U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-A-S-USA INC.

DATE: OCT. 29, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an aeronautical engineering company, seeks to temporarily employ the Beneficiary as an aircraft mechanic in its new office[1] 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 California Service Center denied the petition on multiples grounds, concluding that the Petitioner did not establish that: 1) it had a qualifying relationship with the Beneficiary's foreign employer, 2) it was doing business in the United States as defined by the regulations, 3) the Beneficiary was employed in a specialized knowledge capacity abroad, 4) the Beneficiary was qualified to perform the intended services in the United States, and 5) the Beneficiary's proposed position in the United States would involve specialized knowledge.

On appeal, the Petitioner contends that it has provided sufficient evidence to establish that the Petitioner and the Beneficiary's foreign employer are affiliates owned and controlled by the same foreign parent company. The Petitioner also asserts that since it filed a new office petition, it was not required to demonstrate that it was doing business as of the date the petition was filed. Lastly, the Petitioner states that it provided sufficient evidence to establish by a preponderance of the evidence that the Beneficiary's position abroad involved specialized knowledge and that he would act in a specialized knowledge capacity in the United States.

Upon *de novo* review, we conclude that the Petitioner has submitted sufficient evidence to demonstrate that it has a qualifying relationship with the Beneficiary's foreign employer; as such, this basis for denial is withdrawn.[2] In addition, we concur with the Petitioner's reasoning on appeal that since it

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F).

[2] The Petitioner provided stock certificates and other corporate documentation to sufficiently establish that the Petitioner and the Beneficiary's foreign employer are affiliates, both commonly owned indirectly through various companies by the same corporate parent company.

filed a new office petition, it was not required to establish that it was doing business as defined by the regulations as of the date the petition was filed.[3] Therefore, this ground for denial is also withdrawn. Lastly, the submitted evidence demonstrates that the Beneficiary would more likely than not be qualified to perform his proposed duties in the United States.[4] We will also withdraw this basis for denying the petition.

However, the Petitioner has not established that the Beneficiary's position abroad, or his position in the United States, involved specialized knowledge. For this reason, 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).

If a beneficiary is coming in a specialized knowledge capacity to open a new office, the petitioner must submit evidence that it secured sufficient physical premises to house its operation, evidence that the new business entity is or will be a qualifying organization, and evidence that it has the financial ability to remunerate the beneficiary and to commence doing business in the United States. *See generally*, 8 C.F.R. § 214.2(l)(3)(vi).

II. BACKGROUND

The Petitioner indicated that it and its affiliated companies are "world leader[s] in defense and security innovation," including aerospace and aircraft. The Petitioner further stated that the Beneficiary is employed abroad in the "mechanical design and service arm" of the company and explained that its "primary operations involve the mechanical upgrade and operation of various types of aircraft…as well as providing turnkey air operations solutions and an aviation training academy."

In addition, the Petitioner indicated that its group of companies "is the world's foremost knowledgeable company with respect to the maintenance, servicing, and reconditioning of the [redacted] fighter and assault craft." It also stated that its foreign parent company purchased [redacted]s from the [redacted] air force in 2005, "including the aircraft, training aids, documentation, tools, special

[3] A petitioner filing a new office petition need only demonstrate that it *will be* a qualifying organization, it has the financial ability to remunerate the Beneficiary, and the ability to commence doing business. 8 C.F.R. § 214.2(l)(3)(vi)(B)-(C). Further, a new office is defined as an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). As such, a new office petitioner need not demonstrate that it is doing business as of the date the petition is filed, only that it is more likely than not to commence doing business during its first year of operation.

[4] The Petitioner provided documentation indicating that the Beneficiary completed the foreign employer's two and a half year mechanic's training course. Therefore, it is likely that he would be qualified to perform the duties of an aircraft mechanic for the company. The nexus of our analysis should be whether the Beneficiary's knowledge is specialized.

and test equipment, spare parts, and pilot training simulators;" and that it has been training and hiring key employees since this time to become the "sole complete solutions provider for the [redacted]" aircraft. The Petitioner explained that it has contracts in place with two U.S. defense contractors, both of whom had purchased fleets of non-operational [redacted], to properly restore and maintain them. It stated that it was incorporated in the United States and would be funded to commence the restoration of these aircraft for these defense contractors, "so that these companies can provide much needed adversary air services to the [redacted]." Further, it indicated that "many of the specialized technicians who have made [the Beneficiary's foreign employer] so successful, including the Beneficiary will be transferred to [the Petitioner] to undertake the restoration of the [defense contractors'] [redacted]."

