U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-M-(A-) INC.

DATE: MAR. 28, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology company, seeks to temporarily employ the Beneficiary as a tech lead 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that it has met all requirements and that the Director erred by imposing additional criteria beyond the statute and regulations.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a position involving specialized knowledge, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. 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.

The statute defines specialized knowledge as a special knowledge of the company product and its application in international markets or 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). Our regulations define specialized knowledge as:

> [S]pecial 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 individual L-1B petition filed on Form I-129, Petition for a Nonimmigrant Worker, must include evidence that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge, evidence that the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States, and a detailed description of the services to be performed in a specialized knowledge capacity in the United States. 8 C.F.R. § 214.2(l)(3).

II. EMPLOYMENT IN A POSITION INVOLVING SPECIALIZED KNOWLEDGE

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

A. The Beneficiary's Employment Abroad

The Director found that the Petitioner did not establish that the Beneficiary worked abroad in a position that involved specialized knowledge for at least one continuous year within the three years preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(3)(iii) and (iv).

The record shows that the Petitioner's foreign subsidiary hired the Beneficiary as a tech lead in February 2015, approximately 18 months prior to filing the petition. The Petitioner stated that the Beneficiary "has vast IT experience and has spent time using the [redacted] and [redacted] projects." The Petitioner added that "[t]he beneficiary is an expert at using the [redacted] application." The Petitioner described [redacted] as "a highly sophisticated Microsoft tool that allows queries to multiple databases," and then went on to describe [redacted] as '[redacted] framework."

An official of the parent company stated that the Beneficiary "played a role of Tech Lead in various projects involving [redacted] He has very good command on Oracle SQL, [redacted] and other Tools related to [redacted] and E-Commerce." The official indicated that the Beneficiary had completed four training programs:

Internal Security Certificate	8 hrs.	03/01/2015
eCommerce 101	40 hrs.	04/27/2015-05/01/2015
[redacted]	40 hrs.	09/07/2015-09/11/2015
[redacted]	40 hrs.	10/05/2015-10/09/2015

The Director issued a request for evidence (RFE), asking for documentary evidence to show that the Beneficiary's foreign position required specialized knowledge. In response, the Petitioner listed the Beneficiary's five main duties abroad, and stated that each of these duties required specialized knowledge of the company's [redacted] tool.

A letter from the Petitioner's human resources department states that, since February 25, 2015, the Beneficiary worked on four projects, all for the same client:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

The above list indicates that the use of [redacted] was part of one project, rather than an intrinsic part of all of the Beneficiary's work for the foreign company. The Petitioner did not claim that the other three projects involved or required specialized knowledge.

The Director denied the petition, stating that, when the foreign company hired the Beneficiary, the Beneficiary "immediately performed the duties of Tech Lead without any prior experience or training on the company's software application or projects."

On appeal, the Petitioner states that "the beneficiary has received 40 hours of training and has used the [redacted] tool extensively for over one (1) year prior to the filing of this petition." The record, however, shows that the Beneficiary received his training in the [redacted] tool in October 2015, 10 months before the Petitioner filed the petition in August 2016. There is no evidence in the record that the Beneficiary used [redacted] or had any specialized knowledge relating to its use, before he received that training. Three of the Beneficiary's four projects abroad did not have an identified [redacted] component.

A graphic in the Petitioner's RFE response letter described [redacted] as a four-part "Automation Framework," including '[redacted] for which "Phase I started in Dec-2015." This information in the record suggests that the Petitioner did not roll out [redacted] until December 2015, and that the Beneficiary's October 2015 training was part of the initial company-wide training in a new, soon-to-be-introduced framework. The record contains no documentary evidence to show that the company, or the Beneficiary, used [redacted] before December 2015.

