U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-C-, INC.

DATE: OCT. 19, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer technology consulting company, seeks to temporarily employ the Beneficiary as a analyst 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 record did not establish, as required, that the Beneficiary possesses specialized knowledge, that he has been employed abroad in a position involving specialized knowledge, or that he will be employed in a specialized knowledge capacity in the United States. The Director further found that the Beneficiary's assignment to the worksite of an unaffiliated employer would not be in compliance the provisions of the L-1 Visa Reform Act, which prohibits L-1B nonimmigrants from providing "labor for hire."

On appeal, the Petitioner asserts that the Director misapplied the law based on an incomplete review and understanding of the Petitioner's claims, and reached a decision that is inconsistent with the record. The Petitioner maintains that the Beneficiary possesses advanced knowledge of software that is unique within the company and within the industry at large.

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 law states that a beneficiary is considered to be serving in a capacity involving specialized knowledge with respect to a company if the beneficiary has a special knowledge of the company

product and its application in international markets or has 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).

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).

An individual L-1B classification petition must be accompanied by evidence that: (1) the petitioner and the foreign employer of the beneficiary are qualifying organizations; (2) the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; (3) the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; and (4) 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).

II. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the Beneficiary's duties are typical of a worker with a computer engineering background and the Petitioner had not established that his knowledge of the Petitioner's products, processes, or methodologies is truly distinct or uncommon compared to other similarly employed workers in the industry or advanced compared to other workers in the company who also work with [redacted] The Director further found that the Petitioner did not establish that it would be difficult for similarly employed workers in the industry to acquire any company-specific knowledge the Beneficiary possesses, noting that the Petitioner did not show that he had completed extensive training within its group of companies.

On appeal, the Petitioner maintains that the Director did not consider all relevant evidence in reaching her decision and did not appear to fully understand the nature of the claimed specialized knowledge despite the Petitioner's explanations. The Petitioner contests the Director's finding that its submissions did not describe the claimed specialized knowledge with specificity or explain how such knowledge is gained within the organization. It maintains that the totality of the evidence establishes that the Beneficiary possesses specialized knowledge because his knowledge of [redacted] software is advanced both within the company and within the industry. The Petitioner also claims that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with guidance provided in USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda.

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.

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. 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.

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.

Here, the Petitioner claims that the Beneficiary possesses advanced knowledge of [redacted] software gained through training and 12 years of professional experience using the software, including approximately 9.5 years gained with its Indian parent company.

A. Background

The Petitioner's parent company is an information technology firm with consulting competencies in a number of industries and technologies, including [redacted] technologies. The Petitioner explained that [redacted] an unrelated entity, develops [redacted] software for manufacturing companies. [redacted] initially built a software product called [redacted] using [redacted] and relational database. In 2007, [redacted] renamed its core product suite from [redacted] to [redacted] Enterprise Application or [redacted]

The Petitioner explained that the foreign entity has long-standing contractual relationships with both [redacted] and [redacted] "has consistently worked on [redacted] and its applications since the initial version of [redacted] and "is one of the few companies in existence that deeply understands the customization and development of [redacted] The Petitioner stated that its foreign parent has worked on [redacted] "multiple versions, multiple technological ecosystems, multiple customizations, its integrations with multiple third party software and applications" all of which gave the foreign entity a "capability edge that very few companies in the world can match."

The Beneficiary has worked for the foreign entity as a [redacted] Consultant since March 2010 (approximately seven years), and previously held the position of software engineer from July 2004 until January 2007, when he was initially trained on [redacted] and assigned to [redacted] projects. He worked as a software engineer with two unrelated employers between 2007 and 2010, where his assignments also required him to use [redacted] The Petitioner emphasized that he has worked with multiple versions of [redacted] and [redacted] for 18 customers worldwide, and has experience with [redacted] implementation, consulting, application development, integration, and support services across different industries.

The Petitioner signed a Technical Services Agreement with [redacted] in 2007, under which it provides development and support services to [redacted] and its clients in the United States. The Petitioner stated that it has been providing [redacted] and [redacted] to customers in the U.S. market since 1999. The Petitioner seeks to transfer the Beneficiary to the United States as a [redacted] Analyst and will assign him to a client worksite where he would be "defining, developing, integrating and implementing solutions to their existing systems."

B. Advanced Knowledge

The Petitioner's primary claim is that the Beneficiary possesses advanced knowledge of [redacted] software in comparison to that found in the industry at large and in comparison to other professionals within its organization, including those who work with [redacted]

Determinations concerning "advanced knowledge" require review of a beneficiary's knowledge of the specific 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, 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.

