U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-E-USA, LLC

DATE: MAY 16, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a contract manufacturer of electronic components, seeks to temporarily employ the Beneficiary as a quality engineer at a salary of $50,000 per year under the L-1B nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1B classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee with "specialized knowledge" to work temporarily in the United States.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required that: the Beneficiary possesses specialized knowledge; she has been employed abroad as a manager, executive, or in a position involving specialized knowledge; and she will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director erred by overlooking its key claims regarding the Beneficiary's specialized knowledge and as well as evidence detailing her technical achievements as an employee of the Petitioner's foreign affiliate

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a specialized knowledge capacity. *Id.* The petitioner 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 and its foreign affiliate are electronic component manufacturers specializing in printed circuit board (PCB) fabrication, surface-mount technology (SMT) and PCB assembly, prototyping, and other turnkey services for manufacturers in the energy, automotive, consumer electronics, telecommunications, and other industries. The organization does not have its own product line; rather, it is a contract manufacturer for outside clients. The Beneficiary's proposed U.S. position as a quality engineer would involve operating, programming, calibrating and maintaining third-party equipment used in the quality control process for the products described above. The Petitioner's foreign affiliate has employed the Beneficiary as a quality engineer since 2011, and she currently performs duties similar to those she will perform in the United States. The Beneficiary has a three-year college degree in applied tourism management. She had approximately nine years of experience as an SMT assistant engineer and SMT engineer prior to joining the Petitioner's foreign affiliate.

III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to other similarly employed workers in its industry or within the company. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that she possesses specialized knowledge, then we cannot conclude that the Beneficiary's past and intended future employment involve specialized knowledge.[1]

Under the statute, specialized knowledge consists of either: (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.

Specialized knowledge is also defined as knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures. 8 C.F.R. § 214.2(l)(1)(ii)(D).

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

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

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

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 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.

The Petitioner stated "the Beneficiary possesses special knowledge of the company's product, equipment, and techniques" based on her employment as a quality engineer abroad, and indicates that she would perform similar functions in the United States. The Petitioner stated:

> The beneficiary is specialized in process parameter setting, product program[m]ing, equipment maintenance, and process quality control. She operates AOI, SPI and X-ray equipment, establishes, reviews and adjusts parameters according to customers' different products, tests product quality, improves quality pass rate and production efficiency. She programs API, AOI and X-ray equipment, optimizes program settings according to different customer specifications, ensures product quality and production efficiency. She maintains SPI, AOI and X-ray equipment and other test equipment to ensure efficient use of the equipment. She confirms and analyzes bad data of each quality control point in the manufacturing process and provides quality management method support for the process control. She also handles quality complaints and solves internal major quality issues, she analyzes and monitors product pass rate and improves overall quality control process.
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> She has received numerous certificates and trainings in her specialized area of expertise. She has specialized knowledge in operating, maintaining, setting and troubleshooting [redacted] and [redacted] She will be responsible for 3 production lines quality control and operating 9 quality testing and control equipment at our company.

The Petitioner stated that, "[t]o ensure the consistency of product quality," the petitioning U.S. company "bought the same machines" used at the foreign entity, and that "[a]ll these machines are different from the brands [used by] most PCB companies . . . in America." The Petitioner asserted that, as a result, "no other company in the U.S." uses the manufacturing equipment that the Petitioner uses, and "the U.S. entity has not been able to find qualified personnel to operate the equipment and perform the job duties." Because the Petitioner purchased the identified equipment from outside suppliers, knowledge of its use and maintenance is not knowledge that is specific to the petitioning organization. The Petitioner did not substantiate its claim that knowledge of this equipment is unusual

or uncommon among engineers working in the PBC fabrication industry, nor did it document its inability to hire and train workers domestically. Further, it did not explain how or to what extent the equipment that it purchased differs from other brands of equipment that is designed and used for the same processes in the PCB fabrication and quality control process. Simply claiming that the Petitioner uses different equipment to manufacture and test the same products as other employers in the industry is not sufficient to differentiate the Beneficiary's knowledge of this equipment from that possessed by other similarly employed workers.

