U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-R-&T-, INC.

DATE: OCT. 2, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a provider of automation test framework products and services, seeks to temporarily employ the Beneficiary as a senior engineer 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director failed to consider all relevant evidence submitted in support of the petition and failed to apply the preponderance of the evidence standard to the facts presented.

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

The Petitioner provides testing solutions and services for networking, security, telecommunications, and wireless technology companies. Its testing solutions include [redacted], a test automation framework for testing of TCP/IP products, and [redacted] a large scale simulator.

The Petitioner states that it has two employees, with 70 technical staff, including the Beneficiary, working for its [redacted] subsidiary. The Beneficiary joined the foreign entity in 2005 and has been working as a project manager for a [redacted] project for the Petitioner's U.S. client, [redacted], since November 2017.[1] The Petitioner now seeks to transfer the Beneficiary to the United States to serve as a senior engineer and indicates that he will continue to work on this client account with additional responsibilities for training new U.S. staff, providing support to other U.S. clients using [redacted] and contributing to the product's ongoing enhancement. He has been offered a salary of ¥540,000 (approximately $80,000) and will be paid by the foreign subsidiary.

The Beneficiary has a bachelor's degree in metallurgical engineering from [redacted] University. The Petitioner provided evidence that he passed the [redacted] "National Computer Rank Examination" with the rank of "software engineer." He joined the foreign entity with three years of experience as a software developer.

III. SPECIALIZED KNOWLEDGE

The sole issue to be addressed is whether the Petitioner established, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in position involving specialized knowledge,[2] and that he will be employed in a specialized knowledge capacity in the United States.

In the denial decision, the Director noted that the Petitioner did not provide evidence of any training completed by the Beneficiary or otherwise explain how specialized knowledge can be gained within the organization. Further, the Director found that the Petitioner did not provide evidence that would allow for comparisons between the Beneficiary's knowledge and that held by other similarly employed workers within the organization and in the Petitioner's industry at large. On appeal, the Petitioner asserts that it submitted sufficient information and supporting documentation to establish the Beneficiary's eligibility by a preponderance of the evidence.

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.

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[1] At the time of filing, the client's name was "[redacted]." The Petitioner provided evidence of the client's name change in response to the Director's request for evidence.

[2] The Petitioner did not claim, in the alternative, that the Beneficiary was employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

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).

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 he has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.

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. Special Knowledge

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.

Here, the Petitioner asserts that the Beneficiary possesses special knowledge of both its flagship [redacted] product as well as a customized version of that product that was developed for its client, [redacted] The Petitioner claims that such knowledge is special compared to others within the company and not available outside of the company because the source code of the [redacted] automation framework is proprietary and copyrighted. However, we note that knowledge that is proprietary or company-specific must still be either special or advanced. We look at the nature of the proprietary knowledge, how it can be acquired within the company, and when and how the Beneficiary gained such knowledge in order to determine whether the knowledge qualifies as "special knowledge.

The Petitioner describes [redacted] as "the first commercial automation framework in the international market," but the Petitioner's client describes it as "the best software of its kind available," thus suggesting that there are other similar products available. [redacted] automates the execution

of test scripts and procedures to enable repeatable regression test methodologies and can alleviate the need for manual testing of TCP/IP networking products. The Petitioner submitted information regarding its product, but did not explain how it is distinguished from other similar products on the market. Nevertheless, the Petitioner stated that the knowledge required to customize [redacted] requires "much more than general software development skills and cannot be performed by any other software developer without undergoing significant training from [the Petitioner]."

Specifically, the Petitioner indicates that "[a] minimum of one year is generally required for an experienced Engineer to become fully trained in [the company's] proprietary [redacted] automation framework system software development procedures", with more time required to learn how to integrate the framework with customers' products. The Petitioner has not stated that the Beneficiary himself completed any training in [redacted] and did not submit any training records or similar documentation in response to a request for evidence (RFE) issued by the Director.

We have, however, considered the Petitioner's claims that the Beneficiary was directly involved in the development of the [redacted] flagship product. If his role in the product's development were established in the record, then such role would perhaps explain why the Beneficiary would not have completed the product training. However, the record contains ambiguous statements and evidence that have not been resolved. For example, in its initial supporting letter, the Petitioner stated that the Beneficiary, based on his years of experience with the foreign subsidiary, "has gained extensive experience with the proprietary processes, procedures, design, and critical technologies of our flagship product." However, the Petitioner did not state that the Beneficiary actually developed the product. In response to the RFE, by contrast, the Petitioner indicated that the Beneficiary "has spent over 13 years participating in the development of [redacted] to keep up with the advancements in technology." On appeal, the Petitioner refers to the Beneficiary as "one of the original developers of the [redacted] software source code."

