U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-T- CORP.

DATE: MAY 31, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which provides information technology services to clients in the telecommunications industry, seeks to temporarily employ the Beneficiary as a senior business analyst 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 record did not establish, as required, that the Beneficiary: (1) possesses specialized knowledge; (2) has been employed abroad in a position that was managerial, executive, or involved specialized knowledge; (3) will be employed in the United States in a specialized knowledge capacity; and (4) will not be employed offsite as labor for hire by another company.

On appeal, the Petitioner submits additional evidence and argues that the Director "neglected to consider certain facts and circumstances" while applying "an inappropriate level of scrutiny."

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 position that involved 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.

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. SPECIALIZED KNOWLEDGE

The first issue we must address is whether the Petitioner has established that the Beneficiary possesses specialized knowledge. If the Petitioner has not met this threshold requirement, then it cannot demonstrate that the Beneficiary has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition of specialized knowledge. Under the statute, a beneficiary is considered 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. In this instance, the Petitioner asserts that the Beneficiary possesses special knowledge, not advanced knowledge.

As "special" is a relative term, determining whether a given beneficiary's knowledge is "special" inherently requires a comparison of the beneficiary's knowledge against that of others. 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, and, if so, 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. The petitioner must specifically describe 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.

Here, the Petitioner's foreign subsidiary hired the Beneficiary as a business analyst in October 2013, almost two years and eight months before the Petitioner filed the Form I-129 in June 2016. On the Form I-129, the Petitioner described the Beneficiary's duties abroad as "[t]ranslating business processes and high-level business requirements to functional specifications. Developing technical design documents and reviewing systems requirements specifications." The Petitioner submitted additional descriptions of the Beneficiary's current and proposed duties in a supporting letter, and further stated that the Beneficiary gained further expertise during his employment with other companies from 2006 to 2013. However, it did not submit his résumé or a description of his prior employment.

The Petitioner's specialized knowledge claim centers around two proprietary systems. The first, [redacted] "provides a wholly-integrated Cable, High Speed Data & Telephony solution for managing multiple service offerings on a single integrated work order." The second, [redacted] "provides centralized, unified, up-to-date view of the customer, product, services, resources, faults, trouble tickets, performance event history, and other important data."

The Petitioner stated that the Beneficiary had completed several "proprietary product and module training sessions by virtue of his extensive support of our clients with the following . . . software solutions applications." The Petitioner claimed that the Beneficiary had undergone extensive on-the-job training and listed six applications, including [redacted] and [redacted] The Petitioner indicated that the Beneficiary used the applications while working on assignments with the foreign entity's clients. The Petitioner did not otherwise describe or document the "product and module training sessions" that constituted the Beneficiary's claimed on-the-job training.

A screen capture listed the Beneficiary's internal training courses with the foreign entity:

Name	**Hours**	**Start Date**
Business Analyst School	54	9/26/2014
Functional Design Activities and Deliverables	8	9/22/2014
Welcome on board	1	10/7/2013
Privacy and security awareness	4	10/18/2013
Solution Delivery Implementation Methodology and Company Processes	1	11/7/2013

The Petitioner has not explained which of these courses, if any, dealt with [redacted] or [redacted] The only course lasting more than eight hours was the "Business Analyst School" course (which actually consisted of several shorter modules). All the courses, together, represent about two weeks of training, and therefore the list of courses does not show that the Beneficiary has received a high level of training that would be difficult to impart to other employees. As the Petitioner did not document or sufficiently describe the Beneficiary's on-the-job training, we cannot determine when or how the Beneficiary gained the claimed specialized knowledge in [redacted] or [redacted]

The Petitioner stated that the Beneficiary:

> has gained experience in numerous critical facets of our enterprise including in-depth and customized implementation, and delivery and technical follow-up consulting. He has also been intricately involved with business process and solution consulting by understanding customers' pain points, brainstorming, and leading the solution implementations. Additionally, he has been involved in delivering detailed responses to Requests for Proposals (RFP's) which require extensive knowledge of our company's products in order to create a comprehensive technical solution to a proposed client's core need, as well as in depth knowledge of our competitor's products in order to properly contrast the available solutions. Most significantly, he has gained a high level knowledge of [the Petitioner's] proprietary and Active Mediation Manager software modules which enable him to provide effective support services to our customers around the world.

The Petitioner submitted examples of user story narratives that the Beneficiary wrote, alone or with others. The Petitioner described the purpose of these documents:

> User narratives link discrete business activities into a single flow that allows business analysts and software developers to understand how the customer goes about executing their existing business process. The narratives provide[] context and define[] the end goal for the process. They are created as one of the first steps in customizing a software solution for the customer and serve as a framework for creating business process and technical workflows. . . . Without the benefit of the training he has received, and the specialized knowledge gained during his tenure at [the petitioning company], and the benefit of his prior education and technical experience, it would be impossible for him to draft this key project documentation.

The Director denied the petition, stating that the Petitioner had not substantiated its assertion that the Beneficiary had "received extensive training." The Director stated that "mere familiarity with an organization's product or service does not constitute specialized knowledge" for the purposes of the L-1B nonimmigrant classification.

On appeal, the Petitioner states that it "provided an overwhelming amount of corroborating evidence to demonstrate the [Beneficiary's] specialized role." The Petitioner states that "USCIS failed to appropriately consider the attestations and evidence," and "misapplied the 'preponderance of evidence standard.'"