The above information indicates that the Beneficiary did not require any knowledge of [redacted] to qualify for employment as a tech lead. The Petitioner, on appeal, states that the Beneficiary did not begin his employment with that knowledge, but rather had to acquire it while working for the foreign company. Even if that knowledge became a requirement during the Beneficiary's employment, the Petitioner filed the Form I-129 petition only about 10 months after the Beneficiary completed his training in [redacted] so we cannot determine that he was employed in a position that involved the claimed specialized knowledge for a full year prior to the filing of the petition. This information is

disqualifying by itself, even before we consider the separate question (addressed below) of whether knowledge of [redacted] constitutes specialized knowledge.

B. The Beneficiary's Possession of Specialized Knowledge

The petition must include evidence that the beneficiary's prior education, training and employment qualify him or her to perform the intended services in the United States. *See* 8 C.F.R. § 214.2(l)(3)(iv). Below, we discuss the Director's finding that the Petitioner had not established that the Beneficiary possesses specialized knowledge. The Petitioner asserts, on appeal, that [redacted] is proprietary and so the Beneficiary's knowledge of [redacted] "should be recognized as a black letter definition of the L-1b category." We disagree with the Petitioner, and will dismiss the appeal for the following reasons.

A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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.

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 the 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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

One of the Beneficiary's stated responsibilities is "[r]equirements gathering and analysis, high level design, development and deployment of application enhancements." As discussed above, the Petitioner's specialized knowledge claim centers on the Beneficiary's use of the tool. At various times in this proceeding, the Petitioner has asserted that the Beneficiary's knowledge of is both special knowledge and advanced knowledge.

1. Special Knowledge

Because "special knowledge" concerns knowledge of the employing organization's products or services and its application in international markets, a petitioner may meet its burden of proof through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge held by similarly employed workers in the particular industry.

First, we must determine what is. The weight and type of evidence establishes whether or not a given 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 has described as a "tool," an "application," and a "framework." The Petitioner initially stated: "The application is a highly sophisticated Microsoft tool that allows queries to multiple databases." The Petitioner's background documentation about does not discuss database queries, and indicates that is proprietary to the Petitioner and its affiliates rather than a "Microsoft tool." It appears the preparer of this letter may have confused with Microsoft's which shares the initials "

The Director issued a request for evidence (RFE), stating that the Petitioner had not shown that a "40 hour training [course] is sufficient to provide specialized knowledge that others do not possess." The Director acknowledged that the Petitioner had listed various computer programs that the Beneficiary uses, but found that the Petitioner had not established that the Beneficiary's proficiency in those areas rises to the level of specialized knowledge.

In response, the Petitioner stated:

> The framework is powered by technologies based on Robotic Process Automation (RPA) and Artificial Intelligence (AI). There are several systems involve[d] in [the client's] current . . . architecture. Each system has [its] own way of functioning/working. This Tool helps the system to come closer and resolve the problem occurring by one system to another system. . . .

A graphic refers to [redacted] as an "Automation Framework" consisting of four elements:

- Center for Automation Technologies Team, which "Owns automation strategy and enablement across service-lines";
- [redacted] Toolkit, comprising "15+ in-house automation platforms" and "tools for implementing automation across all service lines," "Based on Open-source and partner solutions";
- Automation Thinking, which concerns "Behavioral Change management" and a "Process framework for implementation," with a goal of "25% certification during this [fiscal year]"; and
- [redacted] a "Program to adopt automation across all ongoing deliveries."

The Petitioner also stated:

> The [redacted] Toolkit, titled [redacted] is a suite of tools and delivery accelerators. It comprises CUBES for Infrastructure and Application maintenance and operations, UNO for Robotic Process Automation, and TACTiX as Artificial Intelligence-powered Knowledge Engine. The [client's] projects that have adopted the framework, we have been able to increase process efficiency and associated benefits from [redacted]

The above information shows that [redacted] is not a process or product in its own right, but rather the collective name for a combination of different software packages, strategies, and practices.

The Director denied the petition, stating that, while "the [B]eneficiary has a wide range of skills, experience, and training with various software programs," the Petitioner had not provided a specific enough description of the claimed specialized knowledge. The Director also stated that "[m]any companies will have developed their own software applications," and that familiarity with these in-house products does not automatically demonstrate specialized knowledge. The Director found that the Petitioner had not shown that the Beneficiary's knowledge or experience is "significantly different from that possessed by similarly employed workers in the same industry."

