U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF [redacted]

DATE: MAR. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company engaged in geophysical software development, seeks to temporarily employ the Beneficiary as a software developer 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 Petitioner did not establish that the Beneficiary possesses specialized knowledge and that he 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 states that the Director applied a higher burden of proof than that required by the regulations and asserts that it submitted sufficient evidence to establish that the Beneficiary qualifies for L-1B classification.

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 position involving 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 managerial, executive, or specialized knowledge capacity. *Id.*

A beneficiary "is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien 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 further defined as "special 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 must be accompanied by evidence establishing 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, the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

The purpose of this proceeding is to determine whether the Director properly denied the petition based on the finding that the Petitioner did not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A. Evidence of Record

The Petitioner is a software development firm with 45 employees and a gross annual income of $10.7 million. It seeks to employ the Beneficiary as a software developer. The Petitioner's initial evidence included a letter from the Petitioner, a copy of the Beneficiary's résumé and master of science degree in computer science awarded in December 2009, evidence of the Petitioner's ownership and corporate status, and product and service information from the company's website.

In its support letter, the Petitioner described itself as "a leading provider of high performance software components for visualization and analysis of complex data" and further stated that it provides IT solutions that "enable software engineers to reduce development times and ongoing costs while enhancing the performance and functionality of their graphics applications." The Petitioner stated that the Beneficiary has been employed as a senior software developer with its French subsidiary for over three years and described his current duties as follows:

> [The Beneficiary] performs software development and research for specialized JavaScript, 2D, and 3D interactive graphics and cross platform visualization packages to build unique client web-based applications to run across various web browsers and different devices without any additional plug-ins utilizing WebGL and HTML5. He assists in the development of a graphic library for one of our major clients. This library is proprietary to [its organization] and specifically customized for the client. [The Beneficiary] is one of a few employees who possesses a technical and detailed understanding of the library's functionality and is currently responsible for development requests pertaining to this product. He stores, retrieves, and manipulates

> data for analysis of system capabilities and requirements. [He] creates architecture and writes code of the applications and libraries, which will be used by geophysicists, geologists, and petroleum engineers globally to view dynamic reports, actual drilling status, logs, and seismic data on multiple devices. He tests and supports HTML5 Toolkit.

The Petitioner restated the above information in its description of the Beneficiary's proposed position in the United States and claimed that the Beneficiary "is well qualified for the offered position" based on his educational credentials and years of work experience, including three years of experience exclusively with the Petitioner's foreign organization. The Petitioner's statement did not specifically identify the Beneficiary's claimed specialized knowledge.

The Beneficiary's résumé indicates that, prior to joining the foreign entity in 2013, he was employed as a postgraduate intern and software developer with [redacted] in the United Kingdom and France from 2009 until 2012, working on the development of [redacted] software. The Beneficiary indicates that since joining the Petitioner's French subsidiary, he has worked with [redacted] on [redacted] components, tools and application management using Eclipse and Java. In addition, he states that he has performed web application development work for [redacted] for the monitoring of micro seismic events using HTML5, jQuery, Node.js, Bootstrap and Backbone.js. The Beneficiary indicates that he used the Petitioner's [redacted] to display 3D views and charts and to manipulate large amounts of data provided by [redacted]

Following a review of the record, the Director issued a request for evidence (RFE) advising the Petitioner that the initial evidence did not establish that the Beneficiary's duties abroad involved knowledge that is special or advanced and further noting that the Beneficiary's knowledge of the employer's operations, systems, and methodologies does not automatically lead to the conclusion that his knowledge is "special" or "advanced." The Director requested that the Petitioner identify the nature of the Beneficiary's knowledge with more specificity and explain how his knowledge or expertise is "special" or "advanced" as compared to employees within the same organization and within the industry. The Director also asked the Petitioner to state the minimum time required to gain the specialized knowledge, including formal training and post-training experience, and to establish that the Beneficiary has knowledge that can normally be gained only through prior experience or training within the organization. Further, the Director requested more detailed information regarding the specific nature of the industry, the nature of the products and services involved, the nature of the specialized knowledge, and the need for the Beneficiary's specific specialized knowledge. The Director provided a list of other evidence that would assist in establishing that the Beneficiary possesses specialized knowledge.