The Petitioner explained that the Beneficiary had just completed a two and half year apprenticeship with the foreign employer during which he was "trained in servicing of the [redacted]'s [redacted] engine…at the [foreign employer's] Training Academy" and indicated that he had completed "well over 6000 hours over three years in hands-on training and servicing of the [redacted]." It stated that the Beneficiary began this training in January 2016 and been certified to maintain the [redacted] aircraft in June 2018.[5] The Petitioner noted that the Beneficiary's knowledge related to the [redacted] aircraft is "special, unusual, uncommon, rare and extremely advanced compared to mechanics, artisans and technicians employed in the industry" and that "U.S. aircraft mechanics would not begin to know how to restore them to active duty."

The Petitioner further stated that training on the [redacted] aircraft was only previously attained through military service with the [redacted] Air Force, or through the company that formerly manufactured these planes which no longer provides support and maintenance on them. The Petitioner indicated that knowledge on the restoration and maintenance of the [redacted] could only be attained through its group of companies. It stated that this left an "enormous gap" between its mechanics and those in the industry that could only be closed by spending at least three years of training on the [redacted]. The Petitioner also explained that the Beneficiary would continue to work as a "Junior Artisan[6]" while performing services for its two defense contractor customers in the United States, further noting that he had "only recently completed his apprenticeship."

The Petitioner stated in the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary would be paid $16,000 per year in his proposed position in the United States. In a request for evidence (RFE), the Director made light of this salary and how it appeared very low compared to typical aircraft mechanics working in the United States. In response, the Petitioner stated that while the Beneficiary's level of specialized knowledge was high, his tenure was relatively short. However, it noted that the Beneficiary would also receive a per diem of $100 while employed in the United States which "over the course of one year…would bring his base compensation to $52,000."

In addition, the Petitioner explained that the Beneficiary's knowledge was "distinct and uncommon as compared to others similarly employed throughout the aircraft maintenance industry." It also submitted a letter from one of its customers explaining the unique nature of the Beneficiary's knowledge as follows:

[5] The petition was filed on December 12, 2018.

[6]

> The [ ] are materially different from commercial planes and [ ] military planes in terms of their ejection seats, hydraulic systems, engine systems, test kits, tooling and avionics. These planes have technology that is and would remain obsolete if [the foreign employer] had not created and perfected the means of modifying and updating these systems. These systems are not digital; the mechanic cannot plug them into a computer, read some codes and follow the repair instructions. These planes have analog systems. Diagnosing and repairing them is an art that is perfected through many years of hands-on experience — experience that only [foreign employer] artisans like the Beneficiary possess in the modern aviation industry.

Lastly, the Petitioner provided a breakdown of the training the Beneficiary received on the [ ] indicating that he received "hands-on training" in the restoration and maintenance of [ ]s amounting to 2000 hours in 2016, 2200 hours in 2017, and 2300 hours in 2018.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner has established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

As a threshold issue, we must determine whether the Petitioner established that the Beneficiary possesses specialized knowledge. If the evidence is insufficient to establish that the Beneficiary possesses specialized knowledge, then we cannot conclude that his past and intended future employment involve specialized knowledge.[7]

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.

The Petitioner only claims that the Beneficiary has "special" knowledge and does not specifically assert that he has knowledge that is "advanced." As such, we will only address whether the Petitioner has established that the Beneficiary's knowledge is special. Determining whether a beneficiary has

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

"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.

As discussed, the Petitioner contends that the Beneficiary's knowledge of restoring and maintaining the [redacted] aircraft is uncommon as this knowledge is held exclusively by the company. Upon review, we acknowledge that the Petitioner has provided credible evidence showing that it, and the foreign employer, hold distinct or uncommon knowledge of the [redacted] aircraft. However, the question we must resolve is whether the Beneficiary himself holds this level of uncommon knowledge in the [redacted] aircraft.

We conclude that the evidence does not demonstrate that the Beneficiary more likely than not holds distinct or uncommon knowledge in the [redacted] aircraft when compared to typical aircraft mechanics in the industry. As noted, the Petitioner submitted evidence reflecting that the Beneficiary had very recently completed the foreign employer's aircraft mechanic training in June 2018 and that he had only a short time ago began work as a junior artisan abroad. Further, it indicated that the Beneficiary would continue to work in this junior level position in the United States. As a preliminary matter, the Beneficiary's junior status and lack of experience raises question as to whether his knowledge could be deemed distinct and uncommon in the industry, or in turn, even within his own company. Although we recognize that the Petitioner as a whole likely has uncommon knowledge in the [redacted] aircraft and its restoration and maintenance, the Beneficiary's lack of experience leaves question as to whether or not his junior level knowledge could not be easily imparted to other more experienced, or typical, aircraft mechanics in the industry; including those working for the Petitioner; group of companies.

The Petitioner submitted training documentation which only heightened the uncertainty as to whether the Beneficiary's knowledge of the [redacted] aircraft is distinct and uncommon in the industry. The Petitioner asserts that the Beneficiary completed "hands-on training" in the restoration and maintenance of [redacted]s amounting to over 6000 hours from 2016 through 2018. If we assume reasonably that the Beneficiary worked full-time during these three years, or for a total of 156 weeks[8], this indicates that the Petitioner claimed he received approximately a little more than 38 hours per week of training on the [redacted] In other words, this would appear to amount to nearly fulltime training on this aircraft for three years.

