U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-P-S- LLC

DATE: MAR. 17, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company that creates, produces and implements digital solutions for advertising agencies and brands, seeks to temporarily employ the Beneficiary as an account manager in its new office 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge or that she has been employed abroad and would be employed in the United States in a position requiring specialized knowledge.

On appeal, the Petitioner submits additional evidence and asserts that the Director failed to consider evidence demonstrating that: the Beneficiary's current and proposed positions required specialized knowledge in company platforms, tools and management; there are no employees in Puerto Rico who have the required knowledge to perform the proposed duties; and, the Beneficiary's knowledge cannot be transferred or taught to another individual without significant cost and impact on the Petitioner's operations.

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.*

The relevant statutory definition states that 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 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).

An L-1B classification petition filed on Form I-129, Petition for a Nonimmigrant Worker, must be accompanied by evidence 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 evidence that 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 found that the Petitioner did not establish that the Beneficiary possesses specialized knowledge, and that she has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

In denying the petition, the Director observed that the Petitioner did not adequately document the Beneficiary's completion of training that it claimed was critical to her acquisition of specialized knowledge and did not demonstrate that the knowledge gained through the claimed internal training could not be easily imparted to another employee. Further, the Director found that the Beneficiary's familiarity with and use of certain company tools to provide services to clients was insufficient to distinguish her knowledge as distinct or uncommon compared to similarly experienced workers in the Petitioner's industry.

On appeal, the Petitioner argues that the Director overlooked convincing evidence demonstrating that the Beneficiary possesses special knowledge of the company's products and services and their application in international markets. The Petitioner asserts that any newly hired employee would require a year of classroom and on-the-job training at its affiliate's office in Uruguay in order to perform the duties of the proffered position, at great expense and inconvenience to the company. In support of the appeal, the Petitioner submits sworn statements from representatives of its foreign affiliate, the petitioning company, and a client.

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 she possesses

specialized knowledge, then we cannot conclude that she has been employed abroad or would be employed in the United States in a specialized knowledge capacity.

A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition. 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.

A. Special Knowledge

The Petitioner's primary claim is that the Beneficiary possesses special knowledge of the company's "platforms, tools and management, and in the application of [the group's] services and products in the Puerto Rico market."[1] The Petitioner claims that the Beneficiary acquired this knowledge through a combination of formal classroom training, on-the-job training, and experience working with a Puerto Rico-based client.

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 specialized.

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.

The Petitioner was established in 2015 and is engaged in creating, producing and implementing digital solutions for advertising agencies and brands in Puerto Rico. The Petitioner's affiliate in Uruguay, which provides similar services, initially hired the Beneficiary as an account manager in 2012 and she had approximately three years and six months experience in the position at the time of filing in 2016. She received her bachelor's degree in communications in 2014.

[1] The record of proceeding includes the petition and initial evidence, the Director's request for evidence (RFE) and the Petitioner's response, and the Petitioner's appeal, which includes a brief and additional evidence. We have reviewed the evidence in its entirety.

The Petitioner explained that the account manager position provides the commercial link between its clients and the company's internal technical and creative team members responsible for delivering products and services. The Beneficiary's "main duties" are to conceptualize projects, to work with technical and creative team members, to monitor and coordinate different projects from start to finish, to attend client meetings and obtain approvals, and to prepare reports and provide presentations regarding finished projects. The Petitioner later provided an expanded duty description in response to the RFE in which it identified specific software tools or platforms she uses to perform each task, including Basecamp, Tick, Smartsheet, UXPin, and MarvelApp, as well as web and social media tools used for advertising on Google, Facebook and Twitter.

The Beneficiary's claimed special knowledge is based, in part, on the Petitioner's claim that she has completed classroom training in these software tools and platforms. The record shows that the Beneficiary completed an 80-hour training course in a proprietary software platform called which was developed by the Petitioner's affiliate in Uruguay and is used to track marketing campaign activities.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. However, a petitioner might satisfy the current standard by establishing that a beneficiary's purported specialized knowledge is proprietary, as long as the petitioner demonstrates that the knowledge is either "special" or "advanced." By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. While training in is more likely than not unavailable outside the Petitioner's group of companies, the length of the training is relatively short in duration and the evidence does not establish that this knowledge could not be easily imparted to another professional who has the requisite marketing and advertising industry knowledge.

