U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-E-[redacted]

DATE: NOV. 6, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, [redacted] seeks to extend the Beneficiary's temporary employment as a "Senior Manager - Risk Management" 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary was employed in a specialized knowledge capacity in his former positions abroad or that he held special or advanced knowledge.

On appeal, the Petitioner contends that the Director erred in concluding that the Beneficiary's foreign duties were typical of an individual working in his role in the industry. The Petitioner asserts that the Director improperly required that it establish the Beneficiary's training as "extensive." The Petitioner contends that it has submitted detailed, specific, and credible support letters for the Beneficiary and states that we should defer to its expertise in determining whether the Beneficiary possesses specialized knowledge.

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

In a support letter submitted with the petition, the Petitioner stated that from April 2013 to January 2016, the time of his entry into the United States as a nonimmigrant, the Beneficiary was employed in the position of "Manager, Global Business Consulting." The Petitioner indicated that the Beneficiary "had more than two years of experience applying proprietary risk information systems…[and] data sources control environments with products."

Later in the same letter, the Petitioner explained that the Beneficiary acted as "Assistant Manager, Global Business Consulting" beginning in April 2013 and noted that he was promoted to manager, global business consulting in May 2015. It further stated that the Beneficiary was "responsible for the execution of complex engagements for global and multinational clients and asserted that "a very limited number of [Petitioner] professionals across the globe possess knowledge of our corporate payments solutions, let alone the advanced knowledge that [the Beneficiary] maintains." In addition, it indicated that the Beneficiary developed "specialized analytical solutions and strategies" and "new capabilities" and provided "analysis on benchmarking, preferred supplier programs[,] Travel & Entertainment…, purchasing process, policy analysis, and performance measurement." The Petitioner asserted that the Beneficiary's "dual knowledge of both risk management and is uncommon and unique compared to other professionals employed at the [Petitioner]."

The Petitioner also listed several "proprietary and highly customized tools" that the Beneficiary used and gained knowledge of abroad, including " ", " ", " ", " ", " ", " ", among other internal systems. The Petitioner further referenced two "successful projects" the Beneficiary had worked on abroad, including the Hotel Sourcing" project where he "assisted [a] major…client with more than $50,000,000 in annual hotel spending to renegotiate their contracted hotel rates" and the Sourcing" project where he assisted "in multiple rounds of bidding and negotiations and getting the best rates for on specified routes."

Later, in response to a request for evidence (RFE) issued by the Director, the Petitioner stated that the Beneficiary "drove [foreign employer] risk management processes and initiatives" and gained "deep expertise of the proprietary [Petitioner] platforms." The Petitioner noted that "some [of the processes] are typically understood on a basic level by some of the [Petitioner's] professional workforce," but that the Beneficiary's knowledge was considered "advanced" due to his "understanding of the inner working so the business charge products and the specific application of these tools with regard to individualized corporate client portfolios and cost structure." The Petitioner further indicated that the Beneficiary "developed an exceptionally unique comprehension of closed-loop analysis and the differentiated charged products that work in tandem with the Company's ("NPSL") strategy."

The Petitioner referred to the Beneficiary's knowledge acquired abroad as "uncommon within the company," "exceptionally unique in the industry," being of "significant complexity and depth," "exceptionally rare," and indicated that he was "uniquely well-versed" and a "rare expert." In turn, it explained that the Beneficiary had provided training to his professional colleagues, including training

"professional Analysts in the , which leverages [Petitioner] proprietary data to calculate alignment with set policy and performance benchmarks based on transactional-level spend data from the ." In addition, the Petitioner referenced two other projects the Beneficiary had worked on, including the " project where the Beneficiary "drove the calculation of 100+ KPI for " It also indicated that on this project the Beneficiary implemented the KPI "to produce transaction-level data for the client." The Petitioner further referenced the Beneficiary's work on the " Hotel Sourcing" project where he "utilized an internal tool to merge duplicate entries and clean the data for use in current state analysis and benchmarking." The Petitioner stated that "while other professionals on [the Beneficiary's] team had some knowledge of these proprietary and highly customized technologies, many of these professionals received training in these technologies directly from the Beneficiary."

The Petitioner stated in the petition that it will pay the Beneficiary $110,000 per year plus "Standard Corporate Benefits."

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad in a specialized knowledge capacity for one continuous year.[1]

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 the Beneficiary possesses specialized knowledge, then we cannot conclude that his past employment involved 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, 8 U.S.C. § 1184(c)(2)(B). 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.

Specialized knowledge is also defined as special 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).

[1] In the denial decision, the Director expressly concluded that the Petitioner did not establish that the Beneficiary "has been employed abroad in a position that...involved specialized knowledge." However, in another portion of the decision the Director discussed whether the Petitioner had established "that the Beneficiary is qualified to perform the intended services in the United States." In doing so, it is not clear whether the Director concluded that the Beneficiary would not act in a specialized knowledge capacity in the United States. Due to this ambiguity, and as discussed, we will only address whether the Beneficiary possessed specialized 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 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 an employee is able to gain specialized knowledge within the organization, and explain how and when the individual beneficiary gained such knowledge.

