U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6830038

Date: NOV. 21, 2019

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner is a plastics manufacturing company that seeks to employ the Beneficiary temporarily as a "PET Process Engineer" 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 California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we find that the Petitioner did not meet that burden. Therefore, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, 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. Section 101(a)(15)(L) of the Act. 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

The Petitioner is a distributer of various plastic products that are supplied by its Vietnamese parent entity, which designs and manufactures molds for these products using polyethylene terephthalate ("PET"). The Petitioner states that it works with its clients to produce plastic packing products that meet their needs. It claims that the Beneficiary "possesses specialized and advanced knowledge" of its products and its plastic mold manufacturing process for three types of products – PET preforms, caps and enclosures, and pharmaceutical bottles. The Petitioner points to product design features that it claims are specific to its organization and provides a broad overview of the manufacturing process that is used to make its products, stating that the process is comprised of four steps – injection, storage,

reheating, and blowing the plastic into a finished plastic container – and requires the use of processing, measuring, injection, and extrusion machines that are purchased from various companies worldwide. The Petitioner states that from the time the Beneficiary was hired as a PET technician, he received "continuous training on the specific processes that are unique to [the foreign entity]'s molds and equipment" and claims that the Beneficiary was promoted to the position of "Injection Technical Team Leader" in May 2018, claiming that his training resulted in the Beneficiary becoming "fully equipped" with the knowledge to carry out the duties of the team lead position. The record shows, however, that in his proposed U.S. position the Beneficiary would assume the position of "PET Process Engineer" and that he would be compensated at an annual rate of $37,000.

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.

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 the Beneficiary's past and intended future employment involve specialized knowledge.[1]

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.

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.

Special knowledge concerns knowledge of the petitioning organization's products or services and its application in international markets. To establish that a beneficiary has special knowledge, 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.

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity may meet its burden through evidence that the beneficiary has knowledge of or

[1] The Petitioner does not claim that the Beneficiary was employed abroad in an executive or managerial capacity.

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.

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 present matter, the petition shows that the Beneficiary commenced working for the foreign parent entity in July 2017 and continued to work there through the date of filing. In the initial support letter, the Petitioner briefly discussed the Beneficiary's employment history stating that the Beneficiary started working with the foreign entity in July 2017 as a technical executive in the PET department until he was promoted to a team lead position in May 2018, approximately ten months after his employment with the foreign entity commenced. The Petitioner provided a foreign document titled "Decision," along with its translation, documenting information about the promotion. We note that any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* The translation in this instance was not certified nor was any information provided as to who completed the translation. As such, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

Aside from the lack of certified translation, there are several anomalies that further undermine the validity of this document. Namely, while Article 1 of the document states that the Beneficiary assumed the promotion position as team lead on "the 6th day of May 2018," Article 3 of the same document states that the "Decision shall replace all the previous decisions and take effect from July 5, 2018." The Petitioner did not explain the apparent inconsistency between the given date of the promotion and the effective date of the document, where the said document was not due to go into effect until two months after the date of the alleged promotion. It is also worthy to note that the dates in the translation do not match those in the original version of the document. While Articles 1 and 3 of the original document reference only one date – "5/6/2018" – the translation mentions two – May 6 and July 5, 2018. Further, it is unclear whether the numerical sequence of the abbreviated date reference in the original version of the document was intended to show month, day, year, which would translate to May 6, 2018 thereby matching one of the dates cited in the translation, or whether the sequence was intended to show day, month, year, which would indicate that June 5, 2018 was the reference date thereby not matching either of the dates in the translated document. The Petitioner must resolve these inconsistencies by submitting independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We further note that the Petitioner did not did not provide a job duty breakdown for the Beneficiary's former position as a technical executive and it did not clarify whether the specialized knowledge claim extends to the former position or whether it applies exclusively to the Beneficiary's current position as a team leader for which the Petitioner provided the following job duty breakdown:

- Research, design, build, and improve on the foreign entity's automated machinery and processes and make repairs to existing machinery;
- Execute production plans and assign tasks to members of the PET group;
- Research and gather information on manufacturing processes and equipment and develop methods to improve the manufacturing process;
- Troubleshoot and work with mechanical design engineers to debug automated equipment and machinery; and
- Work with other departments to provide automation solutions for new product launches and samples.

