U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-, LLC

DATE: MAR. 21. 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a research firm serving the global entertainment industry, seeks to temporarily employ the Beneficiary as a "Senior Research Manager, International" 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 or that she will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision did not give adequate consideration to its claims regarding the Beneficiary's special and advanced knowledge, or the knowledge required for the proposed position, and did not apply the preponderance of the evidence standard to the facts presented.[1]

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

[1] The Petitioner also asserts that the Director "did not address the evidence that [the Beneficiary] is in a functional manager position abroad at the UK affiliate," and instead found that the Beneficiary's position abroad "is not a specialized knowledge position." The Petitioner maintains that the Beneficiary has been employed abroad in a managerial capacity. However, the Director acknowledged that the Petitioner "provided evidence to establish that the beneficiary served in a managerial role abroad." We agree with this determination and will not further address the Beneficiary's employment capacity abroad, which was not a basis for the denial of the petition.

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 [redacted] provides market research services for the global entertainment industry, including film studios worldwide. It works with its clients' marketing and research staff on the development and execution of their marketing strategies, from concept development through distribution, using quantitative and qualitative research methods. The group's services include "International Campaign Analytics," which involves testing potential marketing materials for movies (such as trailers and television advertisements) on a country-by-country basis to enable clients to create tailored marketing campaigns for different global markets.

The Petitioner states that its United Kingdom affiliate hired the Beneficiary as a research executive[2] in April 2015 and subsequently promoted her to the positions of senior research executive (in January 2016), research manager (in November 2016), and senior research manager (in April 2018). The Petitioner indicates that the Beneficiary has been working on international campaign analytics market research and projects for a major client, [redacted] during much of her three years of employment abroad. The Beneficiary has a bachelor's degree in film studies and American studies, as well as a master's degree in digital entrepreneurship, and a [redacted] certificate in process-based project management methodologies.

The Petitioner now seeks to employ the Beneficiary in the United States in the position of senior research analyst, international, at an annual salary of $65,000. The Petitioner states that she will continue to oversee international market research projects for [redacted] which has reorganized its international film marketing team to report to its [redacted] offices, and will also work with international campaign analytics project teams for other movie studios.

[2] The Beneficiary's initial 2015 offer letter from the foreign entity lists her job title as "Jr. Research Analyst."

III. SPECIALIZED KNOWLEDGE

The issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge, and that she 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 she possesses specialized knowledge, then we cannot conclude that she 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 of specialized knowledge. 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. 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.

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.

The Petitioner claims that the Beneficiary possesses special knowledge of the company's services, research, techniques, and methodologies and their application in international markets. The

Petitioner also focuses on the Beneficiary's educational background, noting that her university studies, in combination with her work experience, make her uniquely qualified for the position. Finally, the Petitioner emphasizes the Beneficiary's client-specific and market-specific knowledge, specifically her contacts within [redacted] and experience working with this client, and her knowledge of international market research techniques.

Turning first to the Beneficiary's company-specific knowledge, the Director found that the Petitioner had not demonstrated that knowledge of its services, techniques, and methodologies could be considered special knowledge that is truly different or uncommon compared to the knowledge held by other market research professionals working within the industry at large.

On appeal, the Petitioner asserts that the Director ignored evidence regarding the nature of the Petitioner's business and the fact that the company has been recognized as the leader in its industry, based on its highly advanced scientific research methods. The Petitioner has emphasized that its group was chosen by [redacted] and other major studios over its competitors, and asserted that these clients would not use its services "if they were not distinct or if they were common in the industry." However, the Petitioner stops short of explaining what makes its specific services, techniques, research, or methodologies distinct from those used by its competitors. The Petitioner claims that its methods are based on "rigorously scientific quantitative and qualitative research methods," but any company providing services in the market research field would reasonably be expected to use the latest research and data analytics techniques. The Petitioner has not described its techniques in detail or claimed that it has developed novel research methods.

The Petitioner did not respond to the Director's request that it explain how the claimed special knowledge is typically gained within the organization, and the record does not support a finding that the Petitioner's research professionals are required to undergo training in any company-specific tools, processes, techniques, or methodologies needed to carry out their work for the company's clients. It may be true that the specific market research requirements of global entertainment companies in general, and of its film studio clientele in particular, are not widely known among market research professionals; however, the Petitioner must also establish that the knowledge cannot be easily imparted in order to establish that it is truly distinct or uncommon. The Petitioner has not met that burden because it has not described this company-specific knowledge or how it is imparted to employees in sufficient detail, nor has it explained how long it would take for a similarly educated research professional to acquire the knowledge.

Simply claiming that the Petitioner itself is considered a leader in its field is insufficient. Even if the Petitioner's methods and processes can be considered proprietary, the Petitioner must still establish that some aspects of its market research or service delivery processes require special knowledge that is somehow different from that held by those working for other market research firms in international markets. The fact that other workers may not have the same level of experience with the company's methodologies as applied to specific clients is not enough to equate to special knowledge if such knowledge could be readily imparted to a similarly educated or experienced employee.