Here, the Petitioner has neither claimed nor documented that the Beneficiary has advanced knowledge of company-specific *processes or procedures*, nor has it identified any specific processes or procedures that it has adopted for the implementation of [redacted] software that would differentiate it from other companies that offer [redacted] consulting services. Rather, his claimed advanced knowledge relates to the [redacted] third-party software *product* and its integration with other third-party software products. While the Beneficiary may have advanced knowledge of this product based on his 12 years of professional experience gained with the Petitioner's foreign parent company and two unrelated entities, this is not the type of "advanced knowledge" contemplated by the statutory definition of "specialized knowledge."

Absent evidence that the Petitioner has actually developed internal processes and procedures for implementing [redacted] projects that are particularly complex such that they could not be readily imparted to a [redacted] consultant from outside the company, the Petitioner has not established the basis for an "advanced knowledge" claim.

C. 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. As with advanced knowledge, 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.

Here, the Petitioner claims that the Beneficiary possesses knowledge of software that is uncommon in the industry and quite rare within the Petitioner's organization. As noted, is not the Petitioner's product but rather a product developed by and based on the programming language. While the Petitioner need not establish that the Beneficiary's knowledge is proprietary or unique, it bears the burden of showing how his knowledge of this third-party software qualifies as distinct or uncommon in comparison to others. The Petitioner draws comparisons based on both the foreign entity's consulting capabilities compared to the industry at large, and based on the Beneficiary's own professional experience working with the product relative to other employees in the company.

First, the Petitioner emphasizes that its foreign parent has been working with and since the development of predecessor product, noting that, as a result of this history, its group of companies has a "capability edge that very few companies in the world can match."[1] While the foreign entity has been providing and consulting services to its clients over a significant period of time, the record does not contain sufficient support for its claim that it is one of few companies in the world that can provide these services, or that it has developed an unmatched body of institutional knowledge of this third-party product that should be considered "special knowledge." The Petitioner does not identify any particular services it provides that are different or uncommon in the industry, or explain how the foreign entity's experience with "multiple versions, multiple technological ecosystems, multiple customizations" differentiate its services to the extent where special knowledge specific to the petitioning company would reasonably be required to implement software for one of its clients.

Later, in response to the Director's request that the Petitioner submit evidence to show how the Beneficiary's knowledge differs from that generally found in the industry, the Petitioner responded that "it is impossible . . . to submit evidence of the qualifications of every single IT worker in the industry." Rather than try to differentiate its services from those provided by other consulting companies, the Petitioner stated that "the fact that the Beneficiary's specialized knowledge is so unique even within a large global IT organization is evidence that his knowledge is rare within the IT field at large." However, this explanation does not distinguish any aspect of the foreign entity's services from those generally offered in the industry and speaks more to the size of its consulting practice than to its actual expertise. In fact, given the Petitioner's emphasis on the foreign company's unmatched capabilities in providing consulting services, it seems incongruous for the Petitioner to also claim that the Beneficiary is practically the

[1] The public website for includes a list of its 86 Global Network Partners. Neither the Petitioner nor its foreign parent company are listed among these partners. *See* www. (last accessed on October 4, 2017).

only employee in the foreign company who actually possesses the knowledge required to provide such services.

The Petitioner notes that, as a result of his 12 years of work experience, the Beneficiary has "special, advanced, sophisticated, complex knowledge of the technology and that his "adroit knowledge of is not generally available in the marketplace" or "readily transferable to another individual." The record shows that the Beneficiary completed a three-month training program in and upon joining the foreign company. The Petitioner emphasizes that cannot be learned at a university and that training is limited to those companies who have access to training programs. While may not be the most widely known system, it is reasonable to believe that any consultant, including those outside of the petitioner's group of companies, would complete a similar training prior to working with clients. The Petitioner has not claimed that it customized the training or that its training conveys skills or knowledge about that would not be learned by other professionals. The Petitioner's claim is based primarily on the sheer length of the Beneficiary's professional experience with this third-party software, as it emphasizes that his knowledge is not shared by other practitioners because it was gained "over a period of 12 years" both with the foreign entity and with unrelated employers.