The Petitioner has not sufficiently documented the Beneficiary's completion of in-house training in the other software tools and platforms referenced above nor has it submitted sufficient evidence to show that completion of such training would have imparted knowledge that is uncommon among similarly employed professionals in the industry.

The foreign entity's general manager, initially described the remaining tools required for the account manager position as "Software and other Technologies; fundamental to the development of the Marketing and Communications Industry," and provided website links indicating that such tools are third-party technologies available outside the organization. In response to the RFE, explained that the company's new accounts department employees receive exclusive, formal training in tools used for project management which he identified as follows: Basecamp – 8 hours; Tick – 16 hours; Smartsheet – 40 hours; UXPin – 160 hours; and MarvelApp – 40 hours. The Petitioner also emphasized the exclusive nature of this training, noting that "no other agency or company in the industry in Puerto Rico or Uruguay uses these programs and platforms in the management of programs." Both the Petitioner and foreign entity stated that after completing 260 hours of formal training in these tools and "company processes," employees receive three months of

on-the-job mentoring while working on real projects. The Petitioner did not identify the nature, length or content of any training new employees receive in company processes.

We agree with the Director's determination that there is insufficient evidence to document the Beneficiary's completion of 260 hours of formal in-house training, nor is there evidence to support the claim that UXPin, BaseCamp, Tick, SmartSheet and MarvelApp are "developed by and are exclusive of [the foreign entity]," as stated, at times, in the record. In fact, the foreign entity's initial statement suggested that these tools are third-party products commonly used in the industry. The Petitioner did not provide any supporting documentation indicating that they are proprietary or exclusive to the foreign entity, as it did with the software.

While we acknowledge that the foreign entity may have adapted some of these tools for its own use and developed company-specific training, it has not adequately explained why it cannot offer supporting documentation of the existence or content of these training courses. On appeal, the Petitioner submits a sworn statement from the foreign entity's general manager, who states the company "does not have the practice or policy of keeping [a] documented record of the training offered to their employees." This statement may explain why the Beneficiary does not have training certificates or human resources records for these 260 hours of training (although she did receive a certificate for the course). It does not explain why the company provided no supporting evidence, beyond its own statements, of this exclusive formal induction training program that it claims it uniformly delivers to all of its accounts department employees. Absent some evidence related to this training program, we cannot determine that this "exclusive" training in third-party tools, platforms and software which are, in the company's words, "fundamental" to its industry, would impart knowledge that is truly different or uncommon compared to what is held by others in the same industry. Other companies may not have the exact same training program, but it is reasonable to believe that other industry professionals have used many of these same tools and platforms in carrying out their duties.

Finally, we note that one of the foreign entity's letters submitted in response to the RFE referred to "years of training and internal training [the Beneficiary] has received from the team in Uruguay." Specifically, the letter stated that the Beneficiary has four years of experience in purchasing tools and advertising platforms including Facebook Ads, Twitter Ads, LinkedIn Ads, Google Search, Google Display, Google AdWords, Google Analytics and Facebook Ads. While it appears that the Beneficiary has been and would be using some of these technologies to perform her duties, the claim that she had years of internal training in their use is not repeated elsewhere and is not sufficiently documented in the record. Again, the Petitioner has not established that knowledge of these technologies would be uncommon among professionals working in the digital marketing and advertising field.

Overall, the Petitioner has sufficiently documented the Beneficiary's completion of only 80 hours of formal training in software. We do not doubt her ability to use UXPin, BaseCamp, Tick,

[2] Earlier, the Petitioner had stated that is another Uruguay affiliate engaged in social media strategy and media buying. This is not the affiliate that employs the Beneficiary.

