U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-I-

DATE: OCT. 31, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an accredited two-year non-profit educational institution,[1] seeks to temporarily employ the Beneficiary as an "Executive Liaison Manager" under the L-1B 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-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 and has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

On appeal, the Petitioner asserts that the Director did not consider that its educational institution is distinct and uncommon in comparison to other institutions of higher learning. The Petitioner avers that the Beneficiary gained his knowledge through nearly three decades devoted to the implementation of the institution's mission, as established by its founder, and thus possesses the knowledge required for the proposed position.

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

[1] The Hawaii government website indicates that the Petitioner "is not in good standing." *See* https://hbe.ehawaii.gov/documents/search.html (last visited Oct. 30, 2017). In any future filings, the Petitioner must provide evidence establishing that it is active and operating in Hawaii.

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 relevant statutory definition 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).

II. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses special or advanced knowledge in the educational field or that the Beneficiary has knowledge that is special or advanced compared to other similarly experienced persons in a related occupation in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a specialized knowledge, managerial, or executive position and that the U.S. position involves a special or advanced level of knowledge in the educational field.

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 and would be employed in the United States in a specialized knowledge capacity.[2]

A petitioner may establish eligibility for an L-1B visa by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition. 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.

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

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

of the evidence that the beneficiary's knowledge or expertise is special or advanced, and that the beneficiary's position requires such knowledge.[3]

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 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 beneficiary gained such knowledge.

Here, the Petitioner states that the petitioning organization "is a unique educational system, distinct among other educational systems, based on its foundation and guiding principals [*sic*] of promoting world peace and harmony through education." The Petitioner added that the petitioning organization's system is the only educational institutional [*sic*] in the world created specifically for the purpose of fostering world peace through education, with campuses and programs located throughout the world."

The Petitioner states that the Beneficiary began work for the foreign entity in 1988 as a staff member, was subsequently promoted to a senior staff member position, and in 2001 was promoted to serve as the liaison officer for the head office of international affairs. In 2006, the Beneficiary was assigned to the position of section director of the petitioning organization's [redacted] in Denmark where he worked until 2015. In 2015, he was appointed to serve as the director general of the [redacted] an affiliated organization. The Petitioner notes that "[i]t is because of [the Beneficiary's] deep familiarity with the [petitioning organization's] educational mission and philosophy, his managerial experience and his knowledge of international institutions that [it] requires [him] to work with [it] in Hawaii."

We have considered the Petitioner's reference to U.S. Citizenship and Immigration Services (USCIS) policy on the adjudication of L-1B petitions and in particular USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. As explained in the memorandum, USCIS is able to adjudicate L-1B petitions most effectively when a petitioner "explains in detail the specific nature of the industry or field involved, the nature of the petitioning organization's products or services, the nature of the specialized knowledge required to perform the beneficiary's duties, and the need for the beneficiary's specialized knowledge." In this matter, the Petitioner has not provided the necessary detailed information required to establish these essential elements.

[3] Although some aspects of the "special" and "advanced" knowledge definitions may overlap, we will address each element individually.

A. Special Knowledge

Special knowledge concerns knowledge of the petitioning organization's products or services and its application in international markets. To establish that a beneficiary has special knowledge, the 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.

The Petitioner initially asserted that the Beneficiary's qualifications for the proffered position "rest upon his specialized knowledge of [the company's] educational philosophy and values, its ' its 'principles of education,' and the 'learning community' concept which is the hallmark of [the petitioning organization's] educational program, as well as his thorough knowledge of [the company's] administrative services, processes and procedures, in particular its international programs."

In response to the Director's request for evidence (RFE), the foreign entity claims that the "specialized knowledge of our organization is not gained through attendance at a specific training course, or series of studies, but rather it develops over a period of many years through exposure to our organization and commitment to our educational philosophy."

The Petitioner also includes job descriptions listing the minimum qualifications and the desired qualifications for the Beneficiary's two positions held from 2006 to 2017. Both job descriptions indicate that the minimum qualifications are experience in higher educational administration, strong English[4] and Japanese language proficiency, demonstrated ability to build community outreach and relations and collaborate with other universities, organizations and businesses, as well as the ability to present information to management and public groups, and to work with mathematical concepts such as probability and statistical inference. Both positions also required Microsoft Excel and Word experience,[5] strong managerial skills and a demonstrated capacity for leadership. The desired qualifications in each job description referred to knowledge of Japanese and other European educational systems and demonstrated experience working with either international students or international researchers.[6] Thus, the petitioning organization's minimum qualification requirements for the "Director and Liaison Officer" in Denmark and the "Director General" position at the do not include specific knowledge of the organization's philosophy or values but only requires experience generally gained in higher education administration. The job descriptions and requirements alone establish that the Beneficiary's previous positions did not require specialized knowledge.

[4] The position in Denmark also required strong Danish language skills.
[5] The Beneficiary's latest position also required knowledge of Microsoft Access.
[6] The position in Denmark also required knowledge of Danish educational systems and desired experience working with international students, while the position with the desired experience working with international researchers.