In response, the Petitioner and foreign entity provided statements that addressed the Beneficiary's claimed specialized knowledge. Regarding the Beneficiary's employment abroad, the foreign entity's representative, [redacted] discussed the positive attributes and wide application of the company's products within various industries and noted that the Beneficiary "helped in different development tasks" and was "involved in testing and support of the library" for the proprietary [redacted] product. He emphasized that the Beneficiary is "particularly knowledgeable in the

3D visualization part (optimization of reservoir displays in particular) as well as the modeling of the data on the server side to minimize the transfer of data from the server to the client browser." [redacted] further explained:

> One key project for [the Beneficiary] was his involvement in the development of a graphic library for [redacted] which is one of our major clients. This project relates to the efficient visualization of unstructured giga cell reservoir simulations and [the Beneficiary] has developed unique expertise that is important for the success o[f] our next development effort. Specifically, [the Beneficiary's] assignment was to develop a new data format [redacted] to enable on-the-fly level-of-detail rendering and filtering of the reservoir cell data.
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> The development of the visualization techniques and data format was structured as a shared IP development. The project was initially developed for local analysis and visualization of the reservoir data but [the Petitioner] would like to extend this research into a commercial offering for web-based visualization of ultra-large reservoir grids into its [redacted] product line. [The Beneficiary] was the primary developer for this project over the last two years and he is the employee from [the Petitioner's group] that has the most intimate knowledge about the technology development during this project. Just one additional employee for [the foreign entity] has been involved with this project.

[redacted] noted that out of 72 company employees worldwide, the Beneficiary is one of a few who possess "a technical and detailed understanding of the library's functionality."

In a separate letter, [redacted] the Petitioner's operations manager, stated that the Beneficiary will serve as "the lead developer of a new generation of [company] products" for the oil and gas industry, using his knowledge of "specialized JavaScript, 2D and 3D interactive graphics combined with extensive knowledge and understanding of the Exploration & Production specific requirements" of its oil and gas industry clients. [redacted] made claims about the capabilities of the Petitioner's proprietary [redacted] and stated the Beneficiary was involved in developing the tool. She asserted that the Beneficiary's transfer to the U.S. office would help in "ramping up the development team" and "transfer some of the knowledge and expertise" to its [redacted] based office. She reiterated that the Beneficiary "is one of the few employees who possesses a technical and detailed understanding" of the [redacted] and stated that while similar technologies exist "in a handful of industrial or research labs across the world," hiring someone with the Beneficiary's skill level "would be extremely difficult" and would otherwise take "at least 2 years to train someone to perform [the Beneficiary's] extensive responsibilities."

She further stated that the Beneficiary will report to the director of the [redacted] development team, which will include two developers and a tester. The Beneficiary is expected to transfer his knowledge and train the team members in parallel with the development effort.

The Petitioner also provided organizational charts depicting its own and the foreign entity's respective staffing hierarchies. The foreign entity's organizational chart depicts the Beneficiary as part of a two-person team within ' [redacted] a term which is not defined either in the chart or in any of the other documents. The ' [redacted] department is shown as consisting of a project manager overseeing the Beneficiary in his position as senior software developer. The Petitioner's organizational chart depicts the Beneficiary as part of an eight-person [redacted] team, which is subject to the direction of a "VP Development." The chart does not identify any of the employees in the Beneficiary's team or provide their respective position titles.