The Petitioner stated: "The process is proprietary to the U.S. and foreign entities," but did not elaborate on what "the process" is. This statement appeared in a paragraph that referred to a broad range of activities, such as "all the manufacturing, equipment operating and program[m]ing tasks." Elsewhere, the Petitioner asserted that the Beneficiary's "knowledge is proprietary," but again the Petitioner did not elaborate as to how the maintenance and use of third-party equipment is proprietary to the Petitioner and its foreign affiliate.

The Petitioner also claimed that the Beneficiary has advanced knowledge based on her experience, noting that "the knowledge is advanced because it requires advanced level of expertise and many years of experience with our company to attain such advanced level." The Petitioner stated:

> Among all the engineers at the foreign entity, [the Beneficiary] is one of the most experienced in what she does. . . . [H]er work was recognized through the awards she has received. She had even achieved technical breakthroughs to improve quality control in the production process. . . . The specialized knowledge possessed by the beneficiary was gained only through extensive prior experience because there is no other place [where] she can gain such knowledge. First, because the knowledge is proprietary. Second, she has received trainings and worked at the same position to obtain such extensive experience. . . .
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> The beneficiary obtained this specialized knowledge in 7 years' working experience on top of all the technical knowledge and training she possessed from her previous employment, education and training. . . . She has encountered many technical, program[m]ing and equipment issues at work and was able to resolve them and save cost and improve efficiency. . . . The U.S. employees we have are not able to perform these tasks and solve the problems. In addition, as stated above, we had tried many times to recruit qualified employees and train them, but it has not been successful.

The above statement contains several vague assertions made without elaboration. With respect to the Beneficiary's "previous education and training," according to the Beneficiary's résumé, she earned a three-year degree in applied tourism management, and worked for unrelated companies as an SMT engineer and assistant engineer prior to being hired as a quality control engineer by the Petitioner's foreign affiliate. Under "Training Experience," the Beneficiary listed "some training provided by equipment supplier," "X-ray professional skills training," "AOI/SPI professional skills training,"

"some training about QC skills" and "internal auditor of quality management system," but provided no details regariding the duration or circumstances of the listed training.

In a section of the résumé with the heading "Technical Breakthrough," the Beneficiary stated that she had solved "the problem of [redacted] during production," and "the problem of [redacted] and challenge the quality of aviation products." She also stated that she had optimized or improved '[redacted]" the '[redacted]," "[redacted] welding technology," and "summarized a series of component testing experience to guide the daily work of IQC." The Petitioner submitted documents titled "Technological Achievement" and "Technological Breakthrough of Quality" which are intended to document the list of achievements in the Beneficiary's résumé. The Beneficiary's name does not appear on these documents and the Petitioner does not further explain, in layman's terms, the significance of the achievement or breakthroughs attributed to the Beneficiary in support of its claim that they are indicative of special or advanced knowledge.

The Petitioner submitted the following evidence of various training completed and certificates earned by the Beneficiary:

- Outline of a five-day training in [redacted] equipment, provided to the Beneficiary and three other employees by [redacted], from March 6-10, 2016;
- [redacted] provided by [redacted] from March 1-10, 2015;
- [redacted] course in the [redacted] (including operation, maintenance and common troubleshooting), issued by [redacted], March 16-20, 2016;
- "2017 Excellent Administrator Award" from the Petitioner's foreign affiliate, issued in January 2018.
- "Veteran Award" from the Petitioner's foreign affiliate, issued in January 2018.

The submitted certificates show that the Beneficiary completed between three and four weeks training provided by the foreign entity's equipment suppliers, several years after she was hired to perform the duties of a quality engineer. The Petitioner did not document any earlier training or explain how she was able to perform her duties prior to completing the manufacturers' training. The Petitioner also did not document any internal training on the Petitioner's own manufacturing or quality processes. The Petitioner referred to "the awards [the Beneficiary] has received" but the only documented awards are in-house awards that the foreign entity presented to the Beneficiary in 2018, shortly before the filing of the petition, and the award certificates do not state with any specificity why she received these particular awards.

