U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10445995

Date: SEPT. 8, 2020

Appeal of Texas Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, describing itself as a provider of software and services for asset management, seeks to temporarily employ the Beneficiary as a senior analyst in the United States 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 Director of the Texas Service Center denied the petition concluding that the Petitioner did not establish it had a qualifying relationship with the Beneficiary's foreign employer. On appeal, the Petitioner contends that the submitted evidence sufficiently establishes that it indirectly owns and controls the Beneficiary's foreign employer and that both entities are owned and controlled by the same corporate parent.

Upon de novo review, the Petitioner has submitted sufficient evidence to establish that it has a controlling interest in an entity owning and controlling the foreign employer. As such, the evidence demonstrates that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. Therefore, we will withdraw the Director's decision and remand it for the entry of a new decision. Notwithstanding our withdrawal of the Director's decision, we find that the record as presently constituted is not sufficient to demonstrate that the Beneficiary possesses specialized knowledge. We note that as a threshold matter, if the Beneficiary does not possess specialized knowledge, then her positions abroad and in the United States would not involve specialized knowledge as necessary to qualify her.

The Petitioner indicated that it is a "post-trade technology and services company that provides comprehensive post-trade solutions for alternative asset managers" and that it "combines proprietary software, technology, and an experienced team of professionals to deliver complete post-trade support." The Petitioner stated that it requires the Beneficiary in the United States for critical tasks and assignments due to a shortage of individuals with specialized knowledge of its complex proprietary systems and processes. The Petitioner explained that the Beneficiary acquired this knowledge from her three years of experience working with the foreign employer and asserted that "there are currently no other employees within our global organization" that possess her exact qualifications.

The Petitioner stated that the Beneficiary would act as a senior analyst and "lead our firm's efforts to replace our legacy [redacted] infrastructure with our customizable, sophisticated, and proprietary reconciliation technologies" such as [redacted]," [redacted]," and [redacted]" The Petitioner indicated that the Beneficiary acquired "multiple years of directly related specialized and unique experience" noting that she "was chiefly responsible for the core development and technical architecture of our proprietary [redacted] and [redacted] tools." The Petitioner explained that the Beneficiary was integral to the creation and enhancement of its [redacted], [redacted] and [redacted] initiatives and that she has "developed specialized knowledge…more advanced than any other employee within our firm."

The Petitioner also asserted that the Beneficiary was part of a three person core team "that conceptualized [redacted]..defined its technical architecture, and modelled the database schema layers," and further noted that she participated in "over sixty (60) hours of [redacted] training modules," while "the vast majority of [Petitioner] employees globally only receive 2 to 4 hours of training on the [redacted] tool." Likewise, the Petitioner stated that the Beneficiary has more than two years of special and advanced experience with customizing [redacted] and that "she participated in over sixty (60) hours of intensive [redacted] training modules," whereas "employees globally only receive 4 to 5 hours of training." Lastly, it indicated that the Beneficiary also participated in "over seventy-five (75) hours of [redacted] training modules," but that its other employees "only receive 8 to 16 hours of training" on this platform.

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, 8 U.S.C. § 1184(c)(2)(B). 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. Specialized knowledge is also defined as special 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).

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence that establishes whether 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 an employee is able to gain specialized knowledge within the organization and explain how and when the individual beneficiary gained such 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. 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.

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

Determining whether knowledge is "advanced" or "special" inherently requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison. However, the Petitioner did not sufficiently document its assertions with respect to the Beneficiary's claimed advanced knowledge as compared to her colleagues. For instance, the Petitioner asserted that the Beneficiary was "chiefly responsible for the core development and technical architecture of our proprietary [redacted] and [redacted] tools across our global [redacted]' and that her knowledge is "more advanced than any other employee" within its global organization. The Petitioner also pointed to the Beneficiary's work on a "three-person core team that conceptualized [redacted]' and discussed her extensive training in [redacted], [redacted] and the [redacted] as compared to other employees within its organization. However, the Petitioner provides no supporting documentation to substantiate the Beneficiary's claimed development of its essential proprietary tools nor any supporting evidence to substantiate her claimed extensive training in relation to her colleagues. It also provided no organizational chart to demonstrate the Beneficiary's place within its organization, did not explain how many others worked in her position abroad, nor did it identify her colleagues by name or specifically detail their years of experience in order to provide sufficiently credible comparisons.

This lack of detail and documentation is noteworthy considering that the Petitioner indicated in the petition that it employed more than 600 individuals worldwide. Therefore, without sufficient documentary evidence to substantiate its claims regarding the Beneficiary's knowledge, development, and training, it has not sufficiently established that she holds the most knowledge in its organization of its discussed proprietary tools. In addition, the Petitioner provided no specific comparisons to set the Beneficiary apart from similarly placed professionals throughout the industry. The Petitioner only generically indicated that the knowledge held by the Beneficiary is proprietary and that she is the most knowledgeable in its [redacted], [redacted] and [redacted] technologies. However, knowledge being proprietary or client specific does not alone establish that it is specialized, as companies commonly hold specific knowledge within their particular industry and knowledge of the requirements of their particular clients.

Therefore, without further detail and documentation, it is reasonable to conclude that there are other projects including several other colleagues working in roles requiring high levels of knowledge of the technology in which the Beneficiary works. Without detailed comparisons of the Beneficiary against

her colleagues, it is not clear that only approximately three years of experience amounts to special or advanced knowledge according to the regulatory definition. It is not sufficient to declare the Beneficiary the most knowledgeable in the organization, assert her claimed development of essential proprietary technologies, and contend that she has high levels of training in these tools without corroborating these assertions with supporting documentary evidence.

For the foregoing reasons, we are remanding this issue to the Director for analysis of the relevant factors above and for a determination as to whether the Beneficiary possesses specialized knowledge; and in turn, whether she is employed in a specialized knowledge capacity abroad and would be employed in a specialized knowledge capacity in the United States.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.