U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-N.A. LLC

DATE: SEPT. 11, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a company engaged in heavy equipment sales and leasing, seeks to temporarily employ the Beneficiary as its service manager under the L-1B nonimmigrant classification for intracompany transferees.[1] 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 that was managerial, executive or involved specialized knowledge, or that he will be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner asserts that the Director's decision does not reflect consideration of all relevant evidence submitted in support of the petition, and does not give sufficient weight to affidavits provided by the Beneficiary and the petitioning company's manager. The Petitioner maintains that the Beneficiary possesses specialized knowledge, and that he has been and would be employed in a specialized knowledge capacity.[2]

Upon *de novo* review, we will dismiss the appeal.

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[1] The Petitioner marked on the Form I-129, Petition for a Nonimmigrant Worker, that it is a new office. 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). However, the record demonstrates that the Petitioner had been doing business for more than one year at the time of filing in May 2017. The Director did not apply the regulation governing new office L-1B petitions at 8 C.F.R. § 214.2(l)(3)(vi) and we agree that such provision was inapplicable here.

[2] The Petitioner also states at times that the Beneficiary has been and would be employed in a "managerial role." The Petitioner requested that the Beneficiary be granted L-1B classification, rather than L-1A classification, which allows a corporation to transfer a qualifying foreign employee to work temporarily in the United States in a managerial or executive capacity. As such, we will focus on whether the evidence establishes that the Beneficiary possesses specialized knowledge.

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).

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. BACKGROUND

The Petitioner is the subsidiary of a Chinese company that manufactures heavy construction and mining equipment such as excavators, rock drilling equipment, forklifts, pavement machinery, and hydraulic components. The record indicates that the Petitioner's group has over 4000 employees and sells its equipment in 60 countries worldwide. The Petitioner states that its parent company has conducted business in the United States since 2008, and established the petitioning company in 2014 as its first U.S. subsidiary.

The Petitioner seeks to employ the Beneficiary in the position of service manager at an annual salary of $60,000 and states that it has employed him in this position since January 2015.[3] The Beneficiary joined the Petitioner's parent company as a quality controller in 2007 and assumed the position of after-sales service manager in 2010, performing duties that are similar to those he will perform in the United States. The Petitioner indicates that the Beneficiary's duties abroad included service management of overseas sales of heavy equipment in multiple countries and oversight of service staff. The Petitioner stated on the petition that the U.S. position will involve the same responsibility in North America, and will include obtaining shipment of heavy equipment parts, handling parts inventory, managing service and parts budgets, and coordinating with U.S. management and affiliates in China.

[3] The Petitioner filed this petition in May 2017. Although the Petitioner indicates that it has served as the Beneficiary's employer since January 2015, he did not spend any time in the United States in 2015, and therefore has more than one continuous year of full-time employment abroad in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii). At the time of filing, the Beneficiary was in the United States as a B-1 temporary visitor for business.

III. SPECIALIZED KNOWLEDGE

In the denial decision, the Director determined that the Petitioner did not provide adequate support for its claim that the Beneficiary has acquired special knowledge of the Petitioner's products, equipment, or methodologies that is truly distinct or uncommon compared to other similarly employed workers in the industry or knowledge that is advanced compared to other workers in the company. The Director emphasized that the Petitioner did not sufficiently document how the Beneficiary's education, training and experience have resulted in specialized knowledge, and noted that the Petitioner's explanation of the claimed specialized knowledge was lacking in detail.

On appeal, the Petitioner asserts that the Director "ignored evidence contained in the documents provided," and refers specifically to affidavits submitted by the Beneficiary and by the Petitioner's manager, [redacted] The Petitioner maintains that these statements, in combination with the Beneficiary's "resume, technical training and experience" provide "a picture of a person far more experience[d] and knowledge[able] th[a]n a mere foreign corporate sales or service manager for heavy equipment." In support of the appeal, the Petitioner submits copies of what appear to be training certificates, but does not provide English translations[4] or explain the relevance of the submitted evidence.

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.