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for

relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

While the Petitioner correctly states that it submitted considerable documentary evidence of the Beneficiary's work product, the evidence does not address a key deficiency noted by the Director, specifically, that the Petitioner did not support its claim that the Beneficiary received extensive training in order to be able to perform his job duties as a business analyst.

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. Even when a petitioner's products are proprietary, it must still establish that qualities of its products or processes require its employees to have knowledge that is truly different from what is commonly found in the industry. The fact that other workers may not have the same level of experience with the petitioner's products or processes applied to a specific client is not enough to equate to special knowledge.

In order to determine whether the Beneficiary's knowledge of the Petitioner's proprietary products should be deemed special knowledge, we need to examine how much additional training the Beneficiary, as an experienced information technology professional, needed in order to be able to successfully perform the duties of a business analyst with the foreign entity. If the Beneficiary already possessed most of the knowledge needed for the position prior to joining the foreign entity and was able to almost immediately perform the duties of the position, then we must conclude that knowledge of [redacted] and [redacted] was easily imparted to him and, although proprietary, is not significantly different from the knowledge commonly held by other similarly employed workers in the industry.

On appeal, the Petitioner provides additional technical details about the Beneficiary's work, but these details do not inherently show that the Beneficiary possesses specialized knowledge. The Petitioner states that the Beneficiary's "[d]rafting and editing product-use and operations guides is clear evidence of his development and acquisition of specialized knowledge regarding these products," because "[o]nly those who have the necessary developed knowledge . . . would be able to provide the necessary solutions . . . by either enhancing or rebuilding the program."

However, the Beneficiary drafted one of the aforementioned guides, '[redacted] on April 8, 2014. At that time, the Beneficiary had worked for the foreign entity for six months, and had undergone six hours of documented training with the company, five of which were general in nature, leaving a one-hour course in "Solution Delivery Implementation Methodology and Company Processes." The April 2014 functional design specification is not consistent with the Petitioner's claim that only an employee with significant experience and training is capable of producing such technical writings.

Email messages show that the Beneficiary communicated with other employees of the Petitioner and its wider multinational organization about various project-related issues. Some email chains show queries directed at the Beneficiary, while others begin with questions from the Beneficiary regarding issues that have arisen during a particular project. The business analyst role, as described in the record, inherently requires frequent interactions with both internal technical staff and clients so these emails provide an illustration of the Beneficiary's day-to-day duties without providing much additional insight into the claimed specialized knowledge. While some of the messages demonstrate the Beneficiary's familiarity with a particular project, but the Petitioner has not shown that these interactions do not take place in the absence of specialized knowledge, or established the knowledge levels of the other participants.

The Petitioner states that, when determining whether the Beneficiary possesses specialized knowledge, the proper point of comparison is with others in the field or industry rather than other employees within the Petitioner's multinational organization. The Petitioner states: "Pursuant to the L-1B Policy Memo released last year, specialized knowledge is, "knowledge . . . that is distinct or uncommon in comparison to that generally found in the *particular industry*" (the Petitioner's emphasis).

This partial quotation omits crucial language. The memorandum's complete definition of "special knowledge" is "knowledge of the petitioning employer's product, service, research, equipment, techniques, management, or other interests and its applications in international markets that is demonstrably distinct or uncommon in comparison to that generally found in the particular industry *or within the petitioning employer*" (emphasis added). USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* 7 (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

Familiarity with one's employer's proprietary technology does not inherently rise to the level of special knowledge. Most, if not all, companies in the Petitioner's industry likely have their own proprietary technology, with employees whose duties roughly match those of the Beneficiary. The Beneficiary's knowledge of his employer's products is not specialized simply because employees of rival companies are not familiar with those products. The Petitioner must establish that the knowledge required to work with its products requires this Beneficiary to have knowledge that is distinct or uncommon to the point that such knowledge could not be readily transferred to a similarly educated and experienced worker. Because the Petitioner has not sufficiently documented that the claimed specialized knowledge was acquired through substantial training, it has not met this burden.

The Beneficiary's role, as described, appears to constitute working with client and internal technical staff to customize the Petitioner's products to fit the client's requirements. While the Petitioner does not have to show that the Beneficiary possesses knowledge that is narrowly held within the organization, in all cases, a Petitioner is required to compare the Beneficiary's knowledge to that of others. USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy*, *supra*, at 12.

As the Petitioner has not meaningfully differentiated between the Beneficiary and other employees with similar knowledge of and , or sufficiently documented the amount of training or

experience required to work with [redacted] and [redacted] we must conclude that, while the Beneficiary is a skilled employee, these skills have not been shown to constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and section 214(c)(2)(B) of the Act.

The record does not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad or would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Because the Petitioner has not met the threshold requirement of showing that the Beneficiary possesses specialized knowledge, we need not make a separate finding on the corollary issue of whether the Beneficiary's employment offsite at the customer's location would rely primarily on specialized knowledge of the Petitioner's products or processes.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge. Therefore, the Petitioner also did not establish that the Beneficiary's past employment abroad and his intended employment in the United States require specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of N-T- Corp.*, ID# 356834 (AAO MAY 31, 2017)