The Petitioner has made varying claims regarding the number of analysts and consultants the foreign entity employs in support of its claim that the Beneficiary's knowledge is uncommon within Petitioner's group. Initially, the Petitioner stated that only five of its parent company's employees "have knowledge of and how to use it" and submitted a chart showing that the Beneficiary, as a senior consultant, oversees a team of four people and reports to a Delivery Manager, who, in turn reports to the Competency Head for & The Petitioner emphasized that the Beneficiary's specialized knowledge of is unique within the company because he leads the team, has worked with all modules, and has worked with many clients, such that it would take at least five years of exposure to projects to develop equivalent knowledge. The Petitioner submitted detailed resumes for the Beneficiary's team members in support of its claim that the Beneficiary's knowledge is specialized in comparison. Two of the team members indicate they have "expert" proficiency in with 4.4 to 5 years of experience in these areas, while the other two indicate "professional" proficiency in with 3 to 4 years of experience.

In response to the Director's request for evidence, the Petitioner provided some additional points of comparison, noting that the foreign parent has 1069 employees,[2] of which approximately 750 are software professionals.[3] The Petitioner emphasized that only 25 of those workers use but did not explain why it previously indicated the size of the foreign entity's consulting practice is limited to five employees. The Petitioner again noted that four of those users report to the Beneficiary, while three others are employed on the same level as the Beneficiary. The Petitioner provided a chart identifying the names, job titles, experience, education level, and salaries of

[2] The Petitioner indicated in its initial support letter that the foreign entity has 650 employees.

[3] The foreign entity's technical competencies are wide ranging and, based on its organizational chart, include SAP, PEGA BPM, Salesforce, Microsoft, Java, eLearning and other areas, in addition to

the foreign entity's [redacted] team. The team includes three other senior consultants with more than 12 years of [redacted] experience and two consultants with over 10 years of experience. While the foreign entity's [redacted] practice is not large and the Beneficiary is one of the most experienced members of that practice, these facts are not sufficient to establish that he possesses truly distinct or uncommon knowledge of this software beyond what would normally be held by a [redacted] consultant working in this industry.

The Petitioner also distinguishes the Beneficiary's knowledge by noting that its U.S. client provided him with a total of 14 days of training in [redacted] modules which would be required for the U.S. assignment at the client's site, but did not establish why these minimal training requirements would be difficult to provide to another employee with the required [redacted] proficiency.

The Petitioner emphasized that it has no [redacted] specialists among its 18 U.S.-based employees. As noted, the Petitioner signed an agreement with [redacted] to provide support services for its products in 2007, nearly 10 years before it filed this petition, and it submitted copies of other contracts in which it represents to clients that it is a company with [redacted] and [redacted] capabilities. The Petitioner apparently chooses to outsource these services to its parent company and temporarily transfer foreign employees to the United States as needed to provide on-site services to its clients. The Petitioner's business and staffing model may have created a need to rely on foreign employees to provide these services; however, that does not lead to a conclusion that the foreign employees possess specialized knowledge as defined in the statute and regulations.

The Petitioner states that it has a time-sensitive need for the transfer and the economic inconvenience of training another employee for five years should be considered as a factor in determining whether the position requires specialized knowledge. However, the Petitioner must still establish that the knowledge itself is different or uncommon. The Petitioner did not establish that the Beneficiary possesses knowledge that is different from what would be held by a similarly experienced [redacted] consultant or that he possesses any company-specific knowledge that could not be readily transferred. The Petitioner stated that it would be "unjust" to insist the company "hire an untrained individual and spend five years training him in all three modules of [redacted]." The Petitioner has not supported its assertion that the Beneficiary is one of few people in the industry who possesses five years of practical work experience working with [redacted] software. The record does not support the Petitioner's suggestion that the IT industry as a whole lacks [redacted] specialists, or establish that the ability to integrate [redacted] with other third-party software constitutes specialized knowledge specific to the petitioning company.

Finally, we acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. However, for the reasons already discussed, the Petitioner has not submitted sufficient evidence to establish that the Beneficiary possesses knowledge that is either special or advanced. While the Beneficiary may be filling a role that is beneficial to the Petitioner's competitiveness in the marketplace and the Petitioner has a time-sensitive need for the services of a [redacted] Analyst, these characteristics alone are not probative of his specialized knowledge. As noted in the memorandum, the "characteristics"

listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." *Id.* The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id.* at 13.

Although the Petitioner considers the Beneficiary to be a valuable employee who excels at his position, it has not sufficiently shown that his knowledge of company processes and procedures is advanced compared to other similarly employed workers, or that he possesses special knowledge of the third-party software that is significantly different from what is generally held in the Petitioner's industry.

Because the Petitioner has not demonstrated that the Beneficiary possesses advanced or special knowledge, we need not address whether the Beneficiary will be employed in the United States in a specialized knowledge capacity or whether his employment at the worksite of the unaffiliated employer requires specialized knowledge.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of P-C- Inc.*, ID# 645621 (AAO Oct. 19, 2017)