U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15764573

Date: MAR. 26, 2021

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a provider of IT cloud solutions for revenue management, seeks to employ the Beneficiary temporarily as its "Sr. Member Technical Staff 2" 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner did not meet that burden. Therefore, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, 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. Section 101(a)(15)(L) of the Act. 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).

II. BACKGROUND

The Petitioner is part of a multinational organization that "developed its own proprietary platform technologies, core application engines, and application infrastructure" to create revenue management IT solutions for its clients in the life science and technology industries. The Petitioner states that the tools it uses and the solutions it creates using those tools are unique to its organization and not generally found within the industry. The Petitioner points to the Beneficiary's education, which included "directly related coursework," and the "unique training experience" acquired during the Beneficiary's employment with the foreign organization resulted in his "extensive knowledge" of

Petitioner's proprietary tools and solutions. The Petitioner states that the Beneficiary "leverages" his knowledge of its organization's proprietary tools and infrastructure as "one of the core members of a team" that builds revenue management applications for its "high tech vertical clients." It also describes the Beneficiary's knowledge as "beyond the working knowledge of the frameworks," stating that the Beneficiary has "advanced design skills" that were developed and have become "specialized" as a result of the Beneficiary's employment with the foreign entity.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether the Beneficiary has been employed abroad and will be employed in the United States, in a specialized knowledge capacity.

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.[1]

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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.

Special knowledge concerns knowledge of the petitioning organization's products or services and their 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 petitioning entity 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

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

operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

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.

In the present matter, the Petitioner submitted a supporting cover letter discussing the Beneficiary's experience with the foreign entity and highlighting his knowledge of the organization's "specialized procedures" and "advanced understanding" of the organization's proprietary "platform, core application engine, and application infrastructure." However, the Petitioner did not describe its organization's "specialized procedures" and although it provided a list of its proprietary tools, it did not point to characteristics explaining why specialized knowledge is required to use them. Likewise, although the Petitioner also provided a list of the Beneficiary's assigned job duties, it did not distinguish them as uncommon among other similarly situated professionals within the IT industry or explain why specialized knowledge is required to perform such duties.

In a request for evidence (RFE), the Director noted that the Petitioner did not provide sufficient evidence establishing that "special" or "advanced" knowledge was required to perform the Beneficiary's duties with the foreign entity and pointed out that the Petitioner did not specify the amount of time or the specific training that was required for the Beneficiary to attain the knowledge that is claimed to be specialized. The Director stated that the Petitioner can address these areas of concern by: identifying the tools or techniques that require specialized knowledge, explaining how the Beneficiary's knowledge is either "special" or "advanced," providing evidence of prior training the Beneficiary had undergone, and specifying the minimum time required to gain the knowledge that is claimed to be specialized.

In response, the Petitioner explained that its organization employs IT professionals who build proprietary revenue management solutions that are "cutting edge" and can be rapidly deployed, thereby maximizing the client's efficiency and revenue. The Petitioner provided a list of solutions its IT staff created and identified the tools they used, stating that both the solutions and the tools are proprietary to the Petitioner's organization and not generally found within the industry. The Petitioner stated that "specific, specialized and internal trainings" are required of all of its "Senior Member of Technical Staff II" and claimed that the Beneficiary gained knowledge of the proprietary solutions and tools "through hands-on experience and training" that he received during his period of employment with the foreign entity. However, the Petitioner did not provide a training schedule, specify or describe the content of any "internal trainings," or offer evidence showing that the Beneficiary completed any such training as part of a path for gaining specialized knowledge. The Petitioner also did not indicate that there was a progression in the Beneficiary's knowledge from the time he commenced his employment with the foreign entity in October 2015 to the date the claimed specialized knowledge was attained. In light of these deficiencies, it is unclear when or how the

Beneficiary obtained the knowledge that is claimed to be specialized. Further, because the Petitioner did not provide an understanding of the process for acquiring specialized knowledge within its organization, it did not adequately support the claim that it is "not possible to quickly or easily training a new U.S. employee in the detailed knowledge of foreign office operations."

The Petitioner also provided a job duty breakdown, claiming that the Beneficiary's assigned job duties required "special" knowledge of the organization's "proprietary technologies, products, techniques and services." However, aside from highlighting the Beneficiary's use of proprietary tools to create business solutions, the Petitioner did not provide practical descriptions of the tools' functionalities explaining why using the tools requires the Beneficiary to have "special" knowledge that is uncommon within the industry.

Although the Petitioner also claimed that the Beneficiary's knowledge is advanced, it did not specify the processes and procedures to which that knowledge applies. Rather, it claimed that the Beneficiary has an "'advanced' level of knowledge of [the Petitioner's] technology and products." Further, the Petitioner also did not demonstrate that the Beneficiary's knowledge of its organization's processes and procedures is uncommon within the relevant industry and greatly developed in comparison to the knowledge that is generally found within the employer. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

The Petitioner also provided the following recognitions as evidence of the Beneficiary's "greatest achievements" during his employment with the foreign entity:

1. A 2015 email listing the Beneficiary as one of 11 recipients being recognized for "successful delivery of the first phase of Non[-]Strategy Migration." The email recognized "the team" for their work on "one of the most complex and technically challenging projects";
2. A 2019 "Certificate of Excellence" and 2019 annual award both recognizing the Beneficiary for "Exemplary display of [the organization]'s values – 'Passion' and 'Creating customer delight while protecting organizational interests'";
3. "Certificate of Excellence" recognizing the Beneficiary for "Exemplary display of [the organization]'s values – 'Team work' and 'Exemplary delivery capabilities'" for the 2015 and 2016 third quarter;
4. The foreign entity's recognition of the Beneficiary as its "Model for May 2015";
5. "Certificate of Excellence" recognizing the Beneficiary for "'Exceptional expertise displayed at work' and 'Exemplary display of [the organization]'s values and Core Competencies" in the 2014 fourth quarter; and
6. An "Individual Excellence" award listing the Beneficiary as the recipient for the 2014 third quarter.