The Petitioner has not stated exactly when [redacted] was developed or first introduced to the market, but the [redacted] copyright registration for this product is dated in 2012. Any claim that the Beneficiary has been working on the product for 13 years is therefore not adequately supported in the record. In addition, other evidence in the record does not support the Petitioner's statement that he was one of the product's original developers. The Petitioner provided a copy of the Beneficiary's resume, in which he states that he works in the foreign entity's "Outsourcing Software Testing Department."[3] According to the projects he describes in his resume, he spent his first 10 years with the Petitioner's foreign subsidiary performing outsourced testing services for client's networking products using hardware, software and tools such as Windows, Linux, Eclipse, Java, Jenkins, Webdriver, Git, Jscript, QFTest, Selenium etc. The record does not reflect that any of these technologies are specific to its company.

The Beneficiary's resume does indicate that since April 2015, he has worked on two projects which required him to "design and implement new features in [redacted]" based on customer requirements, so that it could be used to test the customers' products. However, the resume does not

[3] According to a submitted "Company Overview," the Petitioner sells its own automation testing framework products, such as [redacted] and [redacted], but also provides "software development and consultation services, such as outsourced software test, embedded system, network protocols, and interface drivers, as well as script development, automation hosting . . . [.]"

support the Petitioner's claim that the Beneficiary was an original developer of its flagship product's source code or that he has worked with this product over the course of 13 years as he does not mention working with the product prior to 2015. It remains unclear whether he was required to complete any in-house training in [redacted] when he transitioned from providing outsourced testing services using industry-standard technologies to customizing [redacted] for the Petitioner's customers.

Further, we note that the submitted letters from the foreign subsidiary tend to confirm the information in the Beneficiary's resume, rather than confirming the Petitioner's claims that he was an original developer of the [redacted] product. The foreign entity's letter notes that the Beneficiary supports the foreign entity's [redacted] development team based on his knowledge of third-party network devices and security software, but does not state he is or was a member of that development team or that he otherwise had a role in the original development of the product. Rather, the foreign entity's emphasis is on the Beneficiary's role in developing customizations for [redacted] for a specific client, [redacted]

Again, given that the Petitioner claims that a minimum of one year of training would be required for an experienced engineer to become fully trained in the company's [redacted] software development procedures, it is reasonable to expect the Petitioner to consistently explain and document when the Beneficiary himself acquired his proprietary product knowledge. The Petitioner has not demonstrated that the Beneficiary completed this training and has not supported its claim that he actually developed the product, a role that might preclude the need for training. If he was able to transition from providing outsourced testing services for clients to developing new features in [redacted] without completing such training, then this undermines the Petitioner's claim that the knowledge needed to customize [redacted] for clients rises to the level of specialized knowledge. Proprietary knowledge that can be easily imparted from one person to another is not considered special knowledge. Here, the Petitioner did not establish when or how the Beneficiary acquired the claimed special knowledge, or how long it took him to acquire the knowledge.

As a result, the record does not support the Petitioner's claim that an experienced testing engineer would require one year of training in [redacted] in order to customize the product for a client. The Petitioner indicates that [redacted] can be integrated with and customized for a customer's internal systems using third-party software tools and programming and scripting languages that appear to be common in the industry, and it has not described in any detail what would be included in the claimed one year training period. The Petitioner provided copies of the tables of contents for [redacted] user manuals designed for administrators and test executors, but did not provide any context or explain how the user manuals provide evidence that knowledge of the product itself should be considered specialized knowledge.

Next, we will turn to the Petitioner's claim that the Beneficiary possesses special knowledge of the customized version of [redacted] specifically developed for its client, [redacted] While the record corroborates the Beneficiary's involvement in a project for this client, it has not established that his work on the development of customizations for the client involved special knowledge that is different from what is commonly held within the company or within the Petitioner's industry.

The Petitioner submitted a copy of a "Consulting Agreement" with [redacted] dated in March 2017. The agreement indicates that the Petitioner would "undertake and complete the Services (as defined in Exhibit A) in accordance with and on the schedule specified in Exhibit A." The Petitioner did not provide a copy of the referenced Exhibit A, and the agreement itself does not contain any reference to [redacted] or the nature of the services to be provided by the Petitioner. In response to the RFE, the Petitioner provided a letter from [redacted] confirming that it is the Petitioner's customer, that it purchased and uses the [redacted] software, and that it requires the Petitioner to customize and provide support for the software, and to train its technical staff. The client indicates that it looks forward to having the Petitioner provide faster, locally-based support, but it does not specifically mention the Beneficiary.

The Petitioner emphasizes that "learning customer product integrations in order to develop a [redacted] customized automation framework for the customer . . . requires training with and from the customer's internal product design teams." The Petitioner emphasizes that the Beneficiary is the only employee from its [redacted] subsidiary who has traveled to the United States to receive direct training from [redacted] and notes that his knowledge is therefore "distinct from other employees in the company and cannot be easily acquired by others in the software development industry." However, the Petitioner has not offered any documentary evidence of this customer-provided training or explained what it entailed. U.S. Citizenship and Immigration Services (USCIS) records confirm that the Beneficiary was in the United States for one week in 2017 (November 29 through December 6) when he was first assigned to the [redacted] project but the Petitioner has not explained how training that was provided in such a short time period enabled him to acquire special knowledge that could not be readily transferred to another employee.

