U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T- INC.

DATE: SEPT. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of fire protection products, seeks to temporarily employ the Beneficiary as a technical and business development support specialist 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, concluding that the record did not establish, as required, that: the Beneficiary possesses specialized knowledge; has been employed abroad as a manager, executive, or in a specialized knowledge capacity; and will be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner submits a copy of the Beneficiary's training record and a letter restating previous assertions.

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 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).

II. BACKGROUND

The Petitioner "manufactures advanced passive fire protection products and materials." Its affiliate in the United Kingdom manufactures "wear parts and bearings, engineering ceramics, high

temperature resistant materials, hard metals, and passive fire protection solutions." The Beneficiary has worked for the U.K. affiliate since 2014, first as a technical support engineer and then as a territory manager.

The Petitioner intends to sell its foreign affiliate's high temperature resistant materials in the United States. The Petitioner states that its employees provide consultation to the company's clients, which "generally do not employ[] technical experts" of their own. The Petitioner seeks to employ the Beneficiary to "offer ongoing technical support to [the Petitioner's] customers, focusing on high temperature insulation, chemical pollution filtration, and wear parts," at a salary of $40,000 per year. The Petitioner asserted that the position requires "a basis of work with niche engineering applications" and "proven knowledge of specialist engineering components."

III. SPECIALIZED KNOWLEDGE

The Director determined that the Petitioner did not establish that the Beneficiary possesses knowledge that is special or advanced compared to others in the same field. The Director also found that the record did not establish that the Beneficiary had previously been employed in a position that was managerial, executive, or involved specialized knowledge, and that the U.S. position involves a special or advanced level of knowledge.

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 the Beneficiary's past and intended future employment involve specialized knowledge.[1]

Under the statute, specialized knowledge consists of either: (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.

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).

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

[1] 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.[2]

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.

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 states:

> [The Beneficiary] has worked since 2014 as [the British affiliate's] first technical point of call on every stage of the project design/specification process across several different business sectors. While responsible for introducing new material and products to clients and advising clients on specific technical applications for High Temperature range products, he has also assisted in the technical development of products through lab/field testing with large manufacturers.
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> [The Beneficiary] has special knowledge of the company's products and applications in the European market. As described above, over the past several years [the Beneficiary] has performed in roles in Europe that provide him with expert technological experience with [the company's] proprietary High Temperature range products. . . .
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> Further, [the Beneficiary's] technical knowledge of the particular . . . technologies and High Temperature range products is uncommon in comparison to that generally

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

> found in the industry within the U.S. because, so far [the company's] products have not been marketed in the U.S.

The Petitioner asserted that the Beneficiary's "proprietary technical experience . . . has provided him with a unique understanding of [the company's] European product lines, as well as best practices for introducing and developing products within certain markets." The Petitioner stated that it has no employees with "in-depth, technical expertise of [the foreign affiliate's] High Temperature products" because those products are not yet available in the United States; the Beneficiary's intended role with the Petitioner would be to help "introduce the products to U.S. customers."

The Petitioner claimed that the Beneficiary meets four out of six specialized knowledge factors listed in USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* 8 (Aug. 17, 2015), http://www.uscis.gov/legal-resources/policy-memoranda:

- [The Beneficiary's] knowledge normally can be gained only through experience with the [foreign company's] products and services;
- He possesses knowledge of . . . certain products and processes that is not easily transferrable; [t]raining requires extensive travel and time.
- The knowledge of [the company's] product[s] and processes is sophisticated, complex, and of a highly technical nature;
- [The Beneficiary] is among only a few employees wo[r]king in Europe that possess[] knowledge that is particularly helpful to [the Petitioner's] competitiveness in the U.S.

In later correspondence, the Petitioner stated that the Beneficiary "has been actively involved in technical product development," and described example projects. For instance, in a project for the Beneficiary "was required to . . . develop, and install novel applications" for thermal insulators, "match the capabilities of a specific . . . material to solve problems," and "recognise working environments which would be outside of the scope of [the company's] products." The Petitioner listed six applications that the Beneficiary identified during this assignment, such as a "Heat-shield board to protect stopper arm" and "Gaskets for slide gates – ladle/tundish." Projects such as these led various companies to approve the U.K. affiliate as a supplier.

The Petitioner also stated that the Beneficiary "has been part of the core working group to improve, develop, and apply" a newly-developed metallic wear protection material. The Beneficiary's responsibilities on the project included overseeing and documenting tests, recording the characteristics of the material, and using those results to formulate applications of the material.

The Director denied the petition, stating that the Petitioner had not shown the Beneficiary's experience and training to be "significantly different from that possessed by similarly employed workers in the same industry." On appeal, the Petitioner submits a new letter which repeats portions

of an earlier letter, but contains no substantive new information. As such, the new letter adds nothing significant to the record.

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. The Petitioner has not established that its products or processes are fundamentally different from those of rivals in the same industry.

