U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-S- LLC

DATE: OCT. 17, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of auto body components, seeks to temporarily employ the Beneficiary as its sales administration manager under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge.

On appeal, the Petitioner submits a brief asserting that the Beneficiary's use and understanding of proprietary products, development processes, manufacturing techniques, and costing and quotation capital approval models and processes equate to possessing specialized knowledge as compared to others within the organization and the industry.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A 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 managerial or executive capacity. *Id.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

The statute defines specialized knowledge as a special knowledge of the company product and its application in international markets or an advanced level of knowledge of processes and procedures of

the company. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). Our regulations define specialized knowledge as:

> [S]pecial 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).

II. SPECIALIZED KNOWLEDGE

The issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge and was employed abroad in a specialized knowledge capacity.

In the denial decision, the Director found that the record lacked evidence to demonstrate that the Beneficiary's proficiency in the use of the foreign entity's products, processes, techniques, and models equates to specialized knowledge. The Director further determined that the Petitioner did not compare and contrast the Beneficiary's duties and knowledge with those of others in similar positions within the foreign organization or within the industry. In light of these findings the Director concluded that the record lacked supporting evidence to establish that the Beneficiary's position as an account executive involved special or an advanced level of knowledge.

On appeal, the Petitioner contends that the Beneficiary "gained a large degree of specialized knowledge" in the foreign entity's products and product components, which allowed him to "effectively support customers [*sic*] engineering changes requests and all associated [company] quotation processes and procedures." The Petitioner claims that the Beneficiary has specialized knowledge of the foreign entity's "project-related costing structures" and further points out that the Beneficiary used the company's "proprietary [redacted] to analyze and report projected returns on investments concerning new projects and changes made to existing projects. The Petitioner claims that the Beneficiary possesses knowledge that is both special and advanced.

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 specialized knowledge capacity.

Under the statute, 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.

A. Special Knowledge

The Petitioner claims that the Beneficiary has "special knowledge" of a product – a specific front-end module auto body part developed by the foreign entity for [redacted] automobiles. Although the Petitioner states that the Beneficiary underwent over 150 hours of training, it claims that he acquired this knowledge through on-the-job experience while working for the foreign affiliate from 2009 to 2014. The Petitioner states that it would take approximately two years to transfer this knowledge to another employee.

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.

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.

The Beneficiary's foreign employer, [redacted], is a manufacturer and distributor of painted automotive plastic parts and components. Its clients are major car manufacturers. In a supporting statement, the Petitioner stated that the Beneficiary was employed as an account executive and that he acquired specialized knowledge of front-end modules, an auto body part, which was then supplied to [redacted] one of [redacted] key clients. The Petitioner provided the following statement about the Beneficiary's former employment as an account executive at [redacted]

> [The Beneficiary] facilitated new business development and commercial activities for assigned accounts, including [redacted] . . . . He continually communicated and coordinated with [redacted] Account Managers and Program Managers regarding new project and tooling quotations, and engaged in customer price negotiations regarding tooling changes. [He] interacted with customer purchasing, engineering, quality assurance, and logistics professionals regarding information required for new projects, engineering changes and associated costs, project timing and deliverables and quality approvals. He liaised with [redacted] engineering teams [and] developed quotations for both new projects and engineering changes utilizing customer cost

> models and price breakdowns, and evaluated new projects for potential capital equipment requests. He assisted in developing annual business plans, and coordinated with company Accounts Payable personnel for payment recovery.

The Petitioner also provided evidence of the Beneficiary's education, which includes a baccalaureate degree in industrial engineering and a master's degree in business administration. The Petitioner did not mention or document any company-specific training in its original submission.

The Director issued a request for evidence (RFE) informing the Petitioner that the foreign job description it provided in support of the petition lacked sufficient detail establishing that the Beneficiary's job duties required specialized knowledge. The Director further stated that the job description did not establish that the Beneficiary's job duties were either "special" or "advanced" and went on to state that the Petitioner did not indicate which of these terms should be applied to the Beneficiary's former position with the foreign entity. Lastly, the Director stated that the Petitioner did not compare the Beneficiary's duties and knowledge to those of others within the same organization or within the same industry. The Petitioner was allowed an opportunity to cure these evidentiary deficiencies by submitting a statement from the foreign entity explaining how the Beneficiary's knowledge is different from that of others in similar positions in the industry; describing the product, service, equipment or process in which he has specialized knowledge; and stating the minimum time required to obtain this knowledge, including training and actual experience accrued after the completion of training.