The Beneficiary states in her résumé that she has "obtained the qualification certificate of internal audit[or]" based on the [redacted] quality management system and is familiar with other system processes and standards relevant to the Petitioner's industry, but the Petitioner has not submitted documentation related to these areas. It is reasonable to believe that any electronics component manufacturer needs to meet certain industry standards and it is unclear how this knowledge, if fully

documented, would establish specialized knowledge of the Petitioner's organization. In fact, the Petitioner submitted what appears to be the foreign entity's official position description and requirements for the quality engineer position and it lists the following as "major requirements" that a candidate would be expected to already possess when assigned to the position: "train in internal auditor"; familiar with "7 QC methods"; and familiar with IPC-A-610E standard and international quality standards. The Petitioner has not established that this required industry knowledge could not be gained outside its organization.

Asked for more details regarding the Beneficiary's claimed specialized knowledge, the Petitioner repeated prior assertions and stated:

> The knowledge is special because it is extremely valuable to our company, most aspects of our products, services and overall performance are depende[nt] on employees with such specialized knowledge. This knowledge is special because it is about our company's product, equipment, and manufacturing and quality control techniques. These are our proprietary knowledge in process parameter setting, product programming, equipment maintenance, and manufacturing and processing quality controls, and etc. The employee with such specialized knowledge is the key employee with our company and being highly regarded because of his or her contribution to our company. Such employee is given the most important assignment that enhances our competitiveness, creativity, quality and productivity. These specialized knowledges [*sic*] take many years of work experience to acquire and it is not commonly held in the industry or possessed by most other employees in similar position[s]. The knowledge is special because it cannot be easily taught or transferred to another employee.
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> The knowledge is also advanced because it requires advanced level of expertise and many years of experience with our company to attain such advanced level . . . [and] the U.S. company cannot find any qualified person in the U.S. job market to perform these job duties successfully.

The above assertions lack crucial details. The statement does not show that the Beneficiary's job involves specialized knowledge. Instead, the Petitioner listed elements of the Beneficiary's work and declared them to require specialized knowledge, using generic language drawn from the regulations and other sources.

The Petitioner asserted that the position "certificates and trainings in the specialized area of expertise" and specialized knowledge in operating, maintaining, setting and troubleshooting [redacted] and [redacted] The Petitioner has documented the Beneficiary's training in only two of these areas and has not established that the training courses she has completed were particularly lengthy.

The Petitioner claimed: "It would take at least 5 years of working experience in addition to the trainings," plus "years of self-study and research," in order to "fully obtain such specialized knowledge." The Petitioner did not corroborate or elaborate upon these assertions. The Petitioner has

documented the Beneficiary's completion of only some of the above listed training, and the training that she did complete was well after she commenced employment with the foreign affiliate as a quality engineer. Without further explanation or documentation of her training, it appears that she readily learned how to use this equipment while on the job.

The Director determined that the Petitioner did not establish that the Beneficiary has knowledge or experience that is significantly different from that possessed by similarly employed workers in the same industry, or submit sufficient evidence to establish that her knowledge and experience are advanced in comparison to other quality control specialists employed within the group.

On appeal, the Petitioner contends that the Director incorrectly focused on whether the position involves special knowledge but ignored the Petitioner's assertions that her current and proposed positions required an advanced level of knowledge, noting that "[a] big portion of the beneficiary's work involves foreign company's process and procedures." However, the Petitioner has not described or documented its group's processes and procedures in support of its claims that its internal processes for production and quality control are different from what is commonly found in its industry, nor has it explained or documented how this type of knowledge is typically gained within the organization. As noted the Petitioner has not shown that the Beneficiary herself completed internal company training regarding the company's processes.

In response to the Director's finding that the Petitioner did not provide enough information about the Beneficiary's tasks, the Petitioner responds that it "provided more than sufficient evidence," including "a report of technology breakthrough achieved by the beneficiary." As noted, this report does not identify the Beneficiary or address the question of how the claimed breakthrough establishes special or advanced knowledge. We cannot determine the significance of the submitted documentation as evidence of the Beneficiary's specialized knowledge.

The Petitioner asserts that "the Beneficiary's knowledge would be very difficult to impart to another," and that the U.S. company had suffered loss and delays because it could not locate or train employees with the required knowledge. The Petitioner's unsupported assertions carry limited weight, particularly when the Beneficiary has only three to four weeks of documented training despite her seven years of employment with the foreign entity. Furthermore, that training was provided by the manufacturers of the equipment in question. The Petitioner has not shown that this short-term training is unavailable to U.S. workers.