The submitted materials show that the Beneficiary has worked with a range of the company's products, including many not yet marketed in the United States, but not that the Beneficiary's familiarity with these products rises to the level of special or advanced knowledge. The Beneficiary evidently worked with a wider range of the company's products than many other employees, but this is because his role is different. He is not a materials scientist or an engineer (although he used to have the word "engineer" in his title). Rather, as the Petitioner has acknowledged, there is a strong "sales [and] marketing" component to the Beneficiary's work. Several project descriptions indicated that customers approved the company as a supplier as a result of the Petitioner's work, and one of the Beneficiary's assignments was to "[i]ntroduce a previous customer to a different product line." Letters to the Beneficiary in the record referred to sales targets and a sales incentive bonus.

The Beneficiary's work with the development of a metallic wear protection material did not involve actually formulating the material, but rather compiling test results to determine the best uses for the material. For instance, the material did not perform well when brazed onto the blades of an agricultural implement, and so the Beneficiary's team recommended against its use in that role. The Petitioner did not establish that evaluating test results of this kind requires, or imparts, specialized knowledge.

While the organization may have no other 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 workers in similar positions in the industry, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

For the above 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 stated that the Beneficiary "has developed an advanced level of knowledge of the processes and procedures the company uses to introduce new technology and products to its customers, which involves on-site testing." The Petitioner claimed that a U.S. employee would

require "more than a year" of "extensive training" and experience "working for the company in Europe" to achieve the Beneficiary's level of knowledge of the company's products.

In subsequent correspondence, the Petitioner stated that the Beneficiary's "technical knowledge is highly developed, and not easily found at such levels within [the organization] itself, nor in the marketplace as a whole," because other employees of the company "focus solely on one business sector" or lack familiarity with the company's manufacturing and development processes. The Petitioner stated:

> [The Beneficiary's] 3+ years of on-site experience provides him with a unique understanding of [the company's] niche product lines and European strategy. His successful involvement in developing new materials and new applications instils him with valuable, [company]-specific best practices for introducing and developing [the company's] complex, niche engineering products within markets.

The Petitioner stated that six weeks of on-the-job training as a manufacturing operator enabled the Beneficiary "to provide product-specific technical support" regarding applications, capabilities, tolerances, and other attributes of the company's products. The Petitioner stated that its foreign affiliates offer a broader range of bearings and rollers than rival companies, and the Beneficiary has specialized "knowledge of different forms of bearings/rollers." The Petitioner further asserted that the Beneficiary "has travelled to a wide range of client's locations," affording him "deep and wide-ranging access to a multitude of daily technical issues and product[s]. The variety and depth of knowledge he gained . . . is not possible to gain within a short time period."

The Petitioner estimated that "it would take at least 12-16 months for [a] new person to be trained in the same capacity," and also asserted that the Beneficiary's familiarity "with ALL of [the company's] markets and product types . . . can only really be gained through extensive experience in [the company] over the course of two to three years." The Petitioner asserted that its current U.S. employees "all have traditional Fire Protection backgrounds" or "handle only order processing and shipping . . . . [The Beneficiary] has a level of product/service/[company] in-house process and limitation knowledge which far exceeds that of any current employee" of the petitioning U.S. entity.

In the denial notice, the Director noted that the Petitioner "did not provide any training records for the Beneficiary." On appeal, the Petitioner submits a training record stating that the Beneficiary attended "12 technical sessions" at the company's U.K. headquarters, although the document listed 14 such sessions. Most of the courses occurred between late 2016 and early 2017, with the final session taking three months later in mid-2017. The Petitioner's U.K. affiliate stated that the sessions amounted to "over 55 hours of guided, expert tuition," which means about four hours per session on average. Topics included "High Temperature Insulation," "Marine Bearings," and "Casting of Aluminum and Steel." The document listed the topic of each session and specified the week during which each took place, but provided no other details about the sessions.

The earliest documented course took place two years or more after the affiliate hired the Beneficiary. Therefore, the Beneficiary apparently did not need this training during his first two years of employment, and each session occupied only about 10% of a 40-hour work week in 2016-2017, with no more than one course per week. The record shows that the Beneficiary performed work for customers during the training period. The Petitioner did not specify any tasks that the Beneficiary was unable to perform prior to taking these courses.

Furthermore, the earliest course took place in week 43 of 2016. (The training document lists numbered weeks rather than calendar dates.) The Petitioner filed the petition on October 17, 2017, which fell during the 42nd calendar week of that year. Therefore, all of the Beneficiary's documented training took place less than a year before the petition's filing date. Even if 14 four-hour training courses were sufficient to impart specialized knowledge, which the Petitioner has not demonstrated, the training took place too late to show that the Beneficiary worked abroad in a capacity involving specialized knowledge for at least a year before the time of filing, as required by section 101(a)(15)(L) of the Act.

For the above reasons, the training record submitted on appeal does not demonstrate that extensive training is required to perform the duties it claims are different from that of others in the Beneficiary's field, either within or outside of the organization.

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 must 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 has not documented the education levels and work experience of other employees. The Petitioner does not describe how this Beneficiary's work and responsibilities differ from other employees in a way that shows specialized knowledge, 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 demonstrate that the Beneficiary's combination of experience, work assignments, and knowledge of the Petitioner's products has given him 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.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possesses specialized knowledge; therefore, we cannot conclude that the Beneficiary's past and intended future employment involve specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of T- Inc.*, ID# 1532560 (AAO Sept. 12, 2018)