U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-, INC.

DATE: SEPT. 25, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, which provides workforce management software to retailers, seeks to temporarily employ the Beneficiary as an implementation specialist 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 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 Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has been employed abroad, and will be employed in the United States, in a capacity involving specialized knowledge.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by not fully considering the complexity of the Beneficiary's work.

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 qualifying managerial or executive capacity, or in a position involving specialized knowledge, for one continuous year within the 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 relevant statutory definition states that 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).

An individual L-1B classification petition must be accompanied by evidence that: (1) the petitioner and the foreign employer of the beneficiary are qualifying organizations; (2) the beneficiary has been employed abroad in a position that was managerial, executive, or involved specialized knowledge for at least one continuous year in the three years preceding the filing of the petition; (3) the beneficiary is coming to work in the United States in a specialized knowledge capacity for the same employer or a subsidiary or affiliate of the foreign employer; and (4) the beneficiary's prior education, training and employment qualifies him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

II. SPECIALIZED KNOWLEDGE

The sole issue to be addressed is whether the Petitioner established that the Beneficiary has been employed abroad, and will be employed in the United States, in a position involving specialized knowledge.[1] While the Beneficiary's intended U.S. position is not identical to the one he holds in India, the Petitioner has indicated that the Beneficiary's employment abroad and his intended employment in the United States both involve similar knowledge relating to the Petitioner's proprietary software.

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.

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. 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.

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 the its

[1] The Petitioner does not claim that the Beneficiary's foreign employment has been in an executive or managerial capacity.

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.

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 advanced or special, and that the beneficiary's position requires such knowledge.

In the present case, the Petitioner has based its claims on both prongs of the statutory definition, asserting that the Beneficiary has a special knowledge of the company's products and their application in international markets and an advanced level of knowledge of the company's processes and procedures.

The Petitioner has described itself as "the only provider of a fully integrated workforce management solution" comprising "web-enabled, Java-based products for use in the Retail and other sectors. . . . Though we use industry standard tools . . . , our software products are proprietary in nature and contain hundreds of thousands of lines of code that are fully developed in-house." The Petitioner states that it employs "approximately 40 computer/software systems analysts and software programmers" who "are working on projects for the design, development, testing and integration and deployment of [the Petitioner's] products." The Petitioner indicated that the Beneficiary has worked abroad as a "Team Lead for Product Development," and that the Petitioner seeks to employ the Beneficiary in the United States as an "Implementation Specialist, a type of software engineer." The Petitioner stated:

> [T]here are no additional US workers with the requisite specialized knowledge of [the Petitioner's] suite of software . . . products . . . . In order to relay the requirements for analysis, coding and testing to our developers [in] India, we need software specialists, including those like [the Beneficiary] and architects, who can understand the requirements to be analyzed, and the market, customer needs, design issues, integration requirements, etc. . . .
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> . . . [The Beneficiary] will use his specialized knowledge of . . . [the Petitioner's] proprietary software applications . . . to enhance the products and increase our sales.

The Petitioner asserted that "[i]t takes a minimum of 12 months to train a software engineer . . . before they can be assigned job responsibilities" like those of the Beneficiary's intended position. This training takes place both in the classroom and on the job. The Petitioner listed 520 hours of training courses that the Beneficiary took when he joined the foreign company in 2009, and stated: "There are only three employees in the Indian office and none in the US office who have undergone [the Beneficiary's] particular training," and "none of the other analysts has the same mix of product skills that he possesses."

The Petitioner stated:

> [T]he training on the specific products is not imparted to all employees. Due to the integrated nature of the [Petitioner's] suite of products, different software engineers have expertise on different sections/modules . . . . Even within the same product . . . , there are specific areas of specialization . . . . **While all the software engineers . . . have completed training and work experience that might appear to be similar to that of [the Beneficiary], none of the other analysts has the same mix of product skills that he possesses.**
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> **There are only three employees in the Indian office and none in the US office who have undergone [the Beneficiary's] particular training.**

The Petitioner stated that, unlike most of its employees, the Beneficiary was "additionally trained on the architecture of the [company's] product suite, the Operating Model which is at the heart of the [company's] applications, the standards for integration development methodology and implementation methodology of [its] software products."

