U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10134661

Date: SEPT. 8, 2020

Appeal of California Service Center Decision

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

The Petitioner, describing itself as an information technology company, seeks to temporarily employ the Beneficiary as a design verification engineer 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 California 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 a discrepancy in its 2018 IRS Form 1120 U.S. Corporation Income Tax Return regarding its ownership was due to a mistake by its accountant. The Petitioner states it remedied this mistake by filing an amended return after it discovered this error when the Director issued her request for evidence (RFE). The Petitioner asserts it submitted sufficient supporting documentation, such as foreign employer share certificates, documentation from its accountant, and other evidence demonstrating it owns all of the foreign employer's shares.

Upon de novo review, the Petitioner has submitted sufficient evidence on appeal to establish that it more likely than not wholly owns the foreign employer's shares; and as such, that there is a qualifying relationship between the entities. 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 his position abroad and in the United States would not involve specialized knowledge as necessary to qualify him.

The Petitioner indicates that it and the Beneficiary's foreign employer are design service companies and providers of "SOC/Chip/FPGA design and verification, embedded systems, application software and mechanical-thermal engineering design using CAD/CAM/CAE, and CAD customization." The Petitioner further stated that it and its affiliated companies offer "modular, reusable, and scalable VIP cores that enable it to build verification environments for module, chip and complex SoCs."

The Petitioner indicated that the Beneficiary had been employed by the foreign employer since 2010 and was "utilized as a key employee abroad and…given very significant and important assignments

that have enhanced the company's productivity, competitiveness, image and financial positions." The Petitioner explained that the Beneficiary "contains knowledge and hands on experience in…areas…not generally available," including "working on VIP development for PCIe and NAND Flash." It stated that the Beneficiary has been "involved in the design and verification of these VIPs," as well as verification test environments, test suite development, regressions, and debugging. The Petitioner further asserted that the foreign employer had developed "several products" noting that they "are significantly different from other products in the industry."

In addition, the Petitioner explained that the Beneficiary gained "knowledge of the [company's] internally developed proprietary product software and processes" and noted that he is "very well versed in implementing these processes on customer projects to improve the efficiency and quality of deliverables." The Petitioner added that the Beneficiary's knowledge can "only been gained through extensive prior experience with the client" and that this knowledge is "distinct and uncommon in our industry, as well complex and further along than others in our company and in the industry." It also emphasized that the Beneficiary is "intimately familiar with the technical requirements for the client in the USA;" and noted his "familiarity with ongoing projects" as well as the "business and technical requirements of our clients." Lastly, it indicated that the Beneficiary developed "proprietary products, processes, and systems" and that "they can only be implemented efficiently by him."

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.

First, the Petitioner has not clearly articulated whether the Beneficiary's knowledge qualifies as special or advanced, or both. Further, the Petitioner has not sufficiently described the Beneficiary's knowledge. For instance, it vaguely stated that the Beneficiary holds knowledge of "VIP development for PCIe and NAND Flash," "the design and verification of these VIPs," "internally developed proprietary product software and processes," and "technical requirements for the client in the USA." However, the Petitioner does not explain these technologies and specifically what they do, nor does it describe its software and processes in detail, or even indicate to which client or clients the Beneficiary provides services. In addition, it did not detail or document the "significant and impactful assignments" or the "ongoing projects" to which the Beneficiary was, and would be, assigned.

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 articulate how the Beneficiary gained his claimed advanced knowledge when compared to his colleagues or how his knowledge was set apart from them. In turn, the Petitioner did not adequately explain how the Beneficiary acquired his claimed specialized knowledge when compared to similarly placed professionals in the industry. The Petitioner provided no specific comparisons to set the Beneficiary apart from his colleagues, both within the company and throughout the industry. The Petitioner only generically indicated that the knowledge held by the Beneficiary is proprietary, that he is "well versed," and that its products and processes can "only be implemented efficiently by him." However, knowledge being proprietary or client specific does not alone establish it as specialized according to the regulations, as companies commonly hold specific knowledge within their particular industries and knowledge of the requirements of their clients.

For instance, the Petitioner submitted a foreign organizational chart reflecting that the Beneficiary, listed as a senior engineer, reported to the "Director [of the] Head India Design Center" along with four other senior engineers. The chart also reflected that each senior engineer oversaw two subordinate engineers. However, the Petitioner submitted provided no explanation as to how the Beneficiary's knowledge and experience compares to the other engineers within its organizational chart and how his knowledge is set apart. In fact, the Petitioner provided two invoices reflecting the provision of hourly services to a U.S. client in February and March 2019, just before the date the petition was filed, by two senior engineers and another subordinate engineer. The invoice indicated that the Petitioner charged the same hourly rate for both the senior and regular engineers, suggesting that all the

company's foreign based engineers have similar knowledge of the company's products and processes. The Petitioner also suggests that the Beneficiary developed certain "proprietary products, processes, and systems," but it does not explain or document this development, nor does it indicate how this claimed development sets him apart from his colleagues providing similar services.

Likewise, it provided no detail as to how the Beneficiary's knowledge compares to similarly placed professionals in the industry; professionals who appear to exist since the Petitioner acknowledged that others in the industry have developed its type of products and that "there may be similarities" between them. The Petitioner did not explain with specificity how its products, and in turn the Beneficiary's knowledge, are "different from other products in the industry."

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 with which the Beneficiary works. Without detailed comparisons of the Beneficiary against his colleagues, it is not clear that his years of experience amount to special or advanced knowledge according to the regulatory definition.

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 he 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.