U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-D-R-

DATE: MAY 12, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a decorative stonework wholesaler based in Venezuela,[1] seeks to temporarily employ the Beneficiary as the managing partner, founder, chief executive officer, accountant, salesperson, and researcher of its new U.S. subsidiary under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Beneficiary's experience with the company amounts to specialized knowledge.

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 specialized knowledge capacity, 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.

[1] The Petitioner states that it seeks to employ the Beneficiary at its branch in the United States. The regulations define a "branch" as an operating division or office of the same organization housed in a different location. 8 C.F.R. § 214.2(l)(1)(ii)(J). The record, however, shows that the new U.S. office is a separate legal entity, organized as a domestic limited liability company of which the Petitioner is the sole voting member. As such, the U.S. company, [redacted] is a wholly-owned subsidiary, not a branch, of the petitioning company.

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 SPECIALIZED KNOWLEDGE CAPACITY

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

A beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company. Section 214(c)(2)(B) of the Act. 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 which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding the 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 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.

The Petitioner stated:

> Since 1999 . . . [the Beneficiary] has acquired an immense amount of knowledge of the ceramic and stone industry specifically in the South American region. Throughout the years, [the Beneficiary] has become a true expert in the stone manufacturing and home décor wholesale/retail field. She is solely responsible for all purchases and sales in [the petitioning company] and has made the company the success it is today. As the company's accountant, [the Beneficiary] prepared all capital accounts by compiling and analyzing account information and maintaining accounting controls by preparing and recommending policies and procedures. [The Beneficiary] was also the leading salesperson in [the petitioning company], it was her expertise and rapport with individual clients and outside companies, which allowed the company to have skyrocket sales in Venezuela. . . .
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> Ultimately, [the Beneficiary's] goal is to use her specialty and purchase U.S. made home décor to provide to South America. . . . [The Beneficiary] is the only employee with the knowledge, experience, passion and dedication to be able to successfully pull off this business venture. . . . [The Beneficiary] will strictly sell said products in South America through [the Petitioner]. No other employee of this company would be equipped to handle this task.

With respect to the Petitioner's assertion that its other employees could not perform the Beneficiary's tasks, the Petitioner's payroll records identify four employees in Venezuela: the president (the Beneficiary), the vice president (her spouse), a secretary, and an assistant.

The Petitioner stated that the Beneficiary worked abroad as a "salesperson, accountant, researcher and President," and would work in the United States as a "Managing Partner/Founder/CEO," and as a salesperson, accountant, and researcher. Therefore, the Beneficiary's responsibilities would be roughly the same in the United States as they had been abroad. The Petitioner did not specify the nature of the Beneficiary's leadership roles abroad or in the United States, but the U.S. company's business plan listed the Beneficiary's intended U.S. responsibilities:

> Accountant
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> - Prepares asset, liability, and capital account entries by compiling and analyzing account information.
> - Documents financial transactions by entering account information.
> - Recommends financial actions by analyzing accounting options.

- Summarizes current financial status by collecting information; preparing balance sheet, profit and loss statement, and other reports.
- Substantiates financial transactions by auditing documents.
- Maintains accounting controls by preparing and recommending policies and procedures.
- Guides accounting clerical staff by coordinating activities and answering questions.
- Reconciles financial discrepancies by collecting and analyzing account information.
- Secures financial information by completing data base backups.

Salesperson

- Services existing accounts, obtains orders, and establishes new accounts by planning and organizing daily work schedule to call on existing or potential sales outlets and other trade factors.
- Adjusts content of sales presentations by studying existing and potential volume of dealers.
- Submits orders by referring to price lists and product literature.
- Keeps team informed by submitting activity and results reports, such as daily call reports, weekly work plans, and monthly and annual territory analyses

Research

- Collect data on consumers, competitors and market place and consolidate information into actionable items, reports and presentations
- Understand business objectives and design surveys to discover prospective customers' preferences
- Compile and analyze statistical data using modern and traditional methods to collect them
- Perform valid and reliable SWOT analysis
- Interpret data, formulate reports and make recommendations
- Catalogue findings to databases
- Provide competitive analysis on various companies' market offerings, identify market trends, pricing/business models, sales and methods of operation
- Evaluate program methodology and key data to ensure that data on the releases are accurate and the angle of the release is correct
- Remain fully informed on market trends, other parties' research and implement best practices

The references to other employees, such as "accounting clerical staff" and a sales "team," appear to conflict with the Petitioner's statement that the Beneficiary "will be the only U.S. employee." The U.S. company's business plan indicated that the company would grow and open more offices, but

offered no time frame for this growth and did not indicate that the company would hire any other employees during its first year of operation.