Overall, the Petitioner did not describe the Beneficiary's claimed special knowledge with sufficient specificity and instead relies on (1) an unsupported claim that he was an original developer of its [redacted] product; (2) the proprietary nature of the product; and (3) his completion of a short period of training with a U.S. customer. The Petitioner's explanations and supporting evidence regarding the development of [redacted] are insufficient to support its claim that the Beneficiary developed special knowledge of the system that is uncommon within the company. Further, the Petitioner did not adequately support its claim that it would take more than a year to train an experienced engineer to acquire the same level of knowledge possessed by the Beneficiary. The record contains insufficient evidence to establish that the Beneficiary possesses "special knowledge" that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained software testing professionals in the Petitioner's industry.

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.

In articulating its claim that the Beneficiary possesses "advanced knowledge," the Petitioner emphasizes that the Beneficiary was "one of the original developers of the [redacted] source code." For the reasons discussed above, this claim is not adequately supported in the record.

The Petitioner also claims that the Beneficiary possesses advanced knowledge relative to other company employees, with respect to the [redacted] customization project. In its letter, the foreign entity stated that "[n]o other engineer at [the foreign entity] in [redacted] possesses the specialized knowledge of the [redacted] version of [redacted] that [the Beneficiary] has acquired as the primary designer and developer of this . . . system." The letter states that the foreign company was attaching its "accounting payroll spreadsheet and the resumes of the other engineers in [the Beneficiary's] group to prove that he is the most experienced and qualified project manager at our company," but this evidence was not attached to the letter, nor was comparable evidence submitted.

In the denial decision, the Director noted that the Petitioner did not provide supporting evidence, such as job descriptions or training histories, for the other employees identified in the foreign entity's organizational chart. The Director observed that the chart submitted, which is labeled "Organizational Chart [redacted] (partial)," showed two other project managers and 14 senior engineers in the Beneficiary's department and noted that the record did not contain supporting information that would allow USCIS to make comparisons between the Beneficiary and other similarly employed workers in the organization.

In response to this finding, the Petitioner states that it and the foreign entity "develop multiple products beyond [redacted] and have various customers aside from [redacted]." The Petitioner explains that "the other Project Managers and their teams do not work on the accounts as the Beneficiary." The Petitioner further explains that others employed by the foreign entity "do not possess the knowledge . . . with the same degree of customer specificity that the beneficiary possesses with respect to [redacted] software or [redacted] products." The Petitioner summarizes its claim by noting that "the beneficiary's specialized knowledge is more 'special' than the other Project Managers who work on other accounts and have absolutely no experience with the design and development of the customization framework for [redacted] and much more 'advanced' than the other Senior and lower Engineers who lack the many years of [redacted] development experience possessed by the Beneficiary." The Petitioner concludes that the Beneficiary "has knowledge of or expertise in the [company's] specific processes with regards to is proprietary [redacted] software" that is advanced compared to other employees working for its subsidiary.

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. While the Petitioner states that other project managers are assigned to different customer accounts and do not have the Beneficiary's knowledge of the [redacted] project, the record demonstrates that the Beneficiary himself was required to undergo, at most, one week of training with the customer when switching from one [redacted] customization project to another.

Further, the Petitioner's description of the Beneficiary's proposed U.S. duties indicates that he is expected to provide support for [redacted] for all U.S. customers, not only [redacted] This role would reasonably require him to support customized versions of [redacted] with which he has no prior project experience. The Petitioner has not established that knowledge of a specific customer project rises to the level of "advanced knowledge" within the company, such that every project manager would be deemed a specialized knowledge employee. Further, although the Beneficiary's job title is "project manager," we cannot determine that he has advanced knowledge relative to a "senior engineer" based solely on his job title or placement on an organizational chart. As noted by the Director, the record does not contain information regarding the job duties or training histories of the other members of the foreign entity's engineering department.

The Petitioner also highlights the Beneficiary's current and proposed training responsibilities as evidence of his advanced knowledge. The Petitioner notes that his role at the foreign entity requires him to "train other engineering teams . . . on [redacted] technology, including framework development and customization." However, neither the Beneficiary's resume nor the letter from his foreign employer specifically mention any training responsibilities, and the record does not contains supporting evidence demonstrating the Beneficiary's role and responsibilities as a trainer. The foreign entity indicates that he supports the foreign entity's [redacted] development team with his knowledge of third-party network devices and security software, but it is unclear if this is consistent with the Petitioner's statement that he provides training in [redacted] customization. As noted, the Beneficiary indicates that he is on the "testing" team and not a part of the development team.

With respect to his proposed training responsibilities in the United States, we note that the record does not demonstrate that the Petitioner currently employs any engineers or other technical staff, and it indicated on the Form I-129 that it has only two workers. While the Beneficiary's knowledge of [redacted] and related processes and procedures may be advanced compared to future hires, the Petitioner must still show that he possesses advanced knowledge in comparison to similarly employed workers within the foreign entity and that the knowledge he possesses could not be readily transferred to another employee with a similar technical skill set. The Petitioner did not provide the information needed to make such a comparison and has not established that he possesses advanced knowledge.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further 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 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 S-R-&T-, Inc.*, ID# 6156604 (AAO Oct. 2, 2019)