U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-E-, INC.

DATE: MAY 30, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company that designs and manufactures electronic component devices for automotive manufacturers, seeks to temporarily employ the Beneficiary as a mechanical project engineer 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 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 met all requirements for this visa petition and that the Director erred by applying an inappropriate standard.

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 specialized knowledge capacity, 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.*

The relevant 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 further 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 must be accompanied by evidence 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; 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. SPECIALIZED KNOWLEDGE

The Director found that the Petitioner did not establish that the Beneficiary possesses specialized knowledge, and that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

In denying the petition, the Director observed that the Petitioner did not document how the Beneficiary's proficiency in the use and application of its tools, processes, and methodologies while employed at the foreign entity satisfies the definition of specialized knowledge. The Director found that the Petitioner did not establish that the Beneficiary has knowledge that is special or advanced in the electronic equipment manufacturing field or that his knowledge is special or advanced compared to other similarly experienced persons in this field. Further, the Director found that the Petitioner did not establish that its tools, processes, and methodologies are different from those used by other mechanical project engineers working in the Petitioner's industry.

On appeal, the Petitioner references the previously submitted evidence and asserts that it has established that more likely than not the Beneficiary has advanced and specialized knowledge of its design and development of and of Indicator Switch Assembly relating to and applications and architectures.

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that he possesses specialized knowledge, then we cannot conclude that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A petitioner may establish eligibility for an L-1B visa 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.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.[1]

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.

A. Advanced Knowledge

The Petitioner initially claimed that the Beneficiary's knowledge is advanced and special with regard to its design of and of Indicator Switch Assembly relating to and applications and architectures applications and architectures). However, the Petitioner concentrates its argument on its claim that the Beneficiary's specialized knowledge is different and more advanced than that of its other employees in India as it relates to these applications and architectures. Accordingly, we will first address the issue of whether the Petitioner has established that the Beneficiary has advanced knowledge of its processes and procedures.

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 an expertise in the organization's processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

The Petitioner initially stated that its foreign subsidiary employed 139 engineers and only 20 are senior design engineers. The Petitioner indicated that the Beneficiary had been working at its subsidiary in India as a senior design engineer since February 2015, a year and a half prior to filing this petition. The Petitioner identified the Beneficiary's job duties in this position as follows:

[1] Although some aspects of the "special" and "advanced" knowledge definitions may overlap, we will address each element individually.

> [The Beneficiary] started off in this position, performing the design and modelling of automotive switches and control modules in [redacted] & [redacted] CAD tools. He worked on the design brief, including the concept, performance and production criteria of the auto electrical switches. He investigated how existing products works [*sic*] and developed ideas based on it. He sketched design ideas and developed design concepts using CAD (computer-aided design). He researched materials, processes or market requirements. He identified and continues to identify the suitability and availability of materials for the product. He made and continues to make the technical presentations with design proposals to senior design management and customer. He performed validation using the proto samples, [redacted] and [redacted] analysis. He supervises team meetings and liaises with engineers in other departments, including marketing, to discuss and negotiate appropriate production processes, costs and commercial issues. He discusses with the counter-part's production facilities & vendors to evaluate the feasibility of manufacturing and production. He produces detailed, final drawings and specifications using dedicated computer software (CAD) to produce design specifications, including bill of materials.

The Petitioner explained that the Beneficiary continues to hold this same position but has been given specialized responsibilities. The Petitioner then stated that the Beneficiary "is the only Senior Design Engineer responsible for the design of [redacted] and of Indicator Switch Assembly relating to [redacted] and [redacted] and that he is the only engineer at the foreign subsidiary who has demonstrated this ability in the design of the [redacted] and Indicator Switch Assembly for these products. The Petitioner claimed that the Beneficiary "quickly grasped [its] systems and procedures."

The Petitioner also noted that the Beneficiary is the only senior design engineer who attended high-level meetings with clients to review, suggest, and recommend engineering design projects with respect to the design of the [redacted] and Indicator Switch Assembly for these automotive products. The Petitioner referenced the Beneficiary's ability to propose, plan, design, lead and tutor other engineers regarding the design of the [redacted] and Indicator Switch Assembly for these products and noted that the other senior design engineers lead other specialized processes and do not possess the kind of superior, advanced, and special knowledge that the Beneficiary possesses as it relates to the design of the [redacted] Analysis and Indicator Switch Assembly for the specific automotive products. The Petitioner also stated that regular engineers, as opposed to senior design engineers, assist in the design and are not required to have visionary abilities.

