U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-, INC.

DATE: SEPT. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a financial processes solutions provider, seeks to temporarily employ the Beneficiary as a "Senior Support Consultant" under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 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 possesses specialized knowledge and has been employed abroad, and will be employed in the United States, in a specialized knowledge capacity.

On appeal, the Petitioner asserts that both the U.S. position and the foreign position involve specialized knowledge and that the Beneficiary possesses the knowledge required for the position.

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 Director determined that the Petitioner did not establish that the Beneficiary possessed specialized knowledge and further that the record did not establish that the Beneficiary's foreign position and proposed U.S. position require specialized 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 he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

A petitioner may establish eligibility for an L-1B visa by submitting evidence that the beneficiary and the proffered position satisfy either prong of the statutory definition. Under the statute, 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.

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.[1]

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

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.

The Petitioner states that it provides solutions for two key financial processes, and financial management and asserts that it is recognized in the industry as a leading provider of invoice automation and procurement solutions. The Petitioner states that the petitioning organization has over 1,600 employees in locations throughout the world. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner states that it currently employs 72 staff in the United States. In response to the Director's request for evidence (RFE), the Petitioner claims that it does not simply install pre-developed software, but rather develops software solutions based on its platform to meet the specific needs of clients.

The Petitioner also identifies two of its products, and and claims that "the Beneficiary is an expert in these products and much of his specialized knowledge centers around these products." The Petitioner explains that its platform "combines the latest cloud, social, mobile and smart analytics technologies to allow businesses to create, deploy and connect critical and order-to-cash processes across the extended enterprise simply, quickly and cost-effectively" and that it allows organizations to "optimize and accelerate the billions of interactions, transactions, and relationships that power global commerce, of every hour of every day." The Petitioner describes the product as a way to simplify and streamline key financial processes, and notes that companies that take a networked approach to are better able to optimize working capital, free up cash within the business, and unlock new profit streams. The Petitioner claims that its business involves both the complex and highly advanced field of financial software and its own specialized platform and that its "teams work within the platform, and work on building customized solutions to meet customer needs." Although the Petitioner asserts that the Beneficiary's knowledge centers, in part, around the platform, it does not further describe the technical interaction of its other products with this platform in layman terms.

Regarding the Beneficiary, the Petitioner states that he began work for the foreign entity in 2012 on the second line of the petitioning organization's support model, and in 2014 he advanced to the third line. The foreign entity asserts that the base line support is technical or common support, but that the second and third levels of support become so specialized that only a few individuals within the global company have the ability and skill to provide the support required for these levels. The Beneficiary, on his resume, indicates that he was a first and second line support consultant from 2012 to 2014 and that in 2014 he became a second line senior support consultant and that his present position is a third line senior support consultant. The Petitioner asserts that the Beneficiary's knowledge coupled with his experience and training with the Petitioner sets him apart from others

and has resulted in his advanced and specialized knowledge in the field.

We have considered the Petitioner's reference to U.S. Citizenship and Immigration Services (USCIS) policy on the adjudication of L-1B petitions and in particular USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws/policy-memoranda. As explained in the memorandum, USCIS is able to adjudicate L-1B petitions most effectively when a petitioner "explains in detail the specific nature of the industry or field involved, the nature of the petitioning organization's products or services, the nature of the specialized knowledge required to perform the beneficiary's duties, and the need for the beneficiary's specialized knowledge." In this matter, the Petitioner has not provided the necessary detailed information required to establish these essential elements.

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 initially did not describe the Beneficiary's special knowledge, but rather claimed that the Beneficiary used his knowledge to perform certain duties for the foreign entity and would do so for the U.S. entity. In response to the Director's RFE, the foreign entity listed the Beneficiary's duties and allocated the Beneficiary's time to those duties. The foreign entity indicated that the Beneficiary spends 40 percent of his time on "[t]echnical system support of 3rd line critical Product and SaaS Environment clients issues of [its] products," 10 percent of his time on "SaaS and On-Premise [-] Incident and Problem Management," and 10 percent of his time on "[s]upport of [i]mplementation and [i]ntegration" of the petitioning organization's products and platforms, among other duties.