Asked to explain how the Beneficiary's duties involve specialized knowledge, the Petitioner stated that the Beneficiary relied on "private tutoring lessons from educators who are experts in the field of accounting, secretarial work, sales and marketing." General skills in those fields, however, do not constitute specialized knowledge. By definition, specialized knowledge is specific to a particular employer. Information and skills that the Beneficiary learned through outside tutors lie outside that definition. Also, the assertion that the Beneficiary knows the petitioning company better than any other employee is not sufficient to show specialized knowledge absent evidence that the knowledge required to perform general accounting, sales and market research duties for the Petitioner is demonstrably different from that commonly held among similarly employed workers in the Petitioner's industry.

The Director denied the petition, stating that the Beneficiary's familiarity with her own company "does not automatically constitute special or advanced knowledge." The Director also found that the Beneficiary's duties in accounting, sales, and research, as described, do not involve or require special or advanced knowledge.

On appeal, the Petitioner repeats its initial assertion that the Beneficiary "has become a true expert in the stone manufacturing and home décor wholesale/retail field." Expertise in a field of endeavor is not the same thing as specialized knowledge. Specialized knowledge is specific to a particular employer, whereas expertise can also be found among experienced employees of other companies that sell similar products. Knowledge or expertise that is commonly held throughout a petitioner's industry is not considered specialized and the Petitioner has not submitted evidence to differentiate the Beneficiary's knowledge from what would commonly held in the field.

Special knowledge concerns a given company's "product, service, research, equipment, techniques, management, or other interests and its application in international markets." 8 C.F.R. § 214.2(l)(1)(ii)(D). The Petitioner manufactures no products; all of its employees are office staff. Therefore, it has no equipment to make those products, and conducts no research to develop them. The Petitioner has not shown how its services or techniques differ from those of other companies that sell comparable products. Knowledge of the industry as a whole is not special knowledge.

The Petitioner states that the Beneficiary has worked with the company since 1999, but advanced knowledge is more than length of experience. The regulation cited above requires an "advanced level of knowledge or expertise in the organization's processes and procedures." The Petitioner has stated in general terms that the Beneficiary's expertise is indispensable to the company, and that she is largely responsible for its success, but the Petitioner identified no specific processes or procedures of which the Beneficiary has advanced knowledge.

The record does not show that the Beneficiary has been or will be employed in a specialized knowledge position. Although the Petitioner asserts that the Beneficiary's position requires

specialized knowledge, it has not sufficiently articulated the basis for this assertion. The Petitioner has not submitted probative evidence of the knowledge and expertise required for the Beneficiary's position that differentiates the employment from similar positions within the industry. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

We note that, in addition to the Petitioner's specialized knowledge claim, the Petitioner has asserted that the Beneficiary served as the Petitioner's president abroad, but the Petitioner has provided few details about this element of the Beneficiary's work abroad and has not claimed that her foreign employment has been in a managerial or executive capacity. The definitions of "managerial capacity" and "executive capacity" require a given beneficiary's work to be *primarily* of a managerial or executive nature. *See* section 101(a)(44)(A), (B) of the Act. As shown above, the Petitioner acknowledges that the Beneficiary has had significant responsibilities in accounting, sales, and market research, none of which qualify as managerial or executive.

III. CONCLUSION

The Petitioner has not shown that the Beneficiary's employment abroad was managerial, executive, or involved specialized knowledge, or that her intended employment in the United States involves specialized knowledge. Therefore, the Petitioner has not established eligibility for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of C-D-R-*, ID# 343526 (AAO May 12, 2017)