The Petitioner asserts that "there is no other place that [workers] can gain such knowledge," but the Petitioner does not elaborate on this point. The omission is especially significant because the Beneficiary works with equipment purchased from outside suppliers, and therefore the question necessarily arises as to why the Petitioner's foreign affiliate is purportedly the only place where one could accumulate experience working with that equipment. The Petitioner does not answer that question, instead simply asserting that the Beneficiary has experience that could not be gained elsewhere.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we must review the duties of those employees in similar positions, as well as their

training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner did provide a chart listing the employees within its foreign affiliate's quality control department. The chart indicates that 14 of the 22 workers were hired in either 2017 or 2018, and that only two departmental employees have been with the foreign entity longer than the Beneficiary. The chart shows that she is one of only two employees with the job title "quality engineer" but those with "QC" job titles appear to perform some of the same duties attributed to her with respect to product and quality inspections. The chart does indicate that the Beneficiary has the highest monthly salary of anyone in the department, but it is not supported by payroll evidence. Specifically, the chart shows that the Beneficiary earns ¥11,500, her manager earns ¥9000, the other quality engineer earns ¥7500, and almost every other employee earns ¥4500.

The Petitioner submitted only the Beneficiary's payroll records, which do show that she was earning ¥11,500 beginning in 2018, which includes a basic salary, overtime allowance, job subsidies, and bonus. In 2015, the Beneficiary earned ¥7500 and only her "job subsidies" have increased since that time; from 2015 until 2018, her basic wage, overtime, and bonus have remained constant at ¥5300. We cannot determine whether the salaries provided for the other employees in her department are stated in comparable terms. Further, we note the possibility that the Beneficiary's higher wage could be related to her longer tenure with the company, rather than her possession of "advanced knowledge." Neither the Beneficiary's salary nor the length of the Beneficiary's experience at the foreign company is, by itself, evidence that the Beneficiary's knowledge is greatly developed or further along in progress, complexity, and understanding than that generally found within the employer. Length of employment is not synonymous with advanced knowledge. The Petitioner has not established how the Beneficiary's knowledge is advanced within the petitioning organization's own operations.

The Petitioner asserts that it submitted evidence demonstrating that the Beneficiary meets all five criteria for specialized knowledge listed in a memorandum from Richard E. Norton, Associate Commissioner for Examinations, Immigration and Naturalization Services, CO 214.2L-P, *Interpretation of Specialized Knowledge Under the L Classification* (Oct. 27, 1988). This same list later appeared in a memorandum from James A. Puleo, Acting Executive Associate Commissioner, Office of Operations, INS, (CO 214.2L-P), *Interpretation of Specialized Knowledge*, (Mar. 9, 1994) (Puleo memo). The most recent guidance to the agency appears in U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), http://www.uscis.gov/legal-resources/policy-memoranda, which superseded and rescinded the Puleo memo. *Id.* at 5.

The 2015 memorandum included an updated list of possible qualifying factors, which shares some common elements with the earlier list, but the Petitioner must first meet the basic test of showing that the Beneficiary possesses special or advanced knowledge. For instance, while the Beneficiary may be filling a role beneficial to the Petitioner's competitiveness in the marketplace, this characteristic alone does not demonstrate specialized knowledge. As noted in the memorandum, the listed elements are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id* at 8. The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13. The Beneficiary should, as a threshold matter special knowledge or advanced knowledge.

The Petitioner asserts, on appeal, that "companies in the same industry in the U.S. do not use the same process, equipment, [and] techniques. The processes and techniques used by the petitioner [are] proprietary." As noted, third-party equipment and machinery is not the petitioning organization's product or equipment. The Petitioner states: "[t]he beneficiary's job involves process parameter, quality control process, and process analysis. The job duties involve company processes and procedures." However, this general statement does not identify specific processes and procedures used by the Petitioner and foreign affiliate that are not commonly found in the Petitioner's industry. The Petitioner has not described its quality control process and has not established that other elements of the Beneficiary's role, including operating, programming, and maintaining third-party quality testing equipment, involve the company's own methods or procedures. As noted, the Beneficiary obtaining training in these skills directly from the manufacturers.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of I-E-USA, LLC*, ID# 3409584 (AAO May 16, 2019)