On appeal, the Petitioner asserts that the Beneficiary's knowledge of [redacted] meets several of the illustrative criteria spelled out in a 2015 policy memorandum:[1]

> The beneficiary has been employed abroad in a capacity involving assignments that have significantly enhanced the employer's productivity, competitiveness, image, or financial position.

[1] USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

The beneficiary has been successfully utilizing the [redacted] tool on projects abroad for over one (1) year with the same U.S. employer. The successful completion of projects overseas has provided the opportunity for the petitioner to do work for the U.S. customer in the U.S.

The beneficiary's claimed specialized knowledge normally can be gained only through prior experience with the petitioning organization.

Knowledge of the proprietary [redacted] tool cannot be gained outside of the petitioner.

The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience (because, for example, such knowledge may require substantial training, work experience, or education).

The beneficiary underwent 40 hours of training and has over one and a half years of experience with the [redacted] tool. This would require a similar amount of training and experience to replicate the beneficiary's knowledge.

The beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the marketplace.

The failure of the petitioner to provide employees with the proper knowledge to fulfill its U.S. customer's requirements puts it at a competitive disadvantage in the U.S. marketplace.

The record refutes the first and third responses above. The Beneficiary has over a year of experience with the foreign employer, but half of that experience occurred before he received [redacted] training.

Regarding the Petitioner's second assertion, [redacted] is proprietary to the petitioning company and its affiliates, but this does not necessarily mean that a working knowledge of [redacted] constitutes specialized knowledge for purposes of L-1B eligibility. As the Director noted in the decision, if "specialized knowledge" simply meant "knowledge specific to a particular employer," most or all workers would have specialized knowledge. The Petitioner may be the only U.S. company that gives the name [redacted] to a particular combination of software and practices, but the Petitioner has not shown how it is substantively different from procedures and protocols at other companies intended to produce similar results, and thus, how the claimed proprietary knowledge is distinct or uncommon in comparison to knowledge generally held by others working in the Petitioner's industry. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner's fourth assertion above is essentially a rephrasing of the preceding sentence from the policy memorandum. While the Beneficiary's work with [redacted] may be beneficial to the Petitioner's

competitiveness in the marketplace, this characteristic alone does not establish 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" and such factors must be supported by evidence. USCIS Policy Memorandum PM-602-0111, *supra*, at 8. The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Supra.* at 13. In this instance, [redacted] may be a significant part of the Petitioner's work for its client, but the Petitioner has not shown that proficiency in [redacted] requires more than the week of training that the Beneficiary received.

The Petitioner has not demonstrated that the Beneficiary's working knowledge of [redacted] constitutes special knowledge as the regulations define that term.

2. Advanced Knowledge

Initially, the Petitioner also claimed that "[t]he beneficiary meets the advanced knowledge standard in several ways," such as being "the Subject Matter Expert in [redacted] framework." In later submissions, the Petitioner has not pursued this claim. 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. The Petitioner has not shown that the Beneficiary's knowledge of [redacted] or other company processes and procedures exceeds that of others in the employer's operations. The Beneficiary worked for the Petitioner for less than 18 months before the petition's filing date, and nearly half of that time was before he had training in [redacted]

The Petitioner also asserted that the Beneficiary gained advanced knowledge through his past work for the same client. The Petitioner did not elaborate on this element of the claim and did not provide a detailed description of his assignments with this client. Familiarity with the client's e-commerce systems is not automatically or inherently advanced knowledge. The only element of the Beneficiary's advanced knowledge that the Petitioner has consistently emphasized is the Beneficiary's use of [redacted]

In response to the RFE, the Petitioner stated: "[t]he Beneficiary's specialized knowledge of petitioner's proprietary [redacted] tool . . . meets the advanced knowledge standard in the following ways:"

1. The beneficiary has over 1 year of experience utilizing said specialized knowledge[.]

2. Comparing the beneficiary's knowledge against that of others reveals that the knowledge required to perform the beneficiary's job duties is beyond the elementary or basic knowledge possessed by others.
3. The beneficiary has significant client interaction.
4. The beneficiary's designation of "Lead" signals an advanced role[.]