A. Advanced Knowledge

The Petitioner emphasizes the unique knowledge the Beneficiary holds in its proprietary tools as compared to his colleagues within its greater corporate structure; as such, we will first discuss whether it demonstrated that the Beneficiary's knowledge is advanced.

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.

In articulating its claim that the Beneficiary possesses "advanced knowledge," the Petitioner emphasized that his knowledge of the company's proprietary risk management tools is "uncommon within the company," of "significant complexity and depth," and "exceptionally rare." It also referred to the Beneficiary as "uniquely well-versed" and as a "rare expert." However, the Petitioner does not sufficiently articulate how the Beneficiary gained this knowledge abroad as compared to his colleagues. Determining whether knowledge is "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison.

However, the Petitioner has not sufficiently compared the Beneficiary against his colleagues and explained why and how his knowledge was set apart. For instance, the Petitioner submitted a foreign organizational structure indicating that as manager, global business consulting, he worked with three other analysts. This chart also reflected that he reported to a "Manager Consulting," who in turn was supervised by a "Director Capabilities." However, the Petitioner also stated that the Beneficiary was not promoted to manager, global business consulting, until May 2015, or approximately seven months prior to his transfer to the United States in January 2016. Therefore, the Petitioner has not submitted an organizational chart or comparisons to his colleagues relative to his role as assistant manager, [redacted] performance analytics. This probative evidence is required to demonstrate that the Beneficiary was required to possess specialized knowledge in his role as assistant manager, [redacted] performance analytics.

Regardless, to the extent that the Petitioner provided comparisons of the Beneficiary to his colleagues these did not credibly demonstrate that his knowledge was greatly developed or further along in progress, complexity, and understanding in comparison. For instance, the Petitioner submitted a chart comparing the Beneficiary's knowledge to the three aforementioned analysts who he worked with while acting as a manager, global business consulting. However, these explanations were generic, indicating that the Beneficiary provided "high level analysis" and stating his expertise was based on his "highly unique knowledge of these proprietary [Petitioner] data systems and products." Meanwhile, it stated that the Beneficiary's analyst colleagues only analyzed "lower level quantitative and qualitative data." The Petitioner's comparisons, which were the same in relation to all three analysts, did not indicate how and why the Beneficiary's analysis was "higher level" or how his knowledge was unique in comparison.

For instance, the Petitioner did not articulate the experience or training of these analysts and discuss in detail how the Beneficiary's knowledge, experience, and training was greatly developed in comparison. Likewise, it submitted little supporting documentation to substantiate the Beneficiary acting in either of his roles abroad or evidence substantiating his higher position and knowledge in relation to these colleagues. The Petitioner also did not discuss the Beneficiary's knowledge or how it was set apart, if at all, from other managers within the submitted foreign organizational chart. Further, it provided no specifics as to how many other individuals within the company worked in each of the Beneficiary's stated positions abroad and it did not clearly articulate how his knowledge might compare with these other colleagues working outside of his immediate, and rather small, department.

The Petitioner also emphasized the Beneficiary's work on four different projects, including the [redacted] Sourcing," [redacted] Sourcing," [redacted]' and [redacted] Hotel Sourcing" projects. In each case, the Petitioner explained that the Beneficiary used proprietary technologies, such as the '[redacted]' '[redacted] business practices," "KPIs" implemented by him, as well as a '[redacted]"

However, it is not clear how the Beneficiary's experience on these projects set him apart from his colleagues. In fact, the Petitioner emphasizes that the Beneficiary gained knowledge abroad of several different internal proprietary systems and technologies, including the [redacted]," among others. Yet, the Petitioner does not detail why the Beneficiary's knowledge of these tools is greatly advanced compared to someone similarly placed in the company. Indeed, many of these tools appear from their explanations to be widely utilized systems within the company. Given the Petitioner's business and the [redacted] function the Beneficiary works within, it is reasonable to conclude that these systems are utilized by many in the company to house customer credit data [redacted], to centralize customer spending information [redacted]), and to assess client hotel spending [redacted]). Without further explanation and evidence, it is not clear how the Beneficiary's knowledge of these apparent companywide tools is greater than similarly placed employees within the company.

