U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-D-, INC.

DATE: NOV. 8, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a developer of enterprise marketing solutions, seeks to continue the Beneficiary's temporary employment as a "software development developer expert" 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was employed abroad in a specialized knowledge capacity or that he would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision provides insufficient analysis and includes errors of fact. The Petitioner contends that the Beneficiary is the sole software engineer responsible for business critical components of the company's [redacted] mail platform responsible for 75% of its revenue.

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.*

II. BACKGROUND

The Petitioner stated that it is "the leader in enterprise cross-channel marketing solutions," that it has "the only independent, enterprise-grade B2C SaaS marketing platform of scale," and that it serves "more than 3,000 customers around the world and has over 1,600 employees in 17 countries." The

Petitioner indicated that the Beneficiary holds specialized knowledge of "a very complex ESP (Email Service Provider) system, specifically [redacted] Email Marketing Platform." It explained that the Beneficiary enhances, maintains, and supports this system and that it "is a fifteen-year old platform that [has] been used by thousands of clients." The Petitioner asserted that any delays in platform response in this system could lead to "security lapses and vulnerability issues" and that the "ramp up time" to fully understand security vulnerabilities is "two to three years."

The Petitioner stated that the Beneficiary would utilize specialized knowledge of different aspects of the [redacted] platform, including "Extract, Transfer, Load (ETL)," "Loader," "Blackbox," "Reporting," "Redirect," and "Bounce." It further indicated that the Beneficiary "possesses in-depth knowledge of the technologies used to support the [redacted] platform, including "CDB key-value database," "Bernstein deamontools (svc services)," and "Bernstein flavored C language." It explained that the Beneficiary's "combined knowledge of our complex [redacted] platform, application software, system hardware architecture, and legacy technologies is uncommon within our company and across the industry." It added that the Beneficiary would "work closely with business analysts and project managers through "scoping, testing and documentation phases" and "maintain relationships with business units, customers, and information technology subject matter experts." It also stated that in his position abroad, the Beneficiary was involved in "directing the engineering and development of the EU Cookie Compliance project to ensure [redacted] system complied with the EU Cookie," that he remodeled and developed the server-side form validation systems to consolidate all validators," and that he "coordinated with Product, Quality Assurance, Project Managers, Operations, and Release Teams to quickly resolve production issues." Further, it indicated that the Beneficiary assisted and mentored junior developers in code reviews.

In a letter submitted in response to the Director's request for evidence (RFE), the Petitioner stated that "few developers inside or outside of [the company] understand the system as well as [the Beneficiary]." The Petitioner listed several software engineering technologies and skills in which the Beneficiary has specialized knowledge, including [redacted] C, Go, Javascript, SQL, PL/SQL," amongst others, and indicated that while some of these languages and systems where understood by other developers, few could assert that they had used these to develop and enhance [redacted] technology. The Petitioner also explained that to perform the duties of the position, an employee must be proficient in "Git," "Jira," "Puppet," [and] "NoSQL databases such as MongoDB and Hadoop." It asserted that knowledge of a "combination of these technologies is a rare permutation in the field, as it encompasses legacy technologies (which are no longer taught) and modern technologies."

In addition, the Petitioner stated that the Beneficiary was "involved in several projects which required the knowledge of those unique set of technologies," and provided a general overview of the projects he worked on and the technologies he used on these assignments. It explained that the [redacted] platform is maintained by four senior software engineers, each acting as "the sole custodian of business critical subject matter expertise unique to the platform and our business segment." It further indicated that the Beneficiary "is invaluable for designing, aiding, and validating the work performed by the three other engineers dedicated to the platform." It stated that

the Beneficiary "remains the only engineer with specific business subject matter knowledge required for the continued maintenance and development of the core [redacted] platform" and that he is the "sole custodian of business critical application knowledge."

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, and will be employed in the United States, in a specialized knowledge capacity. If the evidence is insufficient to establish that the Beneficiary possesses specialized knowledge, then we cannot conclude that he has been employed abroad in a specialized knowledge capacity.

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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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.

In the denial decision, the Director concluded that the Petitioner did not demonstrate how the Beneficiary's knowledge of the [redacted] platform differed significantly from that held by similarly placed employees both within and outside of the company. The Director noted that the company has many employees; and therefore, that it is likely there are many other employees with narrowly held knowledge of specific products or clients. In addition, the Director stated it was not sufficient for the Petitioner to merely indicate that the Beneficiary is the most knowledgeable in the company without specifically comparing him against his colleagues both within and outside of the company to demonstrate that his knowledge is special or advanced.