The Petitioner also provided the following job duty breakdown for the Beneficiary's proposed position in the United States:

- Oversee blow molding systems in the PET production process;
- Participate in the development of a maintenance plan that will maximize the efficiency and ensure functionality of operations processes;
- Manage the process of converting raw materials to finished products;
- Develop and evaluate tools for creating new molds;
- Troubleshoot and oversee equipment and engineering processes and take inventory of spare parts and tools needed for all molds;
- Develop new methods and equipment improvements; and
- Train process molding technicians and shift supervisors.

The Petitioner did not state why specialized knowledge is needed to perform the foreign and proposed listed duties, nor did it distinguish between the tools and processes of its organization from those used by other companies in the industry. As such, the Petitioner did not establish that there was a basis for claiming that knowledge of its equipment and processes could not be easily transferred without "significant cost" to the company, nor did it identify specific features of its equipment that can only be used by someone possessing specialized knowledge or point to complex aspects of its processes that require specialized knowledge to implement.

In a request for evidence (RFE), the Director found that the Petitioner did not show when the Beneficiary gained knowledge that is claimed to be specialized, state the minimum time needed to gain such knowledge, or establish that specialized knowledge was and would be needed to perform the Beneficiary's assigned duties. The Director also found that the Petitioner did not demonstrate that the Beneficiary's knowledge of its organization's products and mold manufacturing processes is either "special" or "advanced." The Director instructed the Petitioner to explain the Beneficiary's knowledge and state why it is specialized, provide evidence showing that the Beneficiary's prior education or training resulted in the specialized knowledge he is claimed to have acquired, and discuss how the Beneficiary's knowledge compares to that of others who are similarly employed within the plastic manufacturing industry.

In response, the Petitioner resubmitted the "Decision" document and its English language translation, but did not supplement the record with a translator certification or acknowledge or resolve the previously noted anomaly regarding the date of the Beneficiary's claimed promotion. The Petitioner also offered two response statements and a payroll record containing information about the Beneficiary's employment with the foreign entity from January 2016 through March 2019. The two response statements indicate that the Beneficiary's foreign employment commenced in April 2013; this claim is inconsistent with the petition and corresponding initial support letter, which state that the foreign employment commenced in July 2017. To the extent that the payroll record contains the Beneficiary's wage information going back to January 2016, it too is inconsistent with the petition and corresponding support letter.

Further, the payroll shows that the Beneficiary's monthly salary remained unchanged from January 2018 to January 2019, despite showing that the Beneficiary was promoted from technical staff to a team lead position in April 2018. In fact, the payroll record shows that the Beneficiary's monthly salary did not increase until February 2019, thus showing that for approximately ten months the Beneficiary continued to receive a monthly salary that is consistent with a technical staff position even though he was purportedly promoted to a higher position in a specialized knowledge capacity. As such, the salary increase that is shown in the payroll record does not correspond with the Beneficiary's claimed promotion and no evidence was provided to show that the purported promotion resulted in the Beneficiary gaining an increased level of knowledge or being assigned job duties with added complexity that would demonstrate that the Beneficiary attained a "special" level of knowledge of the employer's products or equipment or an "advanced" level of knowledge of that entity's processes and procedures. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In one of its RFE response statements the Beneficiary's duties were described as "special" because they were claimed to require unique skills, techniques, and knowledge and the use of "highly sophisticated machine components." However, the Petitioner did not explain how these requirements are unique in comparison to others within the employing entity or within the plastics manufacturing industry. Although the Petitioner also claimed that the molds developed by the foreign entity have "proprietary features and functions," it did not describe those features or functions or distinguish them from those of other entities in the industry. Likewise, the Petitioner referred to the proprietary nature of its machines, but did not describe any proprietary features to establish that specialized knowledge was required to understand how these machines function; instead, the Petitioner claimed that it was unable to "release much of this information" because of its proprietary nature. As noted above, the Petitioner's assertions must be supported by relevant, probative, and credible evidence. *Id.*

Further, although the Petitioner claimed that it would take an individual at least three years "to become fluent" with the foreign entity's machines, it did not provide a path for becoming "fluent" or establish that achieving fluency in the Petitioner's machines is synonymous with attaining specialized knowledge. In fact, the Petitioner claimed that the foreign entity "developed copious amounts of training materials, from manuals to instructional videos, to train our technicians and engineers." However, it stated that "the difficult part is adjusting to the many parameters." Other than claiming that the specialized knowledge can only be gained through hands-on experience, the Petitioner did not describe a progression of knowledge during the course of the Beneficiary's foreign employment or

demonstrate that the Beneficiary's knowledge increased in its level of complexity to reach a specialized level of knowledge. It is therefore unclear how the Petitioner determined that it would take another employee at least three years to acquire specialized knowledge.

