U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A- LLC

DATE: SEPT. 13, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as its "Lead Java Developer" 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 Texas Service Center denied the petition concluding that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge or that he was employed abroad in a specialized knowledge capacity and would has the qualifications to be employed in a specialized knowledge capacity in the United States.

On appeal, the Petitioner contends that the Director's decision is not consistent with decisions we previously issued in other cases where we addressed specialized knowledge. The Petitioner cites to several unpublished decisions to support its claim that the Beneficiary possesses specialized knowledge and has been and would be employed in a specialized knowledge capacity.

Upon *de novo* review, we find that the Petitioner has not established that the Beneficiary possesses specialized knowledge and that he was employed abroad and would be employed in the United States in a specialized knowledge capacity. Therefore, 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 is an IT company that uses its proprietary software platforms – [redacted] – to "improve IT efficiency and business profitability" and assist customers in building custom software to meet their business needs. The Petitioner indicated that the Beneficiary would work primarily with [redacted], which it described as a [redacted] tool used for web applications. It also stated that a "highly technical engineer" is needed to work with [redacted] and listed the following job requirements for the proposed position: a master's degree in a technical field, 6+ years of software engineering experience, "solid skills" using the [redacted] framework" and experience using Java SE and Java EE, a "[w]orking knowledge" in using and customizing [redacted] "[h]ands[-]on experience" in designing, developing, and deploying Java-based web applications, "experience with [redacted] architecture and [redacted] cloud services design and development," and general working competences, including technical and management skills, fluency in English, and the ability to communicate orally and in writing.

Although the Petitioner listed some of [redacted]'s distinguishing characteristics, stating that it does not require coding, "element ids," or "checks and assertions" to complete automation, it did not explain why specialized knowledge is required to work with this platform. Rather, the Petitioner stated that the Beneficiary is the "best fit" for its U.S. position because of his experience with [redacted] and Java web applications. It also pointed to the Beneficiary's approximately 18 months of experience in working with its foreign affiliate at the time this petition was filed, indicating that the Beneficiary meets the above-listed job requirements.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he has been employed abroad and will be employed in the United States in a specialized knowledge capacity.

In the denial decision, the Director found that the submitted evidence did not demonstrate that the Beneficiary's foreign or proposed job duties require knowledge that is either special or advanced. The Director also noted that the Petitioner did not explain what is deemed to be a "high level of trouble shooting skills" with regard to the [redacted] platform and determined that the record does not establish that the Beneficiary's level of knowledge is different from knowledge that is ordinarily held by other individuals in the same 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 the Beneficiary's past and intended future employment involve specialized knowledge.[1]

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

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. A petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition.

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

Because "advanced knowledge" concerns knowledge of an organization's processes and procedures, the petitioning entity 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.

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 and when the individual beneficiary gained such knowledge.

In the present matter, the Petitioner's supporting statements contained a list of the Beneficiary's proposed job duties and requirements for the proposed position. The Petitioner focused on the Beneficiary's experience working with [redacted] in his current position as the foreign entity's "Lead Java Developer," indicating that he possesses the education, skills, and experience necessary to meet the requirements of the proposed U.S. position. Although the Petitioner indicated that the Beneficiary's "consistently great performance" in his position with the foreign affiliate is the reason he was offered the U.S. position, it did not distinguish the Beneficiary's experience and knowledge from that of other IT professionals who similarly work with clients in business automation; nor did the Petitioner point to specific characteristics that demonstrate the Beneficiary's specialized

knowledge. The Petitioner also listed the Beneficiary's job duties, but did not explain why specialized knowledge is required to perform them. Rather, the Petitioner emphasized the Beneficiary's educational credentials and years of experience prior to assuming his position with the foreign entity; it did not, however, explain how either the Beneficiary's level of education or his prior work experience resulted in his attaining knowledge that is claimed to be specialized.

Further, the Petitioner provided a letter from the foreign entity's director, who included a chart comparing the Beneficiary's level of knowledge as a "high-level programmer" to that of others occupying similar positons in the same field. The chart identifies the Beneficiary's level of knowledge as "high" in several job categories where others' levels of knowledge were identified as either "low" or "medium." However, the letter does not explain how the Beneficiary attained this higher level of knowledge and indicates that most of his knowledge pertains to tools that are widely used by programmers within the IT industry. Only one of the 12 categories listed in the chart pertained specifically to the Petitioner's software product; that said, the chart indicates that it would take other Java developers only two to six months to achieve the Beneficiary's level of knowledge, thus indicating that someone in the Beneficiary's field could acquire his level of knowledge in a reasonably short period of time.

The Petitioner also provided a business plan, which contains a section titled "Management Team and Key Personnel." That Beneficiary was not named in that list, which includes the company's founder and CEO, the vice presidents of U.S. and Ukraine delivery, respectively, the vice president of human resources, and the vice president of solutions.

In a request for evidence (RFE), the Director noted that the Petitioner did not provide evidence establishing that the Beneficiary performed duties that required specialized knowledge and likened the Beneficiary to a typical lead Java developer. The Director asked the Petitioner to identify the type of specialized knowledge it claims the Beneficiary has attained, explain how and when the Beneficiary gained his claimed specialized knowledge, and compare and contrast the Beneficiary's duties and knowledge from those of others employed in the organization or within the industry.