The Petitioner's assertion that its educational system is unique and distinct among other educational systems, because it was created to promote peace and harmony through education is not corroborated in the record. Many higher educational systems throughout the world include components that foster peace and world harmony.[7] Moreover, the Petitioner's catalogue[8] identifies three programs: a two-year liberal arts program to "introduce students to various fields of knowledge . . . plac[ing] a strong emphasis on learning and communication skills;" a college preparatory program "to acclimate international students to American college study;" and an international program to "offer customized intensive English language programs." These programs do not establish that the petitioning organization's two-year educational institution is distinct or uncommon within the higher educational industry. The Petitioner has not established that the general philosophy and values underpinning its educational mission are more than general concepts favored by many educational institutions or incorporated in their approach to education.

Based on the minimal information and evidence submitted regarding the petitioning organization's mission, it appears more likely than not that a qualified educational administrator may require only a basic level of training to gain sufficient familiarity of the petitioning organization's philosophy and that knowledge of this philosophy could be readily transferred to other similarly degreed and experienced administrators working in the petitioning organization's industry.

Although the Beneficiary has gained insight into the petitioning organization's philosophy during his lengthy tenure at the foreign entity, the Petitioner has not established that the Beneficiary's work experience while employed as a section or general director resulted in knowledge that is distinct, noteworthy, or uncommon in comparison to the knowledge of other similarly employed workers in the higher education industry. The Petitioner does not describe how the Beneficiary gained special knowledge of its mission through training or special tasks. The Petitioner does not explain how other experienced educational administrators in the educational environment would be unable to apply and implement the petitioning organizations policies with minimal training or exposure to the organization.

The current statutory and regulatory definitions of "specialized knowledge" do not include a requirement that a beneficiary's knowledge be proprietary. Thus, whether the knowledge is proprietary or not, a petitioner must still establish that the knowledge utilized in the proposed position and possessed by the beneficiary is in fact specific to the petitioning organization, and somehow different from that possessed by similarly-employed personnel in the industry. It is reasonable to believe that all universities and colleges develop internal tools, methodologies, and

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[7] For example, the was established in December 1980 as a by the The Charter of the University calls for *See* https://www (last visited Oct. 30, 2017).

[8] The Petitioner submits a partial catalogue for the 2016-2017 academic year that does not include a description of specific programs or classes. However, the Petitioner's website provides an overview of the proffered programs. *See* https://www. (last visited Oct. 30, 2017).

philosophies. Without a substantive explanation or evidence, the Petitioner has not established that the petitioning company's mission is particularly complex or uncommon compared to similar educational institutions. The Petitioner has not sufficiently explained how the Beneficiary gained knowledge specific to only its organization, and has not supported a claim that it would take a significant amount of time to train an experienced administrator to perform the duties required of the proposed position.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on its statements regarding the Beneficiary's knowledge of its organization. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other administrators, either within or outside of the organization. The job requirements for the Beneficiary's previous two positions demonstrate that an experienced administrator without specialized knowledge is capable of performing the duties of the petitioning organization's positions. While there likely are no employees with the exact same knowledge the Beneficiary possesses, the record does not demonstrate that the Beneficiary's knowledge is in fact significantly different from that generally held by professionals in the Petitioner's industry, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

For the foregoing reasons, the record does not establish that the Beneficiary possesses special knowledge of the company's services and their application in international markets.

B. Advanced Knowledge

The Petitioner asserts that during the Beneficiary's completion of the petitioning organization's educational program and 30-year employment with the petitioning organization, he gained "specialized knowledge of the [petitioning organization's] educational mission and philosophy, as well as its administrative interrelationships, process and procedures, and its international operations." In response to the Director's RFE, the foreign entity noted that a "deep knowledge of [the petitioning organization's] origins, institutional history and philosophy are essential for upper-level administrators including those serving in the critical liaison positions between our primary campus in Japan and its overseas affiliates." The foreign entity added that "[a]ll upper-level . . . administrative employees must possess this 'specialized knowledge' of our institution's educational services, management style, community involvement and inter-workings."

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 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.

To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's mission. Here, the Petitioner does not provide a list of the petitioning organization's upper-level administrative employees, their education levels, and work experience. The Petitioner does not describe how this Beneficiary's work and responsibilities differ from other employees or how other employees gained their knowledge of the petitioning organization. The Petitioner has not established that the Beneficiary's knowledge is advanced within the petitioning organization's own operations.

In sum, the record does not include sufficient evidence demonstrating that the Beneficiary's combination of professional experience, work assignments, and knowledge of the Petitioner's values, philosophies, mission, and methodologies has resulted in his possession of knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company or that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

While the Beneficiary may be a valuable employee who is well-qualified for the proposed position in the United States, the record does not establish that the Beneficiary possesses special or advanced knowledge.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge. As the evidence does not establish that the Beneficiary possesses specialized knowledge, we also cannot conclude that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of H-T-I-* ID# 673715 (AAO Oct. 31, 2017)