The Petitioner, however, provides little information on the [redacted] Analysis or Indicator Switch Assembly products for the [redacted] platforms or the design processes associated with these products.[2] The Petitioner did not specifically identify what any of its procedures, practices, and

[2] The record includes a document describing [redacted] craftsmanship requirements that does not identify the Petitioner and is current only to March 18, 2014, a date more than two years prior to the filing of the petition. The record further

methods are as they relate to this particular technology. The Petitioner simply repeatedly states that the Beneficiary is the only senor design engineer at the foreign entity responsible for the design of Analysis and of Indicator Switch Assembly relating to the specified and product standards and that he is the only engineer at the foreign subsidiary who has demonstrated this ability in the design of the Analysis and Indicator Switch Assembly for these products. The record does not include a sufficient description of this technology and probative evidence regarding the Petitioner's processes and methodologies relating to this technology.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization we must review the duties of those employees in similar positions. In that regard, we note that although the Petitioner stated that the foreign subsidiary employed 139 engineers, the foreign entity's organizational chart depicts only 26 engineers. The 26 engineers depicted on the chart report to five different project or technical leads and have various titles such as advanced project engineer, senior project engineer, project engineer, senior design engineer, design engineer, costing engineer, advanced design engineer, and associate engineer. The foreign entity's organizational chart identifies the Beneficiary, a second senior design engineer, and two project engineers as on the same team reporting to one of the designated technical leads. In response to the Director's request for evidence, the Petitioner revised the numbers for its engineers and claimed that the foreign subsidiary employed 103 engineers and only two of these are senior design engineers, not 20 as it initially stated.

The Petitioner does not include job descriptions for the 26 engineers depicted on the organizational chart or otherwise differentiate the duties and knowledge of the engineering positions depicted. Although the Petitioner asserts that its "senior design engineers" have greater knowledge and ability than regular engineers, the description of the Beneficiary's duties and the knowledge he possesses to perform them do not demonstrate that his duties require significantly greater knowledge than the knowledge of a regular engineer. The fact that the petitioning organization delegates limited responsibilities to its "regular" engineers and assigns more responsibilities to its senior design engineer does not establish that the Beneficiary possesses specialized knowledge or that he was employed in a position involving specialized knowledge. The Petitioner does not adequately explain its statement that senior design engineers have visionary abilities and does not sufficiently describe the duties of the regular engineers to support its claim that they only "assist" in designing the product. The record does not include sufficient evidence to conclude that the Beneficiary's knowledge is more advanced than the foreign entity's "regular" engineers.

The Petitioner also does not adequately distinguish the duties of the Beneficiary's senior design engineering position from the engineers on the organizational chart with titles that suggest a more senior engineering position within the petitioning organization, such as advanced project engineer, advanced design engineer, and senior project engineer. Further, the Petitioner does not sufficiently differentiate the Beneficiary's senior design engineering position with the other senior design

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includes templates for specific projects with and which do not identify the Petitioner, its particular technology, or its specific responsibilities. Without additional information regarding these documents, we cannot determine their relevance to the matter at hand. Thus, they will not be further considered in our analysis.

engineer on his team. We note that the Petitioner asserts that the Beneficiary's position is different because the other senior design engineer on his team is assigned to projects that are unrelated to Analysis and Indicator Switch Assembly Panels.

Although we recognize that the other senior engineers may work on different product lines, their knowledge of the petitioning organization's processes, procedures, and methodologies would likely be similar. Again, the Petitioner has not provided sufficient information about the specific processes, procedures, and methodologies for a specific product line, such as the Analysis and Indicator Switch Assembly Panels product line, to demonstrate that working with these products requires advanced knowledge. Moreover, the Petitioner has not submitted probative evidence distinguishing the Beneficiary's experience or training from other similarly employed engineers or evidence demonstrating that the Beneficiary's customer service or any supervisory role requires specialized or advanced knowledge of a specific project or the Petitioner's processes relating to the project.

We have reviewed the Beneficiary's training status report which shows he received two hours of induction level training in February 2015, shortly after he was hired, two hours of training on QMS and Configuration in March 2015, and 12 hours of training on the ' analysis tool" in May 2015, a little over three months after he was hired. Other than the 12 hours of training on the analysis tool, the record does not identify other training that the Beneficiary received on this tool. The Petitioner noted that the Beneficiary's responsibilities also included "validation using the proto samples, and analysis." However, the Beneficiary did not receive training on (a total of eight hours) and verification and validation (two hours) until May 2016, 15 months after he was hired, and only 4 months before the Form I-129 was filed. The Beneficiary's limited training on the Analysis tool and the recent limited training on as it relates to analysis suggests that the knowledge required to perform the duties of the particular project to which the Beneficiary has been assigned can be acquired with only a few days of training and therefore has not been shown to be advanced knowledge in comparison to that held by the Petitioner's other engineers.

