U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-K-A-C-O- [redacted]

DATE: OCT. 3, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an "[redacted]," seeks to temporarily employ the Beneficiary as its [redacted] Technician" 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge or that she was employed abroad in a specialized knowledge capacity and would be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner disputes the Director's decision and contends that the Beneficiary had advanced knowledge of the foreign entity's proprietary treatments, programs, and procedures, which were cultivated through "many years of practice and research."

Upon *de novo* review, we find that the Petitioner has not established that the Beneficiary possesses specialized knowledge and that she was employed abroad and would be employed in the United States in a specialized knowledge capacity. Therefore, 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 states that it is an [redacted] health services provider that uses proprietary health and beauty packages and therapies. It claims that its foreign parent entity has developed "various unique approaches to the [redacted] [and] [redacted] treatments" and that "only persons with specialized and deep knowledge and experience" on the treatment procedures and herbal preparations can determine the appropriate treatment based on clients' specific ailments. The Petitioner does not describe the proprietary nature of its treatment procedures and claims that the Beneficiary has advanced knowledge of the Petitioner's various therapies and treatment processes and procedures, which she has and will continue to implement in her employment with the U.S. entity. To support the claim that the Beneficiary possesses the requisite specialized knowledge, the Petitioner refers to the Beneficiary's "extensive training in [redacted] Massage and [redacted] Therapy," including a diploma the Beneficiary obtained from the foreign entity's training institute and the formal training curriculum she completed in April 2017 during her U.S. employment.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether she 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 she 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.

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

As the Petitioner claims that the Beneficiary has "advanced" knowledge and does not specifically claim that the Beneficiary has knowledge that is "special," we will only address the claim being made and will discuss whether the Beneficiary's knowledge is "special."

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 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 and when the individual beneficiary gained such knowledge.

In the present matter, the Petitioner describes the therapeutic products and services it offers, repeatedly referring to the "various [redacted] preparations" and "unique methods" for administering those preparations. The Petitioner also lists a variety of ailments that its products and services are used to address, claiming that only an "extensively trained" person can make the herbal preparations used in the course of the treatments it offers. The Petitioner does not, however, describe the proprietary nature of its processes and procedures or explain why "advanced" knowledge is required to implement them. Although the Petitioner claims that the Beneficiary is able to perform her job duties because she is highly trained, it does not describe a path for attaining advanced knowledge or establish that knowledge that is greatly developed or further along in progress, complexity, and understanding in comparison to the Petitioner's other employees is needed to perform the Beneficiary's duties.

The Petitioner also discusses the Beneficiary's training, stating that the Beneficiary completed a "rigorous and extremely extensive" 12-month training program in April 2011 at a training institute owned by the foreign entity, which "awarded" the Beneficiary a diploma for "successful completion" of its "[redacted] Therapies" program. The Petitioner does not claim that the training the Beneficiary received prior to assuming her initial position abroad was limited to only certain employees or that the Beneficiary had to meet other prerequisites prior to assuming that position. Rather, the Petitioner indicates that the Beneficiary assumed the position of "[redacted] Technician" upon completing the 12-month in-house training program, and although the record demonstrates that the Beneficiary received 12 more months of "intensive theoretical and practical training" during her employment in the United States, there is no nexus between the additional training, which the Beneficiary completed in April 2017 during her employment in the United States, and her position as "lead" technician, which she held during her employment abroad and which took place prior to the additional training. As the Petitioner did not complete the additional training during her employment abroad, it cannot be said that the knowledge gained from such training was relevant

to the Beneficiary's foreign employment or the specialized knowledge she was claimed to possess in the course that employment.

Further, the Petitioner's claim that the Beneficiary was one of only two people among the foreign entity's employees to receive "such in-depth and extensive training" appears to have no basis, as there is little to suggest that only the Beneficiary and one other individual were privy to the training; merely claiming that the Beneficiary was "among the select few" chosen to complete the training does not establish that it was given to only two employees. If, as the Petitioner indicates, the "in-depth and extensive training" was offered to the Beneficiary and one other employee, it is unclear how the foreign entity was able to acquire other [redacted] technicians. Moreover, the Beneficiary's job description expressly states that the Beneficiary's job duties included training "new employees" to perform [redacted] and [redacted] therapies, make the therapeutic preparations, and use the foreign entity's "proprietary treatment packages." This claim negates the notion that the Beneficiary's knowledge was held by only a few people, as the Beneficiary's job description specifically states that she was responsible for disseminating her knowledge of the organization's products and treatments to other company employees. If USCIS finds reason to believe that an assertion stated in the petition is not true, USCIS may reject that assertion. *See, e.g.*, Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