The Director denied the petition after concluding that the Petitioner's response did not overcome the deficiencies identified in the RFE. On appeal, the Petitioner asserts that the Director applied a higher burden of proof than that required by the regulations and contends that the Beneficiary qualifies for the L-1B classification. The Petitioner also contends that the Beneficiary was "the primary developer" of several of the Petitioner's proprietary products, including the [redacted] specialized library, which the Petitioner now seeks to expand as a commercial offering. The Petitioner claims to have a total of six employees, including the Beneficiary, who are "at the same level" among 15 other senior developers and further states that the Beneficiary's role within the organization "is to develop new capabilities for the proprietary digital libraries related to advanced 3D visualization."

B. Analysis

In order to establish eligibility, a petitioner must show that the individual beneficiary will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 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 definition.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence that establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS 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.

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 a 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.

In the instant matter, the Petitioner states that the Beneficiary has special and advanced knowledge of its proprietary [redacted] product, which is customized to fit the needs of individual clients.

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.

Here, the Petitioner's claim rests on broad statements about the Beneficiary's experience and level of understanding of the complexities involved in the development and application of the Petitioner's proprietary tool, which is customized to fit individual clients' needs. We note, however, despite claiming on appeal that the Beneficiary had a "lead" role in developing the [redacted] product, the Petitioner did not consistently maintain this claim throughout this proceeding. While the Petitioner has consistently stated that the Beneficiary is a senior software developer with "a technical and detailed understanding" of the functions of a graphic library for a key client, its initial support letter indicates that the Beneficiary "assists in the development" of the library, which detracts from the claim that the Beneficiary was the lead developer in a project involving a proprietary product. The Petitioner did not initially claim that the Beneficiary was involved and had a primary role in developing the proprietary [redacted] product. In fact, it did not mention [redacted] in its initial letter. Likewise, while [redacted] generally referred to the Beneficiary's involvement in development of [redacted] his letter suggested that the Beneficiary had developed a web-based visualization capability in conjunction with a client that the company would now like to incorporate into the existing [redacted] product. He did not state that the Beneficiary was the lead or primary developer of [redacted]

Further, the information provided in the Beneficiary's resume does not support the Petitioner's claim that he was the primary developer of one of the company's key products. The Beneficiary indicates that he worked with the Petitioner's client, [redacted] on the development of components and applications for [redacted] software product using his skills in Eclipse and Java, and that he developed a web application tool for [redacted] *using* the Petitioner's [redacted] along with his skills in HTML5, jQuery, Node.js, Bootstrap and Backbone.js, none of which are the Petitioner's technologies. He does not indicate that he developed [redacted] during his tenure with the foreign entity or list any in-house research and development assignments.

In addition, the Petitioner has not provided a detailed description of the Beneficiary's assignments with the foreign entity sufficient to corroborate its claims regarding his role in developing its proprietary product, as it has not explained when or how he actually developed [redacted] Given the fact that the Petitioner did not mention this claimed lead development role at the time of filing, we find the Petitioner's statements alone insufficient to establish that the Beneficiary did in fact develop its proprietary product. 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's statement may be persuasive evidence if it is detailed, specific, and credible. However, in this case, the Petitioner's statements regarding the claimed specialized knowledge appear to have evolved since the petition was filed and the only independent supporting evidence, the Beneficiary's résumé, does not appear to support the claims the Petitioner now makes on appeal.

The Director provided a list of documentation that would have assisted in corroborating its statements regarding the claimed specialized knowledge, but the Petitioner opted to establish the claimed specialized knowledge through submission of statements alone. As such, the record does not include documentation that would tend to support the Petitioner's claims, such as information regarding the [redacted] product's initial release date or any internal reports or documentation demonstrating the Beneficiary's role in the development of the product.

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.