The Petitioner in this matter attributed the Beneficiary's ability to "quickly grasp[]" its processes of validation using proto samples, and analysis to the Beneficiary's advanced formal education in the engineering field (bachelor's in engineering and a post graduate diploma in tool design) and nine years of designing and modeling automotive electrical switches for his previous automotive industry employers. This acknowledgement confirms that the Beneficiary, as an experienced engineer, was able to quickly learn the petitioning organization's processes, procedures, and methodologies and perform the duties of a specific project, and that such duties do not require advanced knowledge specific to the company. Further, according to the Petitioner, the Beneficiary was placed in the position of senior design engineer when he was hired. It is reasonable to believe that another similarly educated and experienced engineer could also quickly acquire the knowledge necessary to work on the same technologies.

Although the Petitioner claims that at some point the Beneficiary assumed specialized responsibilities, the record does not specifically identify the specialized responsibilities or clearly state when the Beneficiary was given these responsibilities. Thus, it is not possible to ascertain from the record, when the Petitioner is claiming that the Beneficiary's knowledge of the Petitioner's processes and procedures became more advanced than other employees, engineers, or other senior design engineers within its employ. Accordingly, the record is also insufficient in establishing that the Beneficiary's position involved advanced knowledge of the Petitioner's processes and procedures for at least one continuous year in the three years preceding the filing of the petition.

It is clear that the Petitioner considers the Beneficiary a valuable employee who excels at his position. However, the record does not sufficiently distinguish the Beneficiary's knowledge from that of other similarly-employed workers in the petitioning organization, and thus does not establish that the Beneficiary possesses more advanced knowledge than those similarly employed individuals.

B. Special Knowledge

The Petitioner also has not established that the Beneficiary possesses special knowledge. Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, the petitioner may meet its burden through evidence that the beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry.

In its initial letter in support of the petition, the Petitioner claimed that the Beneficiary's "special knowledge of the design of and of Indicator Switch Assembly relating to and applications and architecture is particularly beneficial to [the Petitioner's] competitiveness in the international automotive marketplace." The Petitioner indicated further that the Beneficiary's position requires the ability to propose, plan, design, lead, and tutor other engineers regarding the design of the and Indicator Switch Assembly relating to the products. The actual duties described, however, appear to be those typical of an electrical engineering position. While the current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that the Beneficiary's knowledge be proprietary, the Petitioner might satisfy the current standard by establishing that the knowledge required to work with the Petitioner's proprietary products, processes, or procedures is special or advanced.

Here, the Petitioner did not provide sufficient details regarding its technology to demonstrate that its products are substantially different or more complex than other similar products in the automotive electronics industry. Likewise, the Petitioner did not provide sufficient detail about its design, development, implementation, or schematics to explain how the processes, methodologies, or procedures differ significantly from, or are more complex than, those used in other automotive electronic engineering positions. In fact, the record indicates that the Beneficiary was hired in a senior design engineering position despite having no prior experience with the Petitioner's processes, methodologies, or procedures or its specific products. The evidence does not support the

Petitioner's claims that the Beneficiary acquired his specialized knowledge through his experience with the Petitioner's products. Rather, the evidence suggests that the position does not require specialized knowledge of the Petitioner's product and can be transferred to a similarly experienced engineer within a reasonable amount of time.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on the Beneficiary's knowledge of a specific project relating to automotive products. However, the record is deficient in detailing when the Beneficiary was assigned "specialized responsibilities," for this project. The record also lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other engineers, either within or outside of the organization. While there likely are no employees with the exact same knowledge the Beneficiary possesses, the record does not demonstrate that the Beneficiary's knowledge is in fact significantly different from that generally held by professionals in the Petitioner's industry, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

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). For the foregoing reasons, the record does not establish that the Beneficiary, more likely than not, possesses special knowledge of the company's products and their application in international markets.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge. As the evidence does not establish that the Beneficiary possesses specialized knowledge, we also cannot conclude that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-, Inc.*, ID# 334469 (AAO May 30, 2017)