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 both special knowledge of its heavy equipment products and related services, and advanced knowledge of its internal processes and procedures for parts inventory and service management.

[4] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

A. Special Knowledge

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 specialized.

The Petitioner states that the Beneficiary has specialized knowledge of its heavy equipment products and the servicing of this equipment, along with associated activities such as inventory and spare parts operations. However, the Petitioner has not provided sufficient explanation or evidence to support its claim that the Beneficiary's knowledge is truly distinct or uncommon in the Petitioner's industry. It did not provide documentation describing either its products or its parts and servicing operations, nor did it describe in detail the nature of the specialized knowledge required for a service manager position within this company. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In fact, the Petitioner's initial statement in support of this petition said very little regarding the Beneficiary's proposed duties or his claimed specialized knowledge. The statement was in the form of an affidavit from its manager, and primarily referenced a separate L-1A nonimmigrant petition filed on behalf. He mentioned that he hired the Beneficiary as service manager "to develop business and provide service and parts to customers in the United States," and noted that the Beneficiary has met with customers, ordered and catalogued parts, maintained inventory, communicated with the parent company regarding service and part issues, and serviced existing equipment. Finally, stated that the Beneficiary "has significant and specialized experience and training necessary to do this work," and noted that "[h]is technical familiarity with [the Petitioner's] excavation and related machinery is essential to [the Petitioner's] operations." A petitioner's statement alone may be persuasive evidence if it is detailed, specific, and credible. However, the Petitioner's statement here lacked the necessary detail to meet the Petitioner's burden of proof.

The Petitioner also provided a copy of the Beneficiary's resume, in which he notes his bachelor's degree in mechanical design and automation, and his experience in "production technology, after-sales service, technical support, spare part sales." However, the resume, like the Petitioner's statement, was not sufficiently detailed to establish that the Beneficiary has acquired knowledge through his education, training, and experience that would be uncommon among similarly employed workers in the heavy equipment industry.

Without information to differentiate its products or service operations, the Petitioner has not shown that the knowledge needed to provide after-sales service and parts and inventory management is truly different from what would be held by other experienced service managers working in its

industry. In fact the record indicates that the company "manufactures equipment with the global marketplace in mind, using industry standard components that are trusted around the world." The Petitioner did not explain what specialized knowledge is needed to service and order parts for equipment that is based on industry standards, or why the knowledge of its specific machinery could not be readily transferred to a similarly educated and experienced worker in the industry.

We note that the Director requested relevant information in a request for evidence (RFE) that would have assisted in making a determination regarding the Beneficiary's claimed specialized knowledge, such as additional details regarding the specific nature of the industry and the Petitioner's products or services; the length of training or experience required to perform the stated duties; how the knowledge required to support its products is different from that generally found in the industry; how much training the Beneficiary received in order to perform the duties of the position; personnel or in-house training records evidencing the Beneficiary's training; information regarding the number of other employees who have received similar training; and detailed descriptions of the Beneficiary's current and proposed duties explaining which specific duties require specialized knowledge. While the Petitioner responded to the RFE, it did not include most of the requested information.

To the extent that the Petitioner addressed the requests made in the RFE, it responded in an affidavit from the Beneficiary. With respect to his education, training and work experience, the Beneficiary reiterated that he has a bachelor's degree, and that he has worked for the Petitioner's group of companies since 2007, initially as a quality controller, and later as an after sales service manager. With respect to his training, the Beneficiary noted that he and [redacted] "are the individuals the [foreign entity's] corporate office has prepared, training and assigned," to the U.S. subsidiary, but he did not elaborate on the nature or length of this training, or provide records or any other type of confirmation of his completion of such training from the "corporate office." While completion of company-specific training can support a claim of specialized knowledge, the Petitioner must still establish that the training conveyed knowledge that is not common in the industry and knowledge that could not be easily imparted to similarly qualified employees from outside the company. Without this evidence, we cannot determine how long it would take a trained mechanical engineer with similar qualifications to acquire the knowledge needed to perform the duties of a service manager within the Petitioner's group.