Although the Petitioner claimed that the above recognitions were "directly related to the proprietary technologies," the recognitions did not specify any "proprietary technologies" nor did they contain information regarding the criteria a recipient was expected to meet. The latter point is particularly relevant given that several of the recognitions were for work performed as part of a "team." We also note that the certificate in No. 2 above was awarded in 2019, when the Beneficiary was already working in the United States and is claimed to have already acquired the specialized knowledge that is purportedly a prerequisite for the U.S. position. As such, the 2019 recognition does not explain how

or when the Beneficiary acquired knowledge that is claimed to be specialized. Moreover, given the Petitioner's claim that the Beneficiary's employment as the foreign entity's "full-time Member Technical Staff"[2] started in October 2015, we question the validity of the recognitions described in Nos. 1 and 3-6 above, which indicate that the Beneficiary received recognition for work performed prior to the commencement of the Beneficiary's employment with the foreign entity. The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the Petitioner argues that the Director erroneously likened the Beneficiary's job duties to those in "related occupation [*sic*] working in the system software development filed," asserting that this conclusion is inconsistent with precedent caselaw in which "the Service did not find that the occupations inherently qualified the beneficiaries and looked for elements beyond general job tasks and duties." Contrary to the Petitioner's assertion, the Director in this instance did not narrowly limit the analysis to the Beneficiary's occupation and "general job tasks and duties." Rather, in concluding that the Beneficiary does not possess the requisite specialized knowledge, the Director factored in the Beneficiary's performance awards and years of experience with the foreign entity, finding that the Petitioner did not adequately distinguish the Beneficiary's knowledge from that of others or provide sufficient information demonstrating that receiving a performance award was an indicator that the Beneficiary possessed specialized knowledge.

The Petitioner also argues that the Director applied a higher standard of proof in reviewing the evidence, pointing to the Beneficiary's use of "proprietary platform technologies" and samples of the Beneficiary's work as evidence that he acquired specialized knowledge. We disagree. Although the Beneficiary's use of proprietary tools is relevant to this discussion, this factor in and of itself does not establish that the knowledge acquired to use those tools necessarily rises to the level of being specialized. As previously discussed, in order to establish that the Beneficiary's knowledge is either special or advanced knowledge, the Petitioner 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 Petitioner must also support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Although the Petitioner asserts that the Beneficiary meets the criteria for possessing special and advanced knowledge, it does not adequately support these assertions; instead, it makes general references to "specific, specialized and internal trainings," yet provides no evidence that the Beneficiary has undergone such training or specifics about a path for gaining specialized knowledge within the organization. Thus, the Petitioner has not answered the critical question of how and when the Beneficiary gained the knowledge that is claimed to be specialized.

We also disagree with the Petitioner's reliance on the Beneficiary's receipt of performance awards as evidence that he possesses specialized knowledge. As from the lack of evidence resolving the discrepancy regarding the date those recognitions were issued, the record also lacks sufficient information about the specific criteria for the awards the Beneficiary is claimed to have received. Without this relevant information we cannot conclude that the receipt of an award signifies that the award recipient possesses specialized knowledge. Moreover, as noted earlier, the probative value of

[2] The Petitioner does not claim that the Beneficiary was employed on a part-time basis or that he assumed a position other than the foreign entity's "Member Technical Staff" prior to October 2015.

the award certificates the Petitioner provided is significantly undermined by the discrepancy between the dates the awards were given and the commencement of the Beneficiary's employment with the foreign entity.

Further, the Petitioner asserts that the Beneficiary possesses knowledge that is beneficial to the Petitioner's competitiveness in the marketplace, can only be gained through experience with its organization, and cannot be easily taught or transferred. Although these characteristics are consistent with those cited in a USCIS Policy Memorandum, such characteristics alone are not probative of the Beneficiary's 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." PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015). The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id*. at 13.

Although the Petitioner claims that the Beneficiary possesses knowledge that is both "special" and "advanced" because it is with respect to proprietary tools and solutions of the employing organization and not widely held throughout the industry, it does not establish that specialized knowledge is required to work with these proprietary tools or to provide proprietary solutions using these tools. And despite claiming that the Beneficiary has the educational foundation and internal training to work with its proprietary tools, the record lacks specific information about the training, evidence showing that the Beneficiary actually underwent any training, or other evidence outlining an actual path for gaining specialized knowledge within its organization with respect to the proprietary tools the Beneficiary has used in the course of his employment with the foreign entity.

Accordingly, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal will be dismissed.