Although we cannot conclude that the Petitioner established that the Beneficiary actually played a substantial role in the development of its [redacted] product, we do not doubt that the Beneficiary possesses proprietary knowledge of the product based on his employment with the foreign entity. However, the Petitioner has not provided a sufficient explanation or evidence to support its claim that the Beneficiary's proprietary knowledge is truly distinct or uncommon. The Petitioner's evidence includes job postings for other graphics software development positions within its [redacted] Texas office that require a bachelor's degree in computer science and three years of experience in HTML5, JavaScript, Java or C# languages, and an understanding of object oriented programming and design patterns. The Petitioner's various versions of [redacted] are built in these environments and the Petitioner has not indicated that the Beneficiary completed, or that its newly hired developers generally complete, extensive training once hired in order to work with the company's products. While the Petitioner develops software tools with scientific applications for the oil and gas industry, it does not appear to require new hires to have experience in this field or particular skills beyond an intermediate amount of software development experience using common programming languages.

Therefore, while the Petitioner offers information about the [redacted] application and capabilities, such information does not establish that the claimed proprietary knowledge could be characterized as distinct or uncommon when compared to knowledge generally held by other software developers working in the Petitioner's industry, despite the Petitioner's reference to the Beneficiary as having "unique expertise." As previously stated, the Petitioner has neither consistently claimed nor provided sufficient evidence to support the claim that the Beneficiary was a lead developer of the proprietary [redacted] The Petitioner has stated that it would take two years to train another developer to the Beneficiary's level of expertise, but has not provided further details or explanation of the type of training that would be involved and has not stated that the Beneficiary himself completed any training upon joining the foreign entity.

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.

Despite claiming that the Beneficiary is one of few employees who possesses knowledge in the use and functionality of the [redacted] product, the foreign entity's organizational chart does not support the claim that the Beneficiary is at the "top tier" of senior software developers. As previously stated, while the chart depicts the Beneficiary and one other employee (a project manager who oversees the beneficiary) as part of the '[redacted] department, the Petitioner does not provide an explanation as to what '[redacted] stands for or explain how the Beneficiary's knowledge differs from that of software developers within other departments. Similarly, the Petitioner's own organizational chart broadly places the Beneficiary in a group of 8 employees who are part of the [redacted] team. However, the chart does not distinguish the Beneficiary and other members of the [redacted] team as being "top tier" of senior software developers.

While the Petitioner claims that the Beneficiary possesses an advanced level of knowledge, its main focus in this petition is on the Beneficiary's knowledge of a proprietary product rather than the organization's processes or procedures. In fact, the Petitioner does not define or describe any of its processes or procedures with any specificity or provide information regarding the training, professional background, and length of experience of other software developers within the Petitioner's organization that would allow us to make comparisons between their knowledge and that of the Beneficiary.

Further, despite stating that the Beneficiary is a senior software developer the Petitioner did not provide evidence to establish that the Beneficiary's knowledge is advanced in relation to the Petitioner's other employees, as we have no information regarding those employees' relative knowledge and experience. The Petitioner did not provide evidence of any training the Beneficiary completed in company processes upon being hired by the foreign entity or explain the processes or procedures in which he possesses advanced knowledge. In reviewing the job criteria provided in the

Petitioner's job listings, it does not appear that the Beneficiary's knowledge or experience surpasses that of other Java-based software developers. We find that the evidence is insufficient to establish that the Beneficiary's expertise in the organization's processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the organization. The Petitioner's claims are not supported by evidence setting the Beneficiary's knowledge of company processes apart from the elementary or basic knowledge possessed by others.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses various characteristics of a worker with qualifying specialized knowledge as set forth in USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. 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. While the Beneficiary may be filling a role that may be beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone is not probative of his 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. *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13.

In sum, we find that the Petitioner has provided credible evidence which establishes that the Beneficiary's educational credentials and employment experience make the Beneficiary a suitable candidate for the proposed U.S. position. However, the record does not establish that the Beneficiary has specialized knowledge or that his duties abroad or with the U.S. entity required and would require specialized knowledge.

III. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and that he was employed abroad, and will be employed in the U.S., in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of* [redacted] ID# 234810 (AAO Mar. 28, 2017)