SmartSheet, MarvelApp, and various Google, Twitter and Facebook advertising tools; however, the Petitioner has not established through sufficient evidence that she gained her knowledge of these through formal, company-specific training or that she possesses knowledge of these tools that is uncommon in the industry.

The Petitioner has consistently stated that account managers are not considered to be fully trained and capable of applying the above-referenced tools in real world situations until they have completed additional supervised work on real client projects. However, the specific amount of required post-training supervision is not consistently stated. In response to the RFE, the Petitioner stated that the position requires 260 hours of formal training, followed by 3 months of "supervised work" to reach an average level of expertise. In a letter also submitted in response to the RFE, stated that a new employee has to learn and adapt to the aforementioned tools and learn to understand and work under the company's processes and standards, which "would require years to learn and acquire." In the next paragraph, he stated that it takes "between 6 months and a year" to train employees to work constructively with clients.

On appeal, the Petitioner states "the required training and after-training experience and mentoring phase to obtain the expertise and knowledge necessary to fully perform the duties of Account Manager can take from 6 months to a year." The Petitioner asserts that because of this required on-the-job training, the knowledge the Beneficiary possesses cannot be transferred to another individual without significant economic cost or inconvenience. The Petitioner indicates that if it had to hire someone other than the Beneficiary, it would take at least a year for that employee to perform the duties of the position as it would take "at a minimum, a whole year" to have the employee complete the classroom and on-the-job training in Uruguay. In support of its claim, the Petitioner relies on *Fogo de Chao (Holdings) Inc. v. DHS*, 769 F.3d 1127, 1132 (D.C. Cir. 2014) (quoting Memorandum from James A. Puleo, Acting Executive Associate Commissioner, INS, *Interpretation of Specialized Knowledge* (March 9, 1994), "'[k]nowledge might be found to be special where . . . the United States firm would experience a significant interruption of business in order to train a United States worker to assume those duties'").

At the time of filing, the Petitioner had been doing business in Puerto Rico for less than one year and was seeking to employ the Beneficiary as its first account manager. Any employee hired for the position from outside the Petitioner's group would likely require some initial training in the company's processes to fully perform the duties. The Petitioner must establish that the position truly requires special knowledge that is different from what is common in the industry and could not be easily imparted to an employee who has experience performing similar duties in the same industry.

As discussed above, the Petitioner's claim that all account department employees complete 260 hours of unique formal classroom training (plus 80 hours of training) is not adequately documented. The required "on the job" training that follows the claimed classroom training is also insufficiently documented. The Petitioner's claims regarding the length of this on-the-job training have varied between three months (based on its initial statements) and nine or more months (based

on its statements on appeal that the total training period for a new employee would be at least one year).

Therefore, we looked at the Beneficiary's employment history to evaluate how much on-the-job training she received before fully performing the duties of the account manager position. The Beneficiary joined the foreign entity in 2012 before completing her university degree and her resume lists no prior work experience. Between 2012 and 2014, she served as account manager for three different clients. The foreign entity provided a very detailed letter describing the Beneficiary's role and responsibilities with respect to these client accounts, but it did not identify any period of on-the job training. Rather, the description of her employment history suggested the Beneficiary was fully performing the account manager duties starting with her earliest assignment. On appeal, the foreign entity's general manager maintains that the Beneficiary completed "on-the-job" training by "contributing as Account Manager to real projects" but that is the extent of the explanation provided regarding her on-the-job training. The Petitioner has not provided, for example, a statement from the employee who mentored her or supervised her training who could confirm the length or nature of the training.

