U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R- CORP.

DATE: NOV. 1, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting company, seeks to temporarily employ the Beneficiary as a 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge, that she has been employed abroad in a position involving specialized knowledge, or that she will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner submits additional evidence and asserts that the Director misapplied the law based on an incomplete review and understanding of the Petitioner's claims, and reached a decision that is inconsistent with the record. The Petitioner maintains that the Beneficiary has been "heavily involved in the design and development" of its proprietary [redacted] and related products, and has "a deep experience in the Life Sciences and Pharma domain," and as such possesses specialized knowledge that cannot generally be found in the Petitioner's industry.

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 qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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, 8 U.S.C. § 1184(c)(2)(B).

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).

II. BACKGROUND

The Petitioner provides IT consulting services to clients in the pharmaceutical industry in the field of drug safety systems and protocols to ensure global regulatory compliance. The Petitioner explained that because this sector is complex and has unique requirements, Oracle and Argus created software specifically for this industry which is "commonly utilized by a company such as ours." The Petitioner is an Oracle Gold Partner and Argus Safety Specialization Partner, and "offers an array of services around the industry-leading Oracle Argus Safety Suite." The Petitioner has also designed and developed its own dashboards, reporting applications, and analytics features to facilitate the gathering and analysis of safety data. Its proprietary solutions include and

The Beneficiary has approximately 18 months of experience with the Petitioner's Indian subsidiary as a consultant and reporting services developer and the Petitioner states that she has been a core member of the global professional service team and the product development team for and The Petitioner has offered her the position of business analyst, which will include the following duties: product development for user acceptance testing and handling of change requirements for tier-1 U.S. clients; conducting workshops in her role as a subject matter expert for Drug Safety Application and and mentoring the internal with drug safety and knowledge.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the Beneficiary's duties are the "same or similar" to others employed in the occupation of "Computer Systems Analyst" as described in the Department of Labor's *Occupational Outlook Handbook* (OOH). As such, the Director found the Petitioner had not established that the Beneficiary has, or the position requires, a special or advanced level of knowledge in the field. In addition, the Director noted that the Petitioner did not adequately describe how knowledge of its proprietary products is typically gained within the organization in support of its claim that the Beneficiary's knowledge of these products is truly distinct within the industry.

On appeal, the Petitioner maintains that the Director did not consider all relevant evidence in reaching her decision and contests the Director's reliance on comparisons to generic occupational

descriptions found in the OOH. The Petitioner emphasizes that it operates in a very niche, specialized area of the IT consulting industry and the Beneficiary has been "heavily involved in the design and development" of its proprietary products, which gives her knowledge that is distinct and uncommon in comparison to others in the industry, and even within the Petitioner's niche domain within the industry. It maintains that the totality of the evidence, including additional evidence of the Beneficiary's work product submitted on appeal, establishes that the Beneficiary possesses special knowledge as defined in the statute and regulations.

Upon review, we agree with the Petitioner that the Director's over-reliance on an occupational description found in the *Handbook* resulted in a lack of relevant analysis of the Petitioner's specialized knowledge claims and the evidence submitted in support of those claims. Because we review the appeal on a *de novo* basis, we will further address the Petitioner's claims and evidence. We do, however, agree with the Director that the record does not demonstrate how the Beneficiary gained her claimed specialized knowledge. Specifically, as discussed below, the Petitioner's claims as to how the Beneficiary gained her specialized knowledge are at times contradicted by the submitted evidence.

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 she has been employed abroad in a position involving specialized knowledge or would 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.

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 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.

A. Special Knowledge

The Petitioner's primary claim is that the Beneficiary possesses special knowledge of its proprietary [redacted] and related software as a result of being "heavily involved" in the design and development of this software during her approximately 18 months of employment abroad with the

Petitioner's Indian subsidiary. The Petitioner also emphasizes that the Beneficiary has five years of experience in the "life sciences and Pharma" domains, which, when combined with her information technology background, makes her a critical member of the petitioning group's development team.