Moreover, even if the Petitioner were to establish that three years of training and hands-on experience would be required to gain specialized knowledge of its organization's products or equipment or its processes and procedures, the record does not contain sufficient reliable evidence showing that the Beneficiary met this prerequisite. As highlighted earlier, both the petition and the Petitioner's initial supporting letter state that the Beneficiary's employment with the foreign entity commenced in July 2017, which would mean that the Beneficiary would have had only 18 months of combined training and on-the-job experience at the time of filing. Although the Petitioner has since submitted two subsequent statements claiming that the Beneficiary's foreign employment commenced in 2013 and provided a payroll record showing that the Beneficiary was employed by the foreign entity since at least January 2016, it has not resolved the inconsistencies between the recently submitted evidence and the information offered at the time of filing. *See Ho*, 19 I&N Dec. at 591-92. Since the Petitioner claims that the foreign entity has continuously provided the Beneficiary with the training and experience that resulted in his gaining specialized knowledge, it is critical to determine precisely when his employment with the foreign entity began. The existing discrepancies regarding this relevant issue causes us to further question when and how the Beneficiary obtained knowledge that is claimed to be specialized.

On appeal, the Petitioner maintains the claim that the Beneficiary has specialized knowledge of its organization's products, services, equipment, techniques, processes, and procedures, pointing to the Beneficiary's promotion to a team lead position, which it claims took place in June 2018. We note that the new promotion date mentioned on appeal is inconsistent with the previously submitted evidence, thus adding to, rather than resolving, existing discrepancies regarding the date of the Beneficiary's claimed promotion. *See id.* Although the Petitioner also states that the foreign entity manufactures its own molds and claims that those molds were "developed from proprietary features and functions," as noted earlier, it does not describe these features or functions to support the contention that one must have specialized knowledge or that three years of training and experience is necessary to work with these molds.

The Petitioner claims that it would take "at least three years of on-the-job experience" working with the organization's "highly technical methodologies"; however, it has not described a progression of knowledge the Beneficiary purportedly gained on his way to achieving the specialized level of knowledge he is now claimed to have, nor has the Petitioner described its methodologies, explained what makes them "highly technical," or established that one needs to possess specialized knowledge to implement these "highly technical methodologies."

The Petitioner also contends that the Director disregarded the USCIS Policy Memorandum PM-602-0111, L-1B Adjudications Policy (Aug. 17, 2015), because she neglected to consider that "[t]he beneficiary's claimed specialized knowledge normally can be gained only through prior experience with the petitioning organization." We disagree with the Petitioner's interpretation of the cited memorandum. Although the memorandum lists several factors that may be considered as part of a "totality of the circumstances" assessment, it does not state that demonstrating the presence of one of the cited factors should automatically result in the finding that a beneficiary possesses specialized

knowledge. Accordingly, even if the Beneficiary's knowledge can only be gained through his prior experience with the petitioner's organization, a totality of the evidence analysis requires that we consider other relevant factors. In this instance, such relevant factors included the lack of information about the proprietary nature of the employer's products or equipment or its processes and procedures,[2] the lack of evidence showing how the Beneficiary gained the knowledge that is claimed to be specialized, and the lack of reliable evidence establishing the length of the Beneficiary's foreign employment, which is claimed to have resulted in his gaining specialized knowledge.

In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that he was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

[2] Although the Petitioner is not required to provide evidence that Beneficiary's knowledge is proprietary or unique in order to establish that the Beneficiary's knowledge is "special" or "advanced," here, the Petitioner itself raises the claim that the Beneficiary has proprietary knowledge and thus in doing so it must substantiate this claim with adequate supporting evidence. *See Chawathe*, 25 I&N Dec. at 376.