much less years of experience with the Petitioner's own proprietary products. In fact, [redacted] the Beneficiary's supervisor, indicates that she herself initially joined the petitioning company as a regional sales manager in 2012. These facts undermine the Petitioner's claims that a newly hired employee could not undertake the regional sales manager position without first acquiring years of exposure to the company's products, customers, competitors, and internal processes and procedures.

The Beneficiary may possess more technical knowledge than other regional sales managers as a result of beginning his tenure with the petitioning group as a field service engineer, but the Petitioner has not established that highly technical knowledge of its proprietary products is actually required for the position. The Petitioner has not differentiated the Beneficiary's actual duties from those

performed by its other regional sales managers other than noting that his existing and potential customers are located in a different geographic region. As such, it has not established that his specific role requires a higher degree of technical product knowledge that is not possessed by other similarly employed workers within the company.

Knowledge that is proprietary or company-specific must still be shown to be either special or advanced in order to be deemed specialized knowledge; the Petitioner must demonstrate that some qualities of its products or sales methodologies require its regional sales managers to have knowledge that is truly different from what is commonly found in the industry. As noted, the Petitioner did not differentiate its products from other snack food production and packaging products available in the industry, other than stating that it is able to offer a "complete line" of equipment. Further, as the Petitioner has not identified any specific training completed by the Beneficiary or other regional sales managers with respect to the products themselves or the company's sales strategies and methodologies, it appears that these employees are able to readily gain the proprietary knowledge needed to carry out the duties of the position while on the job.

The Petitioner also emphasizes the Beneficiary's language skills and relationships with Latin American customers as unique within the company. As noted, the Beneficiary worked for the Petitioner's Mexican affiliate for seven years prior to coming to work for the Petitioner in the United States. The Petitioner states that its market includes all of North America, including Mexico and Canada, but it also asserts that it does not have any other employees who are Spanish-speaking or who have any existing relationships with Mexican or other Latin American clients. It is unclear how the Petitioner has operated in the Mexican market without Spanish-speaking staff or customers in the market.

While the Beneficiary's ability to communicate with Spanish-speaking clients in his assigned sales region is undoubtedly valuable to the company, the Petitioner has not shown how his ability to speak both Spanish and English can be considered special knowledge specific to the company. We also acknowledge the Petitioner's claim that the Beneficiary's existing relationships with customers in his assigned region are an asset to the company. Individual employees within the U.S. and foreign entities may have more contact with some clients than others, but it is reasonable to believe that any regional sales manager representing the Petitioner's group, even a new hire, would reasonably be able to communicate with any given client regarding the Petitioner's products because the company claims to be a worldwide leader in its industry and can presumably rely on that reputation. The Petitioner has not established how a specific sales manager's relationship with a client, or the ability to establish a relationship, qualifies as special knowledge.

On appeal, the Petitioner claims that the Director's decision "erroneously assumes that other employees with the same or similar experience as the Beneficiary even exist." We note that all employees can be said to possess unique skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced sales manager is not "special knowledge." Again, the Petitioner must establish that the position requires this employee to have knowledge that is uncommon in the industry and knowledge that could not be readily transferred. Here, the record does not support the Petitioner's claim that "a replacement employee

would have to work in engineering and sales positions in [the foreign affiliate] for years to even being to grasp the concepts and methodologies that [the Beneficiary] has mastered." As discussed, the Petitioner's own internal job description for the position states no such requirements for the regional sales manager position.

We acknowledge the Petitioner's claim that the Beneficiary is qualified for the offered position because he already possesses the required client-specific, technical, and market-specific knowledge. However, for the reasons discussed above, the Petitioner has not established how the Beneficiary gained knowledge that is truly different from that possessed by other regional sales managers within the company or within the industry. The record does not sufficiently support the Petitioner's claim that the knowledge is in fact significantly different from that generally held by professionals in its industry, or that it would require years to acquire the knowledge needed for the U.S. position. The Petitioner's claims are overly broad and not supported by sufficient documentary evidence to meet its burden of proof.

For the foregoing reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's products and sales methods and their application in international markets.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given 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. Also, as with special 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 Petitioner claims that the Beneficiary is "the most experienced employee within [the petitioning company] with regard to international markets for [the Petitioner's] products" and notes that it is "very rare" for sales representatives within its group to possess the Beneficiary's technical experience and to understand international sales transactions within various Latin American countries. However, the Petitioner has not provided supporting information or documentation that would allow us to compare the Beneficiary to other workers within the group's operations and therefore has not sufficiently supported its claim that the Beneficiary's knowledge of company processes and procedures can be considered advanced.

[redacted] stated that the Petitioner employs seven regional sales managers and that the Beneficiary "has by far the most experience and knowledge of the Latin American market, our customers in that territory, and how to best position the company for expanding sales in Latin America and the Caribbean." She also mentioned that, as a result of his year of employment as a field service engineer, he has "a unique in-depth knowledge of our equipment to a level of detail that is extremely rare."

The Petitioner provided a list of its seven regional sales managers, but did not provide any information regarding the employees' backgrounds or duties that would differentiate the Beneficiary (or his specific regional sales manager position) from that of his colleagues. As noted, the Petitioner's own description of the position indicates that no particular technical or industry background is required for the role, so while the Beneficiary's short period of employment as a field service engineer may be an asset, the Petitioner does not indicate that he is expected to perform duties not performed by the other regional sales managers.

It appears that each of the Petitioner's regional sales managers may have his or her own geographic region or industry sub-specialty (for example, one appears to be assigned to Canada and another assigned specifically to processing solutions). However, the Petitioner does not appear to claim that every member of the sales organization has specialized knowledge, and it has not shown how the Beneficiary's specific assignments resulted in his acquisition of advanced knowledge in comparison to his colleagues. We acknowledge the Petitioner's claim that the Beneficiary is unique within the company due to his focus on the Latin American region. However, it appears that most sales managers likely have a specific emphasis on a region or type of customer. If such specialization is common throughout the company's sales organization, the Petitioner has not shown how it amounts to "advanced" knowledge.

We also 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, for the reasons discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While we do not doubt that the Beneficiary has technical sales skills, experience working with Latin American customers, and foreign language capabilities that make him a valuable employee; these characteristics together, or individually, do not establish that the Beneficiary has 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 to be a valuable and highly productive employee who excels at his position, but it has not sufficiently shown that his knowledge of company processes and procedures is advanced compared to other similarly employed-workers performing the duties of a regional sales manager, or that he possesses special knowledge that is different from what is generally held in the Petitioner's industry. We do not discount the possibility

that the Beneficiary possesses specialized knowledge; however, the Petitioner's claims are not supported by sufficient evidence to meet its burden of proof, as explained above.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether the Beneficiary has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

IV. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of T-N-A-, Inc.*, ID# 2289027 (AAO Mar. 14, 2019)