As described above, to gain the same level of expertise and understanding as the beneficiary a successful candidate would require over a year of experience utilizing the petitioner's proprietary methodology and solution.

As shown above, the Beneficiary's documented experience with was less than a year at the time of filing, and the Petitioner has provided no basis for comparison to show that the Beneficiary's knowledge exceeds that of others similarly employed. Also, the Beneficiary has held the title of "Tech Lead" since his first day on the job at the foreign company, and therefore that designation does not establish or imply an advanced level of knowledge of the Petitioner's products, services, processes, or procedures. Similarly, the fact that the tech lead position involves more extensive client interaction than lower level technical positions does not establish that the position requires advanced knowledge of company processes or procedures not possessed by other similarly employed workers.

The Director, in denying the petition, found that the Petitioner had not established that the Beneficiary has advanced knowledge, or "adequately described how such knowledge is typically gained within the organization." The Director acknowledged that the Beneficiary has job-specific skills, but found that the Petitioner had not shown that the Beneficiary's knowledge is significantly different from that of others in the industry.

On appeal, the Petitioner does not directly address the issue of advanced knowledge, asserting generally that the Beneficiary possesses specialized knowledge. The Petitioner contends that the Beneficiary's skills are difficult to replace because any replacement would need to have as much experience as the Beneficiary has. Apart from the overstatement of the Beneficiary's experience with the Petitioner has not shown that the Beneficiary's months of experience with have imparted a hard-to-replace level of expertise. As noted, the Beneficiary's formal training in consisted of a one-week training course and knowledge that can be easily imparted to an employee does not qualify as special or advanced. In addition, the background information the Petitioner provided on its framework suggests that it is being implemented company-wide, both internally and in client projects. The Petitioner has not provided information that would allow us to compare the Beneficiary to other company employees involved in similar implementations for its clients.

The Petitioner has not shown how the Beneficiary's knowledge of specific processes and procedures is greatly developed or further along in progress, complexity and understanding that that generally found within the employer. The Petitioner stresses that the Beneficiary has more than one year of experience at the foreign company, but the record offers no credible support for the Petitioner's

repeated claim that the Beneficiary has more than a year's experience with [redacted] it is not evident that [redacted] existed for a year before the petition's filing date; and [redacted] appears to be essentially a combination of existing programs and practices rather than a distinct entity in its own right.

The Petitioner has not shown that the Beneficiary's 40 hours of training and ten months of experience with [redacted] resulted in his possession of advanced knowledge.

We acknowledge the Petitioner's assertion that it has established eligibility according to criteria specified in USCIS Policy Memorandum PM-601-011, *supra*. For the reasons discussed above, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. The memorandum highlights that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Supra*. at 10. Further, while the memorandum provides that a petitioner's statement alone may be persuasive evidence of specialized knowledge in some circumstances "if it is detailed, specific and credible," it also states that "the petitioner is required in all cases to compare the beneficiary's knowledge to that of others." *Supra*. at 11-12. Here, the Petitioner has put forward some questionable assertions, such as identifying [redacted] as a Microsoft tool and claiming that the Beneficiary has more than a year of experience with [redacted] when the chronology of his training proves otherwise. The Petitioner's statements do not contain sufficiently detailed information regarding the nature of the specialized knowledge, nor do they contain the information needed to allow for comparisons between the Beneficiary's knowledge and that possessed by others within the company and in the industry.

Because the Beneficiary's knowledge of [redacted] is the focus of the Petitioner's specialized knowledge claim, we also find that the Petitioner has not shown that the Beneficiary's intended employment in the United States requires specialized knowledge as required by 8 C.F.R. § 214.2(l)(3)(ii).

III. CONCLUSION

The evidence submitted does not establish that the Beneficiary possesses specialized knowledge, or that he has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of T-M-(A-) Inc.*, ID# 240191 (AAO Mar. 28, 2017)