In response, offered a statement which contained information about the Beneficiary's colleagues, including two other account executives whose duties were nearly identical to the Beneficiary's, despite the fact that their respective college degrees varied with the Beneficiary holding an industrial engineering degree and a master's degree in business administration and his colleagues holding a bachelor's degree in industrial engineering and a bachelor's degree in business administration, respectively. The Petitioner did not claim that a specific degree was required to perform the Beneficiary's assigned job duties, which, as noted above, greatly overlapped with those performed by his two colleagues with lesser educational credentials.

The statement went on to discuss the Beneficiary's role as "primary liaison between the U.S. and Mexican commercial and engineering teams" in matters dealing with price quotation activity in relation to a project with claimed that in order to work on the project, the Beneficiary had to "gain a large degree of specialized knowledge" in front-end modules, as well as "program-specific engineering" about the product's components. It further claimed that in 2012 the Beneficiary "was instrumental in modifying" the front-end module program, but did not state specifically what his contribution was or establish that specialized knowledge was required in order to make that contribution. Rather, the statement included general information about the Beneficiary's role in the front-end module program, referring to the Beneficiary as "the point person" with respect to "all highly specialized and proprietary engineering and commercial details" and highlighting his role in "coordinat[ing] the preparation of detailed quotations" for program-related costs.

While [redacted] statement also indicated that the Beneficiary's work in its front end module projects involved "proprietary [redacted] products, development processes, and manufacturing techniques," it did not identify any proprietary products, development processes, or techniques, and instead identified a proprietary tool – the [redacted] which it claimed the Beneficiary used to evaluate and analyze new projects and engineering changes to existing projects. [redacted] also stated that the Beneficiary was the only account executive "focused on front-end modules and active grille shutter programs for critically important [redacted] clients such as [redacted] indicating that this factor is directly related to the Beneficiary's claimed specialized knowledge. However, the statement did not establish that being the only account executive who worked on these components was an indicator that the Beneficiary's knowledge was "special"; nor did the Petitioner establish that the Beneficiary was actively selected as the only account executive to work on these projects because of the type of knowledge he possessed. [redacted] also claims that the Beneficiary's knowledge is different from other account executives within the industry because his position "involve[d] very detailed commercial and engineering concepts and issues specifically for major [redacted] front end module projects which are based upon proprietary [redacted] products, development processes, and manufacturing techniques." Again, the letter did not identify with specificity any of [redacted] products, development processes, or manufacturing techniques.

Further, while we acknowledge the Petitioner's submission of a detailed job description delineating the duties the Beneficiary performed during his employment abroad, we find that [redacted] statement did not adequately respond to the RFE, which instructed the Petitioner to distinguish the Beneficiary's knowledge from that used industry-wide, state whether the Beneficiary's knowledge is generally found in the industry, and specify the minimum time that is required to obtain such knowledge. [redacted] letter also did not specify the product, service, or tool that the Beneficiary used that required specialized knowledge or establish that the Beneficiary's knowledge was "special" with respect to a product, service, or tool. In other words, the Director sought an understanding of what qualifies the Beneficiary's knowledge as special and precisely how he gained such knowledge. Although the statement lists nine training programs the Beneficiary completed for a total of 154 hours, it explains that formal training programs are not emphasized as a means of gaining specialized knowledge. It states instead that an account executive "develops this expertise through the course of assignments to major automotive systems programs" and specifies two years as the minimum time required for another account executive to gain the knowledge that is necessary to assume "a lead role with respect to major [redacted] front end module programs." The letter did not specify what knowledge the Beneficiary gained that should be deemed "special" or state precisely when the Beneficiary gained such knowledge. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In the denial decision, the Director stated that the Petitioner did not show how the Beneficiary's proficiency in using [redacted] products, processes, techniques, and models equates to specialized knowledge. The Director noted that the Petitioner did not compare and contrast the

Beneficiary's position to similar positions within the same employer or industry and concluded that his duties appeared to have been similar to those of others in similar positions within the industry.

On appeal, the Petitioner disputes the Director's findings, again highlighting the Beneficiary's five-year employment with and his significant contributions to a program in 2012 that resulted in improvements to an active grille shutter mechanism that "featured a unique design." The Petitioner claimed that the improved grille shutter systems are "industry-leading and gained significant acceptance" in the industry and that the equipment, systems, and techniques used to develop these products should therefore be considered "special." However, the Petitioner does not specify the Beneficiary's actual contribution to the improved product or explain why specialized knowledge was required to make such a contribution. Likewise the Petitioner provided a detailed list of duties that the Beneficiary performed, but did not explain how these duties demonstrate "special" knowledge of products when compared to other account executives in the industry.