The Petitioner asserts:

> People who undergo . . . standard, core training in [the Petitioner's products] are only capable of developing software programs when given detailed specifications while a few select individuals such as [the Beneficiary] who have undergone additional specialized training, are able to develop such specifications . . . and, more importantly, able to develop integration across multiple products . . . .
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> It should be emphasized that [the Beneficiary] has been . . . [and] will be working on the process of the software development itself (represented by 'customizing' the base code to meet specific customer requirements) and not just providing consulting services to determine customer requirements.

The Petitioner stated that the Beneficiary's specialized knowledge concerned the Petitioner's "application architecture," "configuration parameters," "database structure" and other elements, and

that the processes and procedures include the Petitioner's "proprietary algorithms," "methodology," "database access control mechanism" and others.

In a request for evidence (RFE), the Director stated that the training courses documented in the record appear to be "initial training" which a new employee would routinely receive. The Director also stated that "the Beneficiary's knowledge of the [Petitioner's] processes and procedures . . . do not appear to be substantially different from, or advanced in relation to, that of any team lead." The Director stated the following:

> Developing specifications, testing and quality assurance are included in the job descriptions of any Team lead . . . . The documentation provided is insufficient to establish that the beneficiary's knowledge of [the Petitioner's] processes and procedures is advanced or specialized in relation to other employees or that the beneficiary's knowledge may be differentiated in any way from similar positions at other companies. Insider knowledge of a company's operations does not automatically constitute special or advanced knowledge.

In response, the Petitioner repeated many of its prior assertions and stated that it had already submitted all the evidence and information requested in the RFE. The Petitioner contended that the Beneficiary's "knowledge of the functionality of [the Petitioner's] proprietary products . . . is special – it is distinct and uncommon in comparison to that generally found in the particular industry." The Petitioner stated that the Beneficiary's knowledge is not common in the industry because the Petitioner's products are proprietary, and training in those products is only available within the petitioning organization.

The Petitioner also submitted an organizational chart for the foreign entity, indicating that the company employs software engineers in four divisions: Coding, QA/Testing, Database Management, and Integration. The Beneficiary's name appears under "Coding," with no indication as to how the Beneficiary's tasks differ from others in the Coding division.

The Director denied the petition, stating that the Beneficiary's use of proprietary tools and methodologies appears to be "both incidental and commonplace among [the Petitioner's] employees," and "[t]he beneficiary's skills appear to be common among other consultants employed . . . in the field of information technology." The Director noted that the Beneficiary does not appear to have created the Petitioner's proprietary products. The Director found that the Petitioner had not sufficiently explained or supported its claim that the Beneficiary's past and intended future work involve specialized knowledge. The Director acknowledged the Beneficiary's training, but found that it appears to be routine introductory training common for new hires, and that the Petitioner had not shown how the Beneficiary's training distinguishes him from other employees.

Most of the Petitioner's appellate brief repeats portions of the Petitioner's initial letter. Repetition of prior claims does not establish errors of fact or law in the Director's decision. The only new evidence submitted on appeal consists of copies of patents issued to the Petitioner. The Director did

not question that the Petitioner has proprietary software and systems. Rather, the Director found that the Beneficiary's mastery of proprietary products does not automatically qualify as specialized knowledge.

Because "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets, 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.

"Special knowledge," however, does not simply mean familiarity with a particular company's products or services. Although the Petitioner has proprietary systems that its competitors lack and two U.S. patents, access to, and use of, proprietary information, technology, or software does not inherently constitute special knowledge. Otherwise, entire occupations would arguably fall under the definition. Only the Petitioner's software engineers have knowledge of the Petitioner's software; but the same can be said of the respective employees of every other company that creates proprietary software.