In fact, on appeal, the Petitioner submits a statement from of a client based in Puerto Rico. states that the Beneficiary has been "in charge" of its projects and campaigns since 2012. This claim is inconsistent with the foreign entity's previous claim that the Beneficiary initially worked with local clients in Uruguay before being entrusted with the company's international client. If she did in fact assume the assignment with in 2012, and this international assignment was indicative of her full mastery of the required specialized knowledge, it is unclear when she would have completed the required classroom and on-the-job training.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to place great weight on the existence of a formal classroom and on-the-job training program that it claims is critical to obtaining specialized knowledge. The total length of the training varies depending on which letter we review. Neither the existence of the 260-hour formal training program nor the actual length of the on-the-job training are clear or well supported based on the evidence submitted. Because there are inconsistencies, we find the Petitioner's statements alone to be insufficient to document its training program or the Beneficiary's completion of the training. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Since we cannot determine how much training the Beneficiary herself completed, we cannot find that she possesses, or the position requires, the claimed extensive training in the company's platforms, tools and processes.

Based on the record, we can conclude that the Beneficiary possesses 80 hours of training in a proprietary software platform, and extensive experience using third-party software tools and platforms in carrying out her duties as an account manager, but the evidence does not establish that this technical knowledge constitutes special knowledge that is different or uncommon among similarly employed professionals in Uruguay or in the United States.

The final component of the Beneficiary's claimed special knowledge is based on her knowledge of the application of the foreign entity's services and products in the local market gained through prior exposure and the management of accounts in Puerto Rico. The Petitioner acknowledges that other account managers working for the foreign entity have similar expertise in the tools, software and processes used to manage accounts within the company, but states that no other employee in Uruguay has worked with a client in Puerto Rico. The Petitioner also acknowledges, while similarly employed workers in Puerto Rico would be familiar with the market, they lack knowledge of the company-specific tools and platforms needed to manage accounts.

The foreign entity stated that the decision to transfer the Beneficiary from Uruguay to Puerto Rico "was solidly based on her knowledge of Puerto Rico's market and culture," but it has not further explained what aspects of the local market in Puerto Rico would be deemed "special knowledge," how long it took the Beneficiary to acquire this knowledge, or how long it would take to transfer this knowledge to a similar employee with the same skills. The claim that knowledge of the local market constitutes specialized knowledge is conclusory and is not adequately supported. Without more, we cannot find that experience with one Puerto Rican client has given the Beneficiary knowledge that is truly distinct from other employees within the company or within the broader industry.

We acknowledge the Petitioner's claim that the Beneficiary is the most efficient choice for transfer because its Puerto Rico office is new, does not yet employ an account manager, and because the Beneficiary alone, out of all account management staff in Uruguay, possesses the appropriate combination of technical and market-specific knowledge. As noted above, the Petitioner must still demonstrate that the Beneficiary's knowledge is distinct from what is generally held in its industry. The Petitioner has not demonstrated how the Beneficiary acquired knowledge that is special within the industry based on her completion of one 80 hour course in a proprietary platform, additional training in third-party technologies, and experience using these technologies in managing accounts for clients. While there are likely no employees in Puerto Rico with the exact same knowledge the Beneficiary possesses, 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 up to a full year or longer to acquire the knowledge needed for the position.

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

B. Advanced Knowledge

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 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 acknowledges that the foreign entity's other account managers have similar expertise in the tools and platforms the Beneficiary uses and a comparable ability to use them in carrying out assignments for clients. The Petitioner has not claimed that all of the foreign entity's account managers have advanced knowledge. As noted the distinguishes the Beneficiary by noting that she alone has worked with a Puerto Rican client, but has not claimed that this knowledge represents advanced knowledge of the company's processes or procedures.

In a statement submitted on appeal, the foreign entity's general manager states that the Beneficiary "fully dominated the Company's processes in such a way that she is the one who carries out the mentoring tasks to new employees in the Account Department," but this statement alone is insufficient to establish that she has advanced knowledge. It is clear that the Petitioner considers the Beneficiary to be a valuable employee who excels at her position, but it has not sufficiently shown that her knowledge of company processes and procedures is advanced compared to other similarly employed-workers performing account management duties.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge. The Petitioner also did not establish that the Beneficiary has been employed abroad and would be employed in the United States in a specialized knowledge capacity

ORDER: The appeal is dismissed.

Cite as *Matter of I-P-S- LLC*, ID# 232568 (AAO Mar. 17, 2017)