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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 claims that the Beneficiary possesses special knowledge of its and software that is uncommon in the industry, as well domain knowledge in the drug safety and pharmacovigilance domain that is uncommon among IT professionals. The Petitioner has stated that her knowledge and domain expertise were critical in developing and that she was "heavily involved" in the development of its proprietary analytics products, and there is no employee in the U.S. office who was similarly involved "at inception" on the development of and However, certain evidence in the record undermines the Petitioner's claim that she has been involved in these products since their inception, or "heavily involved" in their development efforts.

The Petitioner's initial evidence included an un-titled report that provides an account of how the Beneficiary spent her time on a weekly basis from October 2015[1] until January 2017, with entries for date, project name, task, and hours spent per task. According to this document, the Beneficiary was assigned to the project as early as six weeks after joining the foreign company and spent the next year working exclusively on this project. Her tasks included using SQL to draft and update datasheets, performing bug fixes, authoring and updating test coding, providing support to the user acceptance testing team, and attending meetings. The Beneficiary's resume lists the project as her only project with the foreign entity and indicates that she was responsible for designing analytical reports in requirements gathering and presentation of technical data, information link creation, mapping and administration, user acceptance testing, and implementation review of business and functional requirements. The Beneficiary's performance appraisal for the 2016 year also references that she "clearly understood client needs and was able to convert these into requirements for" and seems to confirm the information in the Beneficiary's resume and in the internal report describing how the Beneficiary has spent her time.

[1] The Petitioner states that the Beneficiary has been employed by the foreign entity since August 17, 2015.
[2] Other documentation in the record indicates that the full project name was "
"

Therefore, even though it appears that the Beneficiary successfully contributed to developing custom reports for one or more clients, this evidence does not support a claim that the Beneficiary has been "heavily involved" in the development of its [redacted] solution since its inception, especially since the record contains published company materials about [redacted] with a 2013 copyright date.

Further, because the Beneficiary was assigned to a significant project involving the implementation of its existing proprietary solution so soon after being hired, this calls into question the Petitioner's "intensive training program" in company products and services it claims all employees receive. The training records provided for the Beneficiary do not show that she completed such a program before being assigned to a client project that involved customizing the company's proprietary products. The Petitioner submitted the Beneficiary's "training attendance sheets" indicating that she completed a one hour "SDLC Training" in August 2015 during her first week on the job. Her other trainings including SOP Management, Internal and External Audit, Corrective and Preventive Action, Change Request and Configuration Management, Incident Handling, Physical Security, Project Management, Validation, Risk Management, Hosting, Defect Tracking, Argus Administration, Contract Review, System Administration, Data Control and Security, System Configuration Management Plan, Development Standards, among others, were all completed by the Beneficiary through "self-study" in 2016 and no further information was provided about these trainings or how they relate to her specialized knowledge.

In fact, the only training records that expressly mention the Petitioner's proprietary products or specialized functional domain were for courses the Beneficiary completed in 2017, after this petition was filed. The Beneficiary completed "Introduction to [redacted]," "Signal Detection & Management," and "[redacted]" by web teleconference or at the Petitioner's U.S. client's office in April 2017. Therefore, it appears that the Beneficiary, based on her prior education and work experience with an unrelated employer, was able to implement the Petitioner's proprietary products for the company's client with no documented training in these products, which suggests that she readily acquired the knowledge she needed on the job and was not performing duties that involved specialized knowledge. 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.

Similarly, the Petitioner has consistently claimed that the Beneficiary has related technical and pharmaceutical industry domain experience gained with her prior employer which is unusual among IT professionals, given the niche area in which the Petitioner operates and the specialized Oracle and Argus platforms used in this domain. The Petitioner did not further elaborate on the Beneficiary's employment history. The Beneficiary's resume indicates that she has five years of experience in BI (Business Intelligence) development and testing, and "1+ years in Drug Safety experience." Her prior experience with an unrelated entity involved four different projects for a single client, and neither the client nor the projects appear to be related in any way to the pharmaceutical industry. While the resume confirms that the Beneficiary gained IT experience in business intelligence and analytics, understanding user requirements, developing business models and reports, and user acceptance testing, among other areas, the evidence does not support the Petitioner's claim that the Beneficiary joined the company with relevant domain experience, as claimed. Rather, it appears that

she learned about this niche domain, including the third-party Argus software and related regulatory requirements, on the job while implementing the Petitioner's proprietary products.