The statutory definition of specialized knowledge requires us to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc. v. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990), "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." The Congressional record states that the L-1 category was intended for "key personnel." *See* H.R. Rep. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position that is "of crucial importance." *Webster's II New Coll. Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of a petitioner's average employee.

Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, we must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the Petitioner's workforce. The Petitioner indicates that "software engineers like [the Beneficiary]" possess special knowledge "[b]y nature of their work." Given such a broad claim, we must conclude that, while it may be correct to say that the Beneficiary is a skilled employee, these skills do not constitute special knowledge as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D) and § 214(c)(2)(B) of the Act.

The Petitioner states that it "provided a detailed breakdown of the beneficiary's duties involving special knowledge of the employer's products." Those duties included the following examples:

- Develop specifications for customizing and integrating [the Petitioner's] proprietary software products . . . to specific customer needs[;]

- Test, configure, perform quality assurance and write implementation scripts for code to be delivered from India . . . [;]
- Plan, setup and maintain various databases . . . for running different versions of [several of the Petitioner's] products. Maintain and support these databases for optimal, ongoing performance to be used by customers . . . [; and]
- Discuss with customers, analyze and design solutions for integration of [the Petitioner's] products amongst themselves . . . .

The Petitioner has not shown that these tasks meaningfully distinguish the Beneficiary from other software engineers. On appeal, the Petitioner states that the Director unfairly focused on the duties, such as those quoted above, without considering "the breakdown of specialized knowledge required to perform each job duty." The breakdown, however, simply listed the products and models needed for each duty, and stated that their use required certain "proprietary algorithms" and methodologies. Naming elements of the Beneficiary's work in this way does not establish that their use involves specialized knowledge.

The Petitioner cites an unpublished appellate decision from 2013, in which we acknowledged that a beneficiary need not have developed a particular product in order to qualify for L-1B status. The Petitioner contends that the beneficiary of the approved petition is comparable to the Beneficiary in the present proceeding. In the 2013 decision, however, we noted the beneficiary's "contributions to the field of circuit design in the form of publications" and four patents in the beneficiary's name among the evidence to show that the individual's specialized knowledge went beyond a particular level of familiarity with the employer's product.

The Petitioner states that the Beneficiary's knowledge "is also advanced knowledge, since his specific training is not imparted to all employees." That is not the definition of advanced knowledge; otherwise, all non-universal training would convey 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.

The Petitioner has established that its software engineers are assigned specific roles within the company. While each role might be considered a "specialty" in the common usage of that term, this sort of compartmentalization does not mean that a worker holds "specialized knowledge" by virtue of performing a delegated function. As a member of the company's "Coding" group, the Beneficiary has knowledge not found among software engineers in "Database Management"; but the converse is also true. Differentiation of tasks is not tantamount to "specialization" for the purposes of the nonimmigrant classification.

The Petitioner has named products with which the Beneficiary works, and asserts that the Beneficiary's ability to write new code in order to customize products for clients is rare within the company, such that the Beneficiary is one of only three employees worldwide with his particular training. The Petitioner has also stated, however, that it "has obtained numerous L-1B petition approvals for its employees in the same and similar positions." The records of proceedings for those other petitions are not before us, and therefore we cannot say whether or not they were properly approved, but the volume of filings undercuts the proposition that the Beneficiary's eligibility comes from being one of only three employees with a particular training history. Either that number is incorrect, or else it is irrelevant, because the Petitioner has not shown that the Beneficiary is only able to do his job because of the exact configuration of training courses that he completed.

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the Petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be dismissed.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary's employment abroad, or intended employment in the United States, involve specialized knowledge.

ORDER: The appeal is dismissed.

Cite as *Matter of R-S-, Inc.*, ID# 588873 (AAO Sept. 25, 2017)