In fact, the only training the Beneficiary identified in any detail was related to various third-party engines and hydraulic equipment which are presumably used in the Petitioner's products. Specifically, the Beneficiary stated that he completed "specialized training" in [redacted] and [redacted] engines and [redacted] hydraulics between 2010 and 2013. It appears that the untranslated certificates submitted on appeal are intended to document this training. Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the untranslated material thus supports the Petitioner's claims.

Further, the Petitioner did not establish how the Beneficiary's training in third-party engines and components conveyed specialized knowledge that is specific to the petitioning organization and its products. As noted, the Petitioner indicates that it uses industry standard components in its heavy equipment and sells its equipment in 60 countries. Absent some explanation of how or whether its

own products are differentiated, we cannot make any meaningful comparison between the Beneficiary's knowledge and the knowledge held by other similarly-employed workers in the industry, and cannot conclude that his knowledge is truly special. The Petitioner has not indicated that only employees who have been trained within the group are able to service or order parts for its products, nor has it claimed that it employs its own service personnel in all countries where its products are sold.

Although the Petitioner emphasizes that it is still a new subsidiary and requires the transfer of internal personnel to fully set up the U.S. organization, the Petitioner also indicates that the parent company's products have been sold in the United States since 2008, despite the fact that there were no domestic sales, service, or spare parts operations prior to 2014. Therefore, it appears based on the facts presented that distributors and service personnel from outside the company have likely been selling and supporting the group's heavy equipment products to date, which undermines the Petitioner's claim that only an employee with specialized knowledge gained within the company would be able to perform the proposed duties.

Based on the foregoing discussion, the Petitioner has not shown that the Beneficiary acquired special knowledge that is different or uncommon compared to what is generally found among similarly employed workers in its industry, nor has it established that the company-specific knowledge would be difficult to impart to a similarly experienced worker who is familiar with the types of heavy equipment manufactured and sold by the Petitioner's group.

B. Advanced Knowledge

We have also considered whether the evidence establishes that the Beneficiary possesses advanced knowledge.

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 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. 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.

The Petitioner has not clearly articulated a claim that the Beneficiary has advanced knowledge, other than noting the length of his tenure with the company and noting that his current and proposed roles involve or would involve some supervisory and training responsibilities and responsibility for coordinating inventory and spare parts operations. However, it did not provide any information regarding other service managers working abroad, such as information regarding their training, professional background, and length of experience. Despite his managerial job title, we cannot determine that the Beneficiary's knowledge is advanced in relation to the petitioning group's other

employees if we have no information regarding those employees' relative knowledge and experience.

The Petitioner relies in part on the Beneficiary's "managerial" role in support of its claim that his knowledge of its internal processes and procedures is advanced. It also suggests that his knowledge would be advanced in relation to other U.S. employees because it does not currently employ another service manager in the United States. However, the Petitioner must show that the Beneficiary possesses advanced knowledge of company processes and procedures, and not merely a relatively senior position. The Petitioner did not provide evidence of any training he completed in company processes and procedures upon being hired by the foreign entity or explain any processes or procedures in which he may possess advanced knowledge. While we do not doubt that he is familiar with internal processes for managing inventory and spare parts, the Petitioner did not provide details or supporting evidence that would establish that his knowledge is advanced within the company, or that the processes and procedures themselves could not be easily imparted to another person with relevant work experience in inventory and spare parts management.

In sum, the Petitioner has not submitted information that would allow us to compare the Beneficiary to other similarly employed workers within the organization. While it is more likely than not that the Beneficiary's knowledge is advanced relative to any recently hired service employees in the United States, the record does not support the Petitioner's claim that his knowledge of the company's products, services and processes as a whole is advanced in comparison to other members of the company's global service and spare parts organization. The record is simply deficient in this regard.

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

Because the Petitioner has not demonstrated that the Beneficiary possesses special or advanced knowledge, we need not address whether the Beneficiary will be employed in the United States in a specialized knowledge capacity, or whether he was employed abroad in a managerial or executive capacity, or in a position that involved specialized knowledge.

IV. 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 S-N.A. LLC*, ID# 1398496 (AAO Sept. 11, 2018)