In response, the Petitioner provided a statement asserting that the Beneficiary's lead Java developer position is that of a professional requiring a minimum of a master's degree in computer science or a related field because of the "specialized and complex" nature of the duties assigned to that position. The Petitioner emphasized the Beneficiary's level of education, stating that the required courses, "rigorous testing and challenging case studies," as well as an understanding of 'various theories and methods" that are associated with the graduate level of study in computer science or related field "directly correspond to and prepare the student for the specific responsibilities of the position." The Petitioner distinguished the Beneficiary's "Specialty Occupation" position from that of "a [t]echnologist or an IT-support employee" referring to the latter as "non-specialty occupation workers"; the Petitioner credited the Beneficiary's "superior background," which includes a master's degree in computer science or a related field, as the reason for his ability to execute the duties of a "highly skilled leadership role."

The Petitioner also provided an "evaluation" of the Beneficiary, taking into account his education, prior work experience, and experience in his current position as the foreign affiliate's lead Java

developer. The Petitioner noted that the Beneficiary "has satisfied requirements that are substantially similar to those required toward the completion of a Master's Degree program . . . in the United States" and pointed to the Beneficiary's six years of "specialized training and work experience in Computer Science and related areas" during which the Beneficiary assumed a position that was "commensurate with Master's level training." The Petitioner did not state or describe any training the Beneficiary may have received beyond the courses he took to complete his master's degree. The Petitioner also did not specify any type of specialized knowledge the Beneficiary gained during his six years of employment with another entity or explain how that experience led to the Beneficiary's claimed specialized knowledge of the foreign entity's proprietary software tools. Moreover, the Petitioner did not establish that specialized knowledge is required to work with the Screenster software tool, which has been the focus of the Beneficiary's employment abroad and would remain the focus of the proposed position in the United States.

Although the Petitioner also claimed that the Beneficiary's period of employment with the foreign entity "reflect[s] experience and training in positions of progressively increasing responsibility," it did not point to any progressive changes in the Beneficiary's knowledge with respect to the foreign entity's software tools or point to specific factors that prompted the alleged progression. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, the record shows that the Beneficiary assumed the position of lead Java developer and remained in that position during the entire course of his employment with the foreign entity. The Petitioner did not state or provide evidence of any training the Beneficiary may have received or demonstrate that the Beneficiary's job duties progressively increased in their levels of complexity to indicate that specialized knowledge had been acquired during the Beneficiary's period of employment with the foreign entity. Although the Petitioner listed several new [redacted] features that the Beneficiary created, including new [redacted] frameworks based on his analysis of customer feedback, it did it explain why specialized knowledge was necessary to create this or any of the other new features it listed. Rather, the Petitioner vaguely referred to the Beneficiary's "extremely high level experience in unique computer programming matters" that other lead Java developers in the same organization do not possess, but it did not describe any such "unique computer programming matters" or list characteristics distinguishing the Beneficiary's knowledge as specialized in comparison to others in his organization or in the IT industry. Further, other than referencing the Beneficiary's level of education and work experience with another unrelated entity, the Petitioner did not state how the Beneficiary attained knowledge that is claimed to be specialized.

On appeal, the Petitioner reasserts several claims that were previously raised in response to the RFE and raises certain new claims, asserting that "the Beneficiary has specialized knowledge that is unique to [its organization] and not transferable to other software development companies." However, the Petitioner does not point to what is unique about the Beneficiary's knowledge, establish that the "unique" knowledge rises to the level of being specialized, or explain why the transferability of such knowledge "to other software development companies" is relevant to the issue of whether the knowledge is specialized. Although the Petitioner claims that the Beneficiary is one of only two employees within the same organization that work with the [redacted] platform, it does not claim or provide evidence establishing that this distinction was the result of having acquired specialized knowledge. Likewise, the Petitioner has not established that specialized knowledge enabled the Beneficiary to grow "an extensive knowledge of specific visual and textual algorithms" that he has

used to improve [redacted]. Further, as indicated in the previously described comparison chart, the Beneficiary's level of knowledge regarding [redacted] can be transferred to another Java developer within a range of two to six months. Although the Petitioner describes the facts pertaining to several unpublished AAO decisions, it does not established that the facts of this petition are analogous to those in the unpublished decisions. Moreover, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on USCIS, unpublished decisions are not similarly binding.

In sum, we find that the Petitioner did not establish a clear path for gaining specialized knowledge within its organization or demonstrate that, in fact, the Beneficiary gained such knowledge. Rather, the Petitioner focused primarily on the Beneficiary's level of education and his years of employment with another entity, but did not establish that there is a nexus between these elements and the specialized knowledge that the Beneficiary is claimed to have acquired with regard to the [redacted] software tool he used and developed during his employment with the foreign entity. As such, the Petitioner has not established that the Beneficiary acquired specialized knowledge and was employed abroad in a specialized knowledge capacity.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A- LLC*, ID# 6013989 (AAO Sept. 13, 2019)