For these reasons, the record does not support a finding that knowledge of the Petitioner's services, research, methodologies, and techniques is special knowledge.

The Petitioner also claims that the Beneficiary's specific academic background makes her uniquely qualified for her current and proposed positions. The Petitioner claims that the Beneficiary's bachelor's and master's degrees, and the specific combination and focus of those degrees, along with her expertise gained through progressive work experience overseas, are what amount to specialized knowledge. While we do not doubt that the Beneficiary's academic studies made her well-prepared for the type of work she performs, the Petitioner has not established that her educational background resulted in her obtaining special knowledge not held by others who are expected to perform the same type of duties.

The Petitioner emphasizes that the Beneficiary's direct subordinates abroad (a research executive and a senior research executive) have bachelor's degrees, but it also indicated that she works closely with a research manager and operations executives who possess either master's or Ph.D degrees. The Petitioner did not provide the specific details of the degrees possessed by others performing similar work within the company, or establish that the Beneficiary, based on her academic background, is expected to perform duties requiring knowledge not possessed by others with the same job title. The Petitioner maintains that the Beneficiary's advanced degree put her on an accelerated track for promotions, but did not submit sufficient evidence to establish how her qualifications contribute to her special knowledge of the petitioning company's products or services.

Further, although the Beneficiary may possess a particularly relevant academic background with respect to her areas of study, the Petitioner has not established that a liberal arts degree in film studies combined with a marketing or data analytics degree is actually required for the offered position. Again, it has not differentiated the Beneficiary's actual duties from those performed by its other research managers. As such, it has not established that her specific role requires a broader academic background that is not possessed by other similarly employed workers within the company, or that this background, alone or in combination with her work experience, has resulted in her possession of special knowledge.

We now turn to the Petitioner's primary claims on appeal, in which it emphasizes that the position of senior research manager, international requires the Beneficiary's (1) knowledge of the client, its specific requirements and preferences regarding international film research, and its market research projects, including historical knowledge regarding its franchises and the results of prior research the Petitioner has conducted; (2) understanding of the client relationship with the "key personalities" within the client company, and familiarity with the client's based teams; and (3) knowledge of international box office trends and international market research techniques. The Petitioner asserts that the Beneficiary has knowledge in these areas that is "distinct or uncommon" even in comparison to others within the company, and that her knowledge of international campaign analytics services and techniques, as they pertain to is unique.

With respect to the Beneficiary' claimed client-specific special knowledge, we acknowledge that the Petitioner submitted a letter from Senior Vice President of Creative Strategy and Research with notes that the Beneficiary has worked onsite at in and "acted as a unique bridge between and [the Petitioner's group], facilitating market research work with [the Petitioner]." He also mentions the Beneficiary's "distinct knowledge of market research requirements" and notes that "it would be invaluable to business to have greater support from [the Petitioner] in to execute and analyze international market research." states that to fulfill this role, "the relevant individual will have to have a highly specialized skill set incorporating knowledge of the international film marketplace, business needs and structure and the intricacies of international market research in terms of survey design, management of fieldwork and analysis." He concludes that the Beneficiary would be the "ideal candidate," noting that her skillset, experience, perspective, and knowledge of the business "would be almost impossible to find elsewhere."

While we have taken statement into account, we must also consider it within the context of the evidence as a whole. He identifies knowledge of business needs" as a requirement for any employee of the Petitioner assigned to the account; however, the other knowledge and skill requirements he mentioned would reasonably be found among similarly employed workers within the Petitioner's company and throughout its industry. It is unclear how the Beneficiary's knowledge of the international film marketplace or knowledge of international market research techniques is substantially different from that held by other professionals working in this field.

We note that the record contains an organizational chart (which appears to include both U.K. and U.S.-based employees) for the Petitioner's "Campaign Analytics – International" organization. This team is comprised of more than 20 individuals, most of whom work in the positions of "Research Executive," "Research Manager, International," "Director, International Research," or similar roles. The Petitioner has not provided job descriptions for other research managers, but it is reasonable to believe that others, like the Beneficiary have developed a working relationship with one or more regular clients of the company, and as such, have knowledge of that client's marketing staff and decision-makers, research requirements, preferences and prior research projects conducted for the client. Individual employees within the U.S. and U.K. entities may have more contact with some clients than others, but it is reasonable to believe that any research manager representing the petitioning company would be able to provide the same international campaign analytics services to any client.

While the Petitioner stresses the importance of the Beneficiary's historical knowledge of previous projects conducted for it did not explain why insights gained through those projects, including both project results and information regarding the "key personalities" in play and how to respond to their "demands and requests," could not be readily communicated to another employee who has performed the same type of work for a different client.