On appeal, the Petitioner contends that the Beneficiary is the sole engineer responsible for business critical components of its [redacted] platform that accounts for approximately 75% of its revenue. The Petitioner asserts that it is not clear from the Director's decision why the submitted evidence was insufficient to demonstrate the Beneficiary's specialized knowledge. It further states that it would take at least two to three years to train another employee to the level of the Beneficiary which would cause undue delay and financial hardship.

We find that the Petitioner did not provide sufficient evidence to establish that the Beneficiary possesses specialized knowledge. Although the Petitioner provided evidence indicating that the Beneficiary has years of experience working with its proprietary platform and is therefore an asset to his current and proposed employers, it has not established that the Beneficiary has specialized knowledge or sufficiently explained how he gained his asserted level of knowledge in comparison to his colleagues.

A. Advanced Knowledge

We will first analyze whether the Beneficiary possesses advanced knowledge. The Petitioner does not clearly indicate whether the Beneficiary holds special or advanced knowledge; as requested by the Director in the RFE, but it does emphasize that his knowledge of its platform is greater than that of his colleagues within the company suggesting that his 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 the RFE, the Director emphasized that the Petitioner did not provide a meaningful comparison of the Beneficiary against his colleagues, as necessary, to set his knowledge apart as greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations. In response, the Petitioner did not specifically compare the Beneficiary to his colleagues. We note that determining whether a beneficiary's knowledge is "advanced" requires a comparison of a beneficiary's knowledge to the knowledge of his colleagues within the company. The Petitioner bears the burden of showing that the Beneficiary holds knowledge that is greatly developed or further along in progress, complexity, or understanding than that of his colleagues. However, the Petitioner did not specifically compare the Beneficiary's duties and knowledge to those of other similarly employed professionals within the organization.

The Petitioner only stated that the Beneficiary "remains the only engineer with specific business subject matter knowledge required for the continued maintenance and development of the core platform" and that he is the "sole custodian of business critical application knowledge." The Petitioner also indicated that the Beneficiary was one of a few within the organization holding this level of knowledge; however, the Beneficiary's foreign organizational chart, only applicable to a Malaysian affiliate amongst many other foreign affiliates[1], included fourteen other software

[1] The record includes blanket petitions specific to the Petitioner and the foreign employer's parent company indicating

developers devoted to the platform, including a manager above the Beneficiary, four "team leaders," and four others identified as senior developers like him. Likewise, the Petitioner states that the Beneficiary would work with a large group of other ancillary employees while working in this technology, including business analysts, product managers, business units, technical subject matter experts, quality assurance employees, and operational and release teams. The Petitioner also refers to the Beneficiary as a member of a "rapidly expanding team." It further stated that its platform has been in existence for approximately 15 years, that it has been used to service thousands of clients, and that it is responsible for approximately 75% of its revenue. In addition, it indicated that the company has "1,600 employees in 17 countries" and that it was recently acquired by its new parent company based on its expertise in the platform.

However, it does not provide sufficient detail on how the Beneficiary became the sole engineer responsible for business critical components of its platform in approximately only four years working for the foreign employer prior to his transfer to the United States in 2015. The Petitioner does not explain in detail how the Beneficiary gained some of the most advanced knowledge out of its 1,600 employees in an application accounting for 75% of its revenue. In fact, given the Petitioner's statements and the provided foreign organizational chart, it is reasonable to conclude that many others have high levels of knowledge of the platform.

The Petitioner also states that the Beneficiary has knowledge of several software engineering technologies, including C, Go, Javascript, SQL, PL/SQL," "Git," "Jira," and "Puppet," as well as knowledge of "NoSQL databases" such as "MongoDB" and "Hadoop," amongst others. It also asserts that the "combination of these technologies is a rare permutation in the field, as it encompasses legacy technologies (which are no longer taught) and modern technologies." However, the Petitioner does not describe in detail how this combination of technologies in uncommon or how he gained this level of knowledge. Further, it did not sufficiently describe these technologies or indicate which were "legacy technologies" and "modern technologies."

Likewise, the Petitioner indicated that the Beneficiary worked abroad on "EU Cookie compliance," indicating that he modified applications to allow for "informed consent to lawfully store information or to gain access to information stored in a terminal equipment of a subscriber or user." However, it is not clear how the Beneficiary's focus on this project abroad set him apart from his colleagues. Without further explanation and evidence, it reasonable to conclude that working on EU Cookie compliance was a broad initiative across the company, particularly given the importance of its application and the presumed size of the European market. For instance, as noted, the submitted organizational chart included fourteen other software engineers focused on only within the Beneficiary's one component in Malaysia, but the Petitioner does not indicate how many others were focused on this EU compliance initiative.