However, the supporting training documentation submitted by the Petitioner does not support that the Beneficiary completed this fulltime three year training in the [redacted] aircraft. For instance, a portion of the Beneficiary's "Experiential Training Logbook" reflected that the Beneficiary completed a total of 1400 "basic training hours" on what appear to elementary aircraft maintenance and operation concepts such as "power tools" (60 hours), "hand tools" (56 hours), "mechanics of flight" (50 hours),

[8] We estimate that there are approximately 52 weeks in one year. Over three years, this would amount to 156 weeks.

"control rigging" (52 hours), "introduction to reciprocating and gas turbine engines" (84 hours), amongst others introductory concepts. Likewise, another part of the Beneficiary's training log titled "summary of work training experience" also reflected a total of over 2835 hours of training in seemingly basic aircraft repair and maintenance topics, including "airframe inspection" (378.5 hours), "flight control systems" (381 hours), "landing gear" (368.5 hours), "fuel systems" (259.5), "helicopter servicing and maintenance" (23 hours), among others such topics. Therefore, in total, the Beneficiary's training log reflects that he completed a total of 4235 hours of training on basic aircraft operation and maintenance concepts during his approximately three years of training, leaving significant question as to the Petitioner's assertion that he spent 6000 hours of training exclusively on the [redacted] aircraft.

In fact, other portions of his training log further indicate that the Beneficiary spent time working on several other types of aircraft, including worksheets reflecting his work on the [redacted] (a total of approximately 52 hours), the [redacted] (4 hours), '[redacted] (4 hours)," and the [redacted] (1 hour). Meanwhile, these same worksheets reflected that the Beneficiary devoted approximately 45 hours of similar training on the [redacted] or less time than he spent on the other plane models combined. Further, in support of the petition, the Petitioner stated that the Beneficiary also "worked and qualified on the [redacted] as well as [redacted] light jet aircraft that the company operates as a part of its [redacted] operations," but later indicated in response to the request for evidence (RFE) that nearly all of his training and experience in his approximately three years with the company had been on the [redacted] In sum, the Petitioner's training logs and assertions do not support its claim that the Beneficiary completed three years of fulltime training in the [redacted] aircraft. Indeed, the weight of the evidence suggests that he received basic training to become an aircraft mechanic and that he worked on a variety of planes during this process. The Petitioner must resolve this inconsistencies and discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the statutory definition of specialized knowledge requires us to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The Congressional record states that the L-1 category was intended for "key personnel." *See* H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position that is "of crucial importance." *Webster's II New Coll. Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of a petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, we must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the Petitioner's workforce.

However, the Petitioner submits no specific comparisons of the Beneficiary's training and experience as compared to his colleagues working for the company. For instance, the Petitioner's and foreign employer's organizational charts reflect that there are over 30 mechanics within the department the

Beneficiary worked in abroad and the one he would operate in the United States, but the Petitioner submits no information on these colleagues nor does it compare them to the Beneficiary as necessary to demonstrate that he rises above the level of an average employee. In fact, the Petitioner submits evidence reflecting that the Beneficiary had only relatively recently completed his aircraft mechanic training with the company and that he works as a junior artisan, suggesting that he is something less than the company's average employee, considering the number of mechanics it employs. Given that the Petitioner has submitted credible evidence to indicate that it is a world leader in servicing the [redacted] aircraft and that is has been in this market position for years, it is reasonable to assume that many of these other mechanics working for the company hold high levels of knowledge and experience in the aircraft. Therefore, without specific comparisons of the Beneficiary against his colleagues, we cannot conclude that his knowledge is special. As the Petitioner states that anyone with knowledge of the [redacted] aircraft possesses "special knowledge," we must conclude that, while it may be correct to say that the Beneficiary is a skilled employee, these skills do not constitute specialized knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and § 214(c)(2)(B) of the Act.

Therefore, the evidence does not support that the Beneficiary holds special knowledge as asserted; namely, that his knowledge is distinct or uncommon in comparison to that held by similarly employed workers in the particular industry. The supporting documentation suggests that the Beneficiary largely completed basic or introductory training on performing maintenance on aircraft, with only a small amount of this time specifically devoted to the [redacted] aircraft. As such, the evidence indicates that the Beneficiary's knowledge of working on this aircraft could likely be easily imparted to another typical, or experienced, aircraft mechanic in the industry, particularly given his junior status within the company and the industry.

Therefore, for the foregoing reasons, the Petitioner has not established that the Beneficiary's knowledge is specialized.

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 P-A-S-USA Inc.*, ID# 6196285 (AAO Oct. 29, 2019)