The record also contains confusing information regarding the Beneficiary's role with the foreign entity and how she gained her knowledge related to product development. The Petitioner acknowledges that she has implemented its products for customers while employed abroad, but clearly emphasizes her product development role as the primary basis for its claim that she possesses specialized knowledge. The Petitioner states that it has an "intensive training program for its employees however the training program is limited to the [company's] products and services" and "does not provide for the transfer of design and development knowledge that [the Beneficiary] has."

The Petitioner must resolve ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on the foregoing, it appears the Petitioner has overstated the Beneficiary's role and industry experience at times throughout the record, and as such was not able to submit documentation that fully supported those claims.

On appeal, the Petitioner submits an affidavit from its president who offers a somewhat more moderate explanation of the Beneficiary's role and experience. notes that the Beneficiary has been "involved in the design and implement [*sic*] computational algorithms and and do enhancements to existing products from concept to launch," which seems to suggest a lesser role than the previously claimed "heavy" involvement in the initial development of the company's proprietary products. also does not repeat the previous claim that the Beneficiary came to the company with years of experience in the drug safety and domain. Rather, she states that the Beneficiary possesses a unique combination of skills that includes system thinking, client management, data modeling/warehousing, software configuration management tools, defect tracking tools, coding techniques, verification and validation procedures, strong technical fundamentals in SQL, Unix shell scripting, etc., and notes that "it is difficult for one person to have all aforementioned skills."

It is evident that the Beneficiary, as a result of her formal university education and three years of work experience, had the technical skills needed to quickly adapt to the Petitioner's specific functional and technical environment without extensive additional training. The record also establishes that she has become well-versed in the implementation, customization and enhancement of those products. However, the record does not show that these skills require special knowledge that is distinct or uncommon in the industry.

The Petitioner repeatedly states that it operates in a very specialized sector of the pharmaceutical industry, but acknowledges that Oracle and Argus have developed software specifically for this industry and have partnerships with IT consulting companies like the Petitioner. The Petitioner explains that its solutions are unique because other companies do not offer such "feature rich" solutions. However, it has not further explained what differentiates its products or requires its consultants and business analysts to possess knowledge that could not be readily learned by professionals with similar academic and professional training. The Petitioner references

and [redacted] as "unique" to the Petitioner's line of products but does not further explain how these third-party technologies differentiate its own products or services.

As noted, the Beneficiary began customizing and implementing the Petitioner's proprietary products almost immediately upon joining its foreign subsidiary with little to no documented product training and no experience with this industry domain, its functional requirements, or its specialized software. Although the Petitioner claims that it cannot find anyone with a similar skill set who could fill the role offered in the U.S., the Beneficiary herself was able to fill a similar role with the foreign entity despite being hired without this skill set.

For the reasons discussed, the Petitioner has not fully supported its claims regarding the Beneficiary's special knowledge or how she gained that knowledge. The Petitioner has also not established that the knowledge she possesses is truly distinct or uncommon or that it was knowledge that cannot be easily transferred to a qualified IT professional with a background in data modeling and business intelligence technologies.

B. Advanced Knowledge

The Petitioner has not established, in the alternative, that the Beneficiary possesses advanced knowledge.

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given 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. Also, as with special 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.

Here, the Petitioner has neither claimed nor documented that the Beneficiary has advanced knowledge of company-specific processes or procedures. Rather, its claims have been focused on the Beneficiary's knowledge of the company's products and services and industry-based comparisons. The Petitioner has not provided information that would allow us to compare the Beneficiary's knowledge of company processes and procedures to that of others within the petitioning company and its foreign subsidiary and therefore has not supported a claim that her knowledge is "advanced."

Because the Petitioner has not demonstrated that the Beneficiary possesses special or advanced knowledge, we need not address whether the Beneficiary has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

IV. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of R- Corp.*, ID# 749618 (AAO Nov. 1, 2017)