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that these affiliated companies account for over 200 entities in various countries.

In addition, the Petitioner stated in response to the RFE that the Beneficiary was a member of a four person team in the United States of senior engineers tasked with the "continued maintenance and functionality" of [redacted] and that "each engineer is the sole custodian of business critical subject matter expertise unique to the platform and our business segment." Again, the Petitioner provides no details or evidence related to these colleagues to differentiate them, and the Beneficiary, from the rest of the employees within its organization. For instance, the Petitioner does not describe how these four engineers gained advanced knowledge in relation to typical engineers within the organization, including the several other [redacted] software developers included within only one component of the Beneficiary's foreign organization. Further, the Petitioner indicates that the Beneficiary is "invaluable for designing, aiding and validating work performed by the three other engineers dedicated to this platform," but it does not explain in detail how the Beneficiary exercises this authority over his colleagues nor does it submit supporting documentary evidence to substantiate this assertion.

Therefore, for these reasons, we conclude that the Petitioner did not establish that the Beneficiary's knowledge is advanced or greatly developed or further along in progress, complexity, or understanding than others within the organization.

B. Special Knowledge

Next, we will analyze whether the Beneficiary's knowledge is special as defined by the Act. As the Petitioner generically indicates that the Beneficiary's knowledge is both special and advanced, its assertions with respect to the special nature of his knowledge are similar to those discussed in the previous section.

Because "special knowledge" concerns knowledge of the employing 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.

As discussed, the Petitioner states that the Beneficiary holds knowledge in a combination of technologies that "is a rare permutation in the field, as it encompasses legacy technologies (which are no longer taught) and modern technologies." However, the Petitioner provides little detail to corroborate this statement, such as indicating which technologies are no longer taught or what specifically about this combination of knowledge in technologies makes it a "rare permutation."

In fact, in support of the petition, the Petitioner submitted an industry article specific to the company dated in June 2017 which reflected that there are several other similar "enterprise software companies." The article also referenced the acquisition of [redacted] by the Petitioner's foreign parent, but further discussed several other similar acquisitions by similarly placed companies in the industry, including Alliance Data buying Epsilon, Teradata acquiring eCircle, IBM purchasing

Silverpop, Salesforce buying ExactTarget, and Oracle purchasing Responsys and Eloqua. However, the Petitioner provides little detail on what makes the Beneficiary's knowledge distinct or uncommon in comparison to the knowledge of other similarly employed workers in his particular industry. The fact that the Beneficiary holds knowledge of a proprietary platform is not alone sufficient to demonstrate that his knowledge is special, as it appears that several other companies in the industry have similar platforms, and it is reasonable to conclude that many employees hold high levels of knowledge in these applications.

Again, determining whether a beneficiary's knowledge is "special" requires a comparison of that knowledge to the knowledge of others who hold comparable positions in the Petitioner's industry. The Petitioner bears the burden of showing that the Beneficiary holds knowledge that is noteworthy or uncommon compared to his colleagues outside the organization. However, the Petitioner did not specifically compare the Beneficiary's duties to those of other similarly employed professionals at comparable organizations, nor did it establish that using and further developing the platform is different from and requires knowledge that is "special" as compared to similarly employed individuals within the same industry.

In light of the above, we find that the Petitioner has not established that special knowledge is required to perform the Beneficiary's assigned duties or that his knowledge is distinct and can be taught only through prior experience with the organization. The Petitioner does not adequately specify how the Beneficiary's knowledge is "special" or sufficiently establish how and when he gained his knowledge. While the Beneficiary may be an experienced information technology professional and a valuable employee of the company, the record lacks sufficient evidence to establish that his knowledge is "special," as defined in the Act and regulations. The Petitioner has submitted little evidence to set the Beneficiary's knowledge apart or to demonstrate that it is uncommon, noteworthy, or distinguished by some unusual quality when compared to similar placed workers in the industry. Due to these evidentiary deficiencies, the record does not establish that the Beneficiary possesses "special" knowledge.

IV. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge, that he was employed abroad in a position involving specialized knowledge, and that he would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of C-D-, Inc.*, ID# 1700934 (AAO Nov. 8, 2018)