U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N- INC.

DATE: MAR. 14, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and IT operations company, seeks to temporarily employ the Beneficiary as a network engineer at its new office[1] 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 record did not establish, as required, that: the Beneficiary possesses specialized knowledge; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States, in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director erred by disregarding credible evidence of eligibility.

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).

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

If a beneficiary is coming in a specialized knowledge capacity to open a new office, the petitioner must submit evidence that it secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi).

II. BACKGROUND

The Petitioner described itself as "a start-up company specializing in telecommunications systems and software development for collaborative communications." The Petitioner's foreign parent company has employed the Beneficiary as a network engineer since July 2015. The Petitioner stated that the Beneficiary has been "responsible for developing and creating [the foreign parent company's] essential software and network technologies by researching various complex open-source network-related technologies and customizing them to meet the needs of [the company's] organization and its clients."

The Petitioner intends to employ the Beneficiary as a network engineer, at a salary of $160,000 per year. In that capacity, the Beneficiary "will be responsible for forming and establishing standards, best practices and production procedures for building, maintaining and improving network infrastructures," and "will be the key person who possesses specialized knowledge of [the Petitioner's] proprietary and advanced technologies and business operations." The Petitioner stated that the Beneficiary would use "open-source network-related technologies . . . includ[ing] Hypertext Transfer Protocol, File Transfer Protocol, Session Initiation Protocol, Real-Time Transport Protocol, Link Aggregation Control Protocol, Transmission Control Protocol, Asynchronous Spacewarp and several IP routing protocols."

III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to others in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

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.[2]

[2] The Petitioner does not claim, in the alternative, that the Beneficiary was employed abroad in an executive or managerial capacity.

Under the statute, specialized knowledge consists of either: (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.

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).

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.

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 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 beneficiary gained such knowledge.

Special knowledge concerns knowledge of the petitioning organization's products or services and its application in international markets. To establish that a beneficiary has special knowledge, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioner 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. The petitioner must support its claims with evidence setting that knowledge apart from the knowledge possessed by others.

The Petitioner stated:

> Some of the specialized technologies . . . that [the Beneficiary] has extensive experience with include: (i) Session Initiation Protocol . . . ; (ii) various elements of network infrastructure to maintain and control the capacity of networks with flexibility; (iii) Virtual Router Redundancy Protocol . . . ; and (iv) Juniper and Cisco, leading complex and versatile network software that enable Engineers to build high-quality network systems for clients efficiently.

The protocols listed above are not native or exclusive to the petitioning organization. Juniper and Cisco are not "specialized technologies," but rather companies that provide network technology and services.

The Petitioner's business plan included a section on staffing. The Beneficiary's page listed the following items under "Training Courses/Certifications":

- Certification from [redacted] and [redacted]
- Certification in Juniper Intermediate Routing (JIR) from [redacted] 2013
- Certification in Juniper Unified Threat Management (JUTM) from [redacted] 2014
- [redacted] English course from the [redacted] (2006)

The business plan also indicated that the Beneficiary "has [redacted] and [redacted] certificates that prove his technical expertise."

English language proficiency is not specialized knowledge. The dates listed above all predate the Beneficiary's employment with the petitioning organization. The Petitioner did not provide dates for the Beneficiary's [redacted] and [redacted] certifications (if the [redacted] certification was different from the Juniper certifications specified elsewhere in the list). The Petitioner did not provide information about the nature or duration of the certification programs, show how this training distinguishes the Beneficiary from others in his field, or establish the time and expense required for other employees to acquire that training.

The Director instructed the Petitioner to submit additional evidence, stating that the initial submission "did not provide supporting documentation and/or explain why the knowledge of the subject matters is not easily transferable to other employees" or "compare and contrast the beneficiary's knowledge, training, and employment with others . . . performing the same or similar type of work."

In response, the Petitioner asserted that the Beneficiary "has been crucial to developing and maintaining infrastructure technology that he has specifically developed and improved to fit the

needs of [the Petitioner's] largest client." As a result, the Beneficiary "is uniquely familiar with the network infrastructure of the client," and "it would be extremely difficult, if not impossible, for [the Petitioner] to find anyone with the knowledge required to fill [the Beneficiary's] position and maintain these systems without undergoing extensive training with [the Beneficiary], himself." The letter containing these claims did not go into further detail, instead citing generally "the documentary evidence of the Beneficiary's projects" and a letter from the Beneficiary's manager at the foreign parent company.

The Petitioner's foreign parent company stated it chose "only a select few" employees to transfer to the United States, and asserted: "The very fact that [the Beneficiary] was chosen to play such an important role . . . is evidence that he possesses specialized knowledge and skills that are unique in this field." Assignment or position is not, itself, evidence that the Beneficiary possesses specialized knowledge.

The Petitioner submitted copies of technical documents relating to the Beneficiary's projects, but the Petitioner did not explain how the Beneficiary's work and knowledge differ from those of other qualified workers in the same field.

The Director denied the petition, stating that the Petitioner did not establish that the Beneficiary's education, training, and experience had imparted specialized knowledge. The Director acknowledged the Beneficiary's familiarity with the Petitioner's products, but found that this familiarity does not necessarily represent specialized knowledge. The Director also made findings about the Beneficiary's past and intended future duties, which we need not address unless and until the Petitioner establishes that the Beneficiary possesses specialized knowledge.

On appeal, the Petitioner states that the Beneficiary is not merely familiar with the company's proprietary products; "the Beneficiary's experience is unique, specialized and involved the actual design, development and creation of technology tailored to the specific needs of [the Petitioner's] client." The Petitioner asserts that the Director selectively quoted from the Petitioner's statements, choosing only the most generic assertions while disregarding the most relevant information about the Beneficiary's specialized knowledge.

A central assertion on appeal is that the Director did not acknowledge details provided by the Beneficiary's manager abroad. That official did not address the Beneficiary's training or explain specifically how the Beneficiary's knowledge distinguishes him from others in his field or within the foreign entity. The official simply presumed the Beneficiary's specialized knowledge, and asserted that the Beneficiary used that knowledge in various projects for the foreign entity. At one point, the official described a software project and stated: "Because [the Beneficiary] developed this software himself, he is the most appropriate individual to transfer to the U.S. to ensure that it is employed properly by the U.S. entity in serving [the Petitioner's] current U.S. client." This statement attests to the Beneficiary's familiarity with his own work, but it does not show that the project required specialized knowledge or that the Beneficiary possesses that knowledge.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. Thus, whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. It is reasonable to believe that all software developers create products for their clients that are unique in some way. Without a substantive explanation or evidence, the Petitioner has not established that the petitioning organization's products are particularly complex or uncommon compared to other companies providing software to the same industry. The Petitioner has not sufficiently explained how the Beneficiary gained knowledge specific to only its organization, and has not supported a claim that it would take a significant amount of time to train an experienced developer to perform the duties required of the proposed position.

IV. CONCLUSION

The appeal will be dismissed for the above stated reason. 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 N- Inc.*, ID# 2338917 (AAO Mar. 14, 2019)