Moreover, the Petitioner has not explained why knowledge of any particular client's needs is considered special knowledge, as it is unclear that different movie studios would have substantially different market research needs when approaching an international marketing campaign for a new

film. For example, it did not attempt to clarify why the international market research knowledge needed to market test movie trailers and advertisements in foreign markets for [redacted] is somehow different from what is generally required to provide the same service to, for example, [redacted] or [redacted] Further, as already discussed above it is unclear how the market research services provided by the Petitioner's group differ from those of other companies that provide the same services to the global entertainment industry. The Petitioner does not appear to indicate that it is the exclusive provider of these services to its clients.

Although the Petitioner emphasizes the Beneficiary's existing relationships with [redacted] staff and "key personalities" within the client organization, the fact that workers outside the Petitioner's group do not have existing professional contacts with individual employees of its clients' organizations, does not establish that this type of knowledge is special. 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 qualified market research professional 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 the duties could only be performed by an employee who has worked with [redacted] in the United Kingdom.

The Petitioner also emphasizes that the Beneficiary's knowledge of international box office trends and international market research techniques is special knowledge but has not sufficiently supported this claim. It is evident that any professional working in this field would be familiar with trends in the industry and the techniques needed to study the industry and to present useful deliverables to clients. While the record reflects that the Beneficiary does in fact have this knowledge, it is unclear how it rises to special knowledge that is truly distinct.

We acknowledge the Petitioner's claim that the Beneficiary is the most efficient choice for transfer because she already possesses the client-specific and market-specific knowledge required for the position. While it may be true that there are no employees in the United States office 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 the duties the Beneficiary has performed and will perform are truly "not comparable to any other researcher in the field."

For the foregoing reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's products or services, 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 asserts that the Beneficiary's knowledge is advanced compared to other employees of the foreign entity "with respect to international research projects for and notes that she has played an essential role in ensuring that the company's international research is conducted efficiently and delivered in a format that can used by the client's senior executives. The Petitioner also emphasizes that the Beneficiary's subordinates in the United Kingdom are not required to have specialized knowledge of research procedures, processes, clientele, international trends, or portfolio management. It states that the position of senior research manager requires detailed knowledge of international markets in order to credibly present and contextualize research results and that the Beneficiary's international experience would be difficult to replicate. Further, the Petitioner states that the offered U.S. position requires this advanced knowledge because the Beneficiary will need to train U.S. staff in international market research techniques.

As discussed above, we found that the Petitioner did not submit sufficient evidence to establish that knowledge of its internal practices, procedures, and techniques for carrying out international research projects constitute special knowledge that could not be easily imparted to another individual in the Petitioner's industry. Likewise, we find insufficient evidence to demonstrate that the Beneficiary has acquired advanced knowledge of the company's processes and procedures in comparison to her colleagues. While the Petitioner maintains that she excels in her role as a senior research manager, it has not provided relevant information that would allow us to compare her knowledge to that of other similarly-employed workers within the company, either in the United States or abroad.

The Petitioner's organizational chart for the group's Campaign Analytics – International team identifies U.S.-based employees with the job titles "Sr. Director, International Research," "Sr. Research Manager II, International," "Research Manager, CA – International," "Research Manager, International," and "Sr. Project Manager, International." In addition, the Petitioner states that its other global entertainment clients etc.), unlike which is in the process of relocating its film marketing operations from to the United States, have already based their studio's international marketing departments out of Therefore it is unclear why the U.S.-based international campaign analytics team would require the Beneficiary to provide training in aspects of international market research techniques or trends in the international film industry.

It is also unclear why the Beneficiary's knowledge of these techniques would be more advanced than that of her U.S.-based counterparts. The Petitioner claims she has advanced knowledge of international box office trends and the reasons for success and failure of different genres in different

international markets. However, as the Petitioner states that it is the leading provider of market research services in this industry, it cannot credibly claim that advanced knowledge in these areas is narrowly held within the company. Further, as already discussed, such knowledge would be considered general knowledge within the industry and is not specific to the company.

The Petitioner does not appear to claim that every research manager within its international campaign analytics team has specialized knowledge, and it has not shown how the Beneficiary's specific assignments resulted in her acquisition of advanced knowledge in comparison to his colleagues, as opposed to client-specific knowledge that could be readily transferred to another research manager who has performed similar work for a client in the same industry.

We acknowledge the Petitioner's claim that the Beneficiary is unique within the company due to her management of the account. However, it appears that most research managers within the same team are likely assigned to a specific client. If such specialization is common throughout the company's campaign analytics organization, the Petitioner has not shown how it amounts to "advanced" knowledge. The Petitioner has not differentiated the Beneficiary's actual duties from those performed by its other senior research managers assigned to different clients. As such, it has not established that her specific role requires a higher degree of company-specific knowledge that is not possessed by other similarly employed workers within the company.

It is clear that the Petitioner considers the Beneficiary to be a valuable and highly productive 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 the duties of a research manager, or that she possesses special knowledge that is different from what is generally held in the Petitioner's industry.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether the Beneficiary 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 M-, LLC*, ID# 2460528 (AAO Mar. 21, 2019)