As previously stated, 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. By itself, simply claiming that knowledge is proprietary will not satisfy the statutory standard. We acknowledge that experience with front-end module program may not be available to those outside the Petitioner's group of companies. However, the Petitioner must still establish that the Beneficiary's knowledge is different from that generally known by account executives working with similar products and that it is not easily imparted to another professional who has the requisite commercial and engineering knowledge. The Petitioner's claim that the Beneficiary worked with "very detailed commercial and engineering concepts and issues" that are specific to front-end module programs and are based on proprietary knowledge of its "products, development processes, and manufacturing techniques" is not sufficient. The Petitioner must support its claim with a definitive explanation of what about the front-end module projects requires special knowledge and what specific "proprietary products, development processes, and manufacturing techniques" the Beneficiary used in working with and improving upon the products that sold to its automotive client. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Without an understanding of these basic elements, we cannot compare the Beneficiary's knowledge to that held by other similarly-employed professionals working in the automotive body parts industry.

We also look to the amount of training and experience required to perform the duties in order to evaluate whether the knowledge required is distinct from that commonly held in the industry and could not be readily transferred to a similarly employed worker. In this matter, aside from the Petitioner's repeated claims that the Beneficiary's years of work experience with the foreign entity resulted in his acquiring specialized knowledge, the record contains only vague information and lacks evidence that specifies the actual steps that are required to obtain the knowledge that the

Petitioner claims is specialized. In fact, the record shows that the Beneficiary assumed his position as account executive in 2009, the same year he earned his master's degree, and that he maintained the same position throughout the duration of his employment with the foreign entity. The Petitioner claimed it would take another account executive a minimum of two years to attain the Beneficiary's level of expertise in working with products; however, the Petitioner did not state or provide evidence to show that the Beneficiary's position evolved over time or that the duties the Beneficiary performed when he was initially hired were different from duties he performed two years into his period of employment such that a higher level of knowledge was required. If the Beneficiary was able to carry out the job duties required of his position at the time he was hired, the Petitioner is not justified in claiming that the foreign position required specialized knowledge, which the Beneficiary did not have when he was first hired. As noted above, the Petitioner must support its assertions with relevant, probative, and credible evidence. *See Id.* at 376. Here, we cannot determine when or how the Beneficiary gained the claimed specialized knowledge and therefore we cannot conclude that the knowledge can only be acquired through considerable work experience.

In sum, while the Beneficiary may be a valuable employee of the company and an experienced account executive, the record is insufficient to establish that the Beneficiary's 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. Due to these evidentiary deficiencies, the record does not establish that he possesses knowledge that is "special."

B. Advanced knowledge

We have also considered whether the evidence establishes that the Beneficiary possesses "advanced knowledge." Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the Petitioner may meet its burden through evidence that the 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. 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 present matter, while the Petitioner stated that the Beneficiary used -specific "quotation processes and procedures," which required the use of the proprietary ' it did not state what specific elements of the Beneficiary's knowledge of the proprietary cost quoting process or procedure make it "advanced" such that it is not commonly found within the auto parts industry or is greatly developed as compared to the knowledge of others within the foreign entity. The Petitioner's broad claims that the Beneficiary has advanced knowledge of processes and procedures are not sufficient without a detailed

description of the processes and procedures and an explanation clarifying what about those processes and procedures makes the Beneficiary's knowledge advanced.

In the RFE, the Director asked that the foreign employer explain how the Beneficiary's position involved advanced knowledge of the company's processes and procedures and to specify how long it would take to acquire such knowledge.

In the foreign entity's RFE response letter, it made vague references to its "quotation processes and procedures," but did not describe what those processes and procedures entailed or definitively state what knowledge the Beneficiary needed to acquire to learn those processes and procedures.

A determination of whether a beneficiary's knowledge is "advanced" inherently requires a comparison of his or her knowledge against that of others in the petitioner's organization. Here, the foreign entity claimed that the Beneficiary "was the sole Account Executive . . . focused upon front-end modules and active grille shutter programs for critically important clients." Although the Beneficiary's job description reflects that he is an experienced account executive, the Petitioner has not specifically explained how his knowledge and experience set him apart from his colleagues within the company, such that his knowledge would qualify as "advanced" for the purposes of the L-1 visa classification. As stated above, despite the additional credentials the Beneficiary has by virtue of having obtained a master's degree in business administration, the record does not indicate that this higher level professional degree was a prerequisite to his attaining the position of account executive, given that [redacted] had two other account executives performing similar job duties and yet neither had a master's degree of any kind. Without sufficient explanations or evidence, the Petitioner cannot meet its burden of establishing that the Beneficiary's knowledge of the company's processes and procedures is advanced compared to others within the organization. Therefore, we conclude that, while the Beneficiary is a skilled employee, his skills have not been shown to constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and section 214(c)(2)(B) of the Act.

The record does not establish that the Beneficiary possesses specialized knowledge or that he has been employed abroad in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses specialized knowledge or that he was employed abroad in a position involving specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-S- LLC*, ID# 643559 (AAO Oct. 17, 2017)