In fact, the Petitioner submits supporting documentation that leaves significant question as to whether the Beneficiary's knowledge of the company's proprietary tools and his experience on projects is greatly set apart from that of his colleagues. For instance, the Petitioner submitted a handful of "Reward Result"

documents the Beneficiary had received while employed abroad, including one dated in April 2015 related to the hotel engagement. In an accommodation write-up the Beneficiary's manager noted that his work was "particularly impressive as this was one of his first engagements" and exclaimed "thank you [Beneficiary] for excelling in your very first project!" This evidence leaves significant question as to whether the Beneficiary possesses specialized knowledge and acted in a specialized knowledge capacity abroad for at least one year, as it appears to indicate that his first client project was less than one year prior to his transfer to the United States as a specialized knowledge nonimmigrant in January 2016. The Petitioner must resolve this discrepancy 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). Further, it is also noteworthy that the Petitioner provides little insight into how the accommodations the Beneficiary received set him apart from his similarly placed colleagues.

The Petitioner further emphasized that the Beneficiary had "undergone multiple [Petitioner]-specific trainings, including trainings in ' ' (20 hours), ' ' (16 hours), and the ' ' It also noted that the Beneficiary provided training to his colleagues. First, the Petitioner does not submit supporting documentation to substantiate the Beneficiary's completion of his asserted trainings. Further, it does not explain how these trainings make the Beneficiary's knowledge greatly developed when compared to his colleagues; for instance, it does not indicate how many other colleagues attended these trainings.

Likewise, the Petitioner emphasizes that the Beneficiary has "trained [Petitioner] professionals on the proprietary tools of which he possesses expertise," pointing to training he provided to two analysts on the ' ' But again, the Petitioner does not detail how providing training to his colleagues sets him apart within the company. For instance, the Petitioner provided email evidence of four trainings the Beneficiary organized with his colleagues in 2015, including one titled ' Transition Session 1" in December 2015, but there is little indication as to the content of these trainings and it does not describe why his scheduling of these trainings sets him apart from his colleagues. Indeed, it is reasonable to conclude that many employees would have client specific knowledge; namely, the Beneficiary's knowledge of the processes used to provide services to Siemens.

For instance, the Petitioner submitted meeting notices related to a handful of other trainings the Beneficiary attended throughout 2015, including an ' ' and a ' ' in February 2015; and a ' ' in September 2015. In two cases, the organizers of these trainings were the Beneficiary's immediate supervisor; and in the other case, one of his analyst colleagues. As such, the Petitioner's attendance at these trainings suggests that it is likely common for the Beneficiary, or his colleagues, to provide training on client or tool specific knowledge that they may hold; and not necessarily indicative of greatly developed or set apart knowledge.

Although we acknowledge that the Beneficiary's knowledge of the company's proprietary systems appears complex, complexity alone does not demonstrate that knowledge is specialized according to the regulations. The Petitioner has not effectively set the Beneficiary's knowledge apart from his colleagues with detailed and probative comparisons, who also likely have knowledge of the company's proprietary tools, processes, and clients.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary possessed specialized knowledge.

B. Special Knowledge

We will next discuss whether the Petitioner has demonstrated that the Beneficiary's knowledge abroad was "special." 8 C.F.R. § 214.2(l)(1)(ii)(D).

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 special knowledge.

Although the Petitioner vaguely notes that the Beneficiary's knowledge is "exceptionally unique in the industry," it provides little explanation and evidence as to why. Again, the Petitioner asserts that the Beneficiary held special knowledge abroad of the Petitioner's "proprietary and highly customized tools," including '[redacted]' among other internal systems. However, we note that proprietary or company-specific knowledge must still be either special or advanced. We look at the nature of the proprietary knowledge, how it can be acquired, and when and how the Beneficiary gained such knowledge in order to determine whether the knowledge qualifies as "special knowledge."

The Petitioner generically describes the various tools it uses to provide its credit, cost reduction, and risk management services to clients, but did not explain how these tools are distinguished from other similar products on the market beyond simply referring to them as proprietary. Likewise, the Petitioner provides no specific comparisons of the Beneficiary's knowledge in relation to the greater industry; within which, it is reasonable to conclude that other risk management professionals likely have internal tools they use to provide services and to hold client specific information. However, the Petitioner has not articulated why the Beneficiary's knowledge is set apart in the industry, nor has it provided specific comparisons of his knowledge to others similarly placed in the field.

Further, as we discussed, the Petitioner submitted an award document indicating that the Beneficiary received accommodation for working on his first project in April 2015, less than one year prior to his transfer to the United States in a specialized knowledge capacity. Similar to analysis of whether the Beneficiary's knowledge is advanced, this apparent discrepancy leaves substantial question as to whether his knowledge while employed abroad could have been considered distinct or uncommon in comparison to the knowledge of other similarly employed workers in the industry.

Therefore, for the foregoing reasons, the Petitioner has not established that the Beneficiary's knowledge is "special" as defined by the regulations.

Because the Petitioner has not demonstrated that the Beneficiary possessed specialized knowledge while employed abroad, we need not further address whether he is qualified for the proffered position in the United States or whether this position involves specialized knowledge.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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 A-E-*, ID# 6409189 (AAO Nov. 6, 2019)