We further note that the record does not clarify how the Beneficiary attained the presumably elevated position of "Lead [redacted] Technician," which she is claimed to have commenced "beginning in 2012." Although the Petitioner refers to the "exclusive and proprietary approaches" of its organization, it does not indicate that the Beneficiary underwent further training abroad, beyond the initial one-year program, to gain knowledge that is claimed to be "advanced" with respect to those approaches, nor does the record contain evidence demonstrating that the Beneficiary's knowledge was greatly developed or further along in progress, complexity and understanding as compared to the knowledge of other [redacted] technicians employed by the foreign entity. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

On appeal, the Petitioner reiterates its claim regarding the Beneficiary's advanced knowledge, once again emphasizing its "unique, exclusive and proprietary approaches" to [redacted] treatments and programs as well as the Beneficiary's "additional" training, which she received after becoming an [redacted] technician. As in its prior submissions, however, the Petitioner does not list the notable characteristics of its "proprietary approaches" to distinguish them from those of other [redacted] practitioners. Further, despite claiming that the Beneficiary was able to address a host of health afflictions by using the foreign employer's proprietary treatments and [redacted] preparations, the Petitioner did not establish that the formal training the Beneficiary received during her employment abroad resulted in advanced knowledge of these treatments and preparations or that advanced knowledge was required for the Beneficiary to carry out her assigned duties. Moreover, the claim that the Beneficiary acquired and used specialized knowledge during her employment abroad is contradicted by the fact that the Beneficiary did not undergo the additional training, which forms the basis of the Petitioner's specialized knowledge claim, until after she stopped working for the foreign entity and, in fact, had been working for the U.S. entity for approximately one year by the time such

training had commenced. In other words, if the additional U.S. training is directly responsible for the Beneficiary gaining advanced knowledge of her employer's proprietary treatments and procedures and the Beneficiary did not complete such training until sometime into her period of employment with the U.S. entity, then it stands to reason that the foreign position, which the Beneficiary held prior to commencing the additional training in the United States, could not have involved specialized knowledge and the Beneficiary cannot be deemed as having worked abroad in a specialized knowledge capacity. As noted earlier, USCIS may reject an assertion that is reasonably found to be untrue. *See, e.g.*, Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d at 1220; *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. at 10; *Systronics Corp. v. INS,* 153 F. Supp. 2d at 15. Thus, even if, *arguendo*, the Petitioner were able to establish that the additional year-long training the Beneficiary received during her employment in the United States resulted in advanced knowledge of the organization's proprietary treatments and procedures, the Petitioner would be precluded from meeting the criteria for this nonimmigrant classification because it has not established that the Beneficiary's foreign employment, for which the additional training was not a prerequisite, was in a specialized knowledge capacity.

Furthermore, as noted earlier, the Petitioner has not adequately described the proprietary treatments and procedures or pointed to distinguishing characteristics to establish that such treatments and procedures are not commonly found within the industry or that advanced knowledge is required to implement these treatments and procedures. Although the Petitioner stated that the Beneficiary is responsible for preparing its manual describing its standard operating procedures, it has not established that advanced knowledge is required to carry out this responsibility. By definition, the term "standard" implies that the procedures can be used by personnel company-wide and would not require specialized knowledge to interpret or apply. It is therefore reasonable to conclude that one need not possess specialized knowledge to create this broadly applicable manual.

In sum, we find that the Petitioner did not establish a clear path for gaining specialized knowledge within its organization or demonstrate that, in fact, the Beneficiary gained such knowledge. Rather, the Petitioner focused primarily on the Beneficiary's formal training – both abroad and in the United States – but did not establish that such training resulted in specialized knowledge of the treatments and procedures that the Beneficiary implemented during her employment abroad and which she now uses in her position with the petitioning entity. As such, the Petitioner has not established that the Beneficiary acquired specialized knowledge and was employed abroad and 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-K-A-C-O-* [redacted], ID# 6432445 (AAO Oct. 3, 2019)