The record includes promotional materials for the Petitioner's [redacted] platform and its [redacted] product describing their benefits to potential customers. However, the Petitioner does not explain how its proprietary versions of these products differ significantly from other platforms and programs that perform similar functions. The foreign entity noted that for the last one and a half years, the Beneficiary concentrated on the latest [redacted] product and the [redacted] portfolio at the highest level and asserted that the Beneficiary's expertise on [redacted] and expertise in computer science are the key elements the Petitioner needs in the United States.

However, the Petitioner does not detail the length of time it takes to train an experienced technician or developer to support the use of the Petitioner's products. The Beneficiary in this matter has a foreign technical degree and entered the foreign entity's employ with 13 years of experience working as a developer for another company. In the Beneficiary's first year of employment with the foreign entity in this matter, the Beneficiary received an unspecified number of hours of training on

two modules. He received training on "IP + Matching," in May 2012, and on "AnyERP," in June 2012. In November 2013, he received training on "Purchase Management" and in April 2014 he received training on the [redacted] program. Other than the [redacted] platform, the record does not include information on the other products. The Petitioner also does not describe the curriculum or the number of hours or days required for each product training module and does not indicate whether all of the petitioning organization's technical employees receive these or similar types of training. The Beneficiary's only other training with the foreign entity occurred in January 2016, on the subject of the petitioning organization's [redacted] platform. The record also includes training agendas, lasting several hours, for training on additional releases of [redacted] and on administering Microsoft SQL Server Databases, but the agendas do not include a student list or identify the Beneficiary as attending, preparing, or presenting any of these trainings. The Petitioner does not identify how any of the Beneficiary's training is different from training received by its other technical customer service employees.

Without detailed information on the petitioning organization's platform, programs, and products and the amount of training required to use and support customers' use of these programs, we cannot determine that knowledge of these products and programs could be considered distinct or uncommon within the Petitioner's industry. Based on the minimal information and evidence submitted regarding the [redacted] platform and the [redacted] program, and their training requirements, it appears more likely than not that a qualified technician or developer may require only limited training and a basic level of technical familiarity to use and support the petitioning organization's software programs, and that knowledge of this technology could be readily transferred to other similarly degreed technicians working in the Petitioner's industry.

Although the foreign entity asserted that the Beneficiary has "seniority in [redacted] and experience with old generation products as well," the Petitioner does not describe how the Beneficiary's training and work experience developed into specialized knowledge. While the Beneficiary may have continued to become more familiar with the Petitioner's platform and products, experience alone, while valuable, does not equal specialized knowledge. The Petitioner does not establish that the Beneficiary's customer service duties supporting its products form a basis for the development of specialized knowledge. On appeal, the Petitioner asserts that the Beneficiary has been "a team leader, a trainer, and a designer" during his five years of experience with the organization. The Petitioner, however, does not further describe or provide other evidence to support this assertion.

We recognize that the Beneficiary has gained insight into the petitioning organization's products and internal processes during his tenure at the foreign entity. But the Petitioner has not established that the Beneficiary's work experience while employed as a consultant for the foreign entity resulted in knowledge that is distinct, noteworthy, or uncommon in comparison to the knowledge of other similarly employed workers in the financial services processing industry. The Petitioner does not effectively differentiate the Beneficiary's initial employment with his current employment and does not describe how the Beneficiary gained special knowledge of its products through training or special tasks. The Petitioner, here, does not explain how other experienced technical consultants in

the industry are unable to perform the third line customer service support of the petitioning organization's products with a similar amount of minimal training.

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. It is reasonable to believe that all companies develop internal tools, methodologies, and software. Without a substantive explanation or evidence, the Petitioner has not established that the petitioning company's products are particularly complex or uncommon compared to similar products of other companies. The Petitioner has not sufficiently explained how the Beneficiary gained knowledge specific to only its organization, and has not supported a claim that it would take a significant amount of time to train an experienced technician or developer to perform the duties required of the proposed position.

A petitioner's statements may provide persuasive evidence of specialized knowledge if they are detailed, specific, and credible. Here, the Petitioner asks us to put great weight on its statements regarding the Beneficiary's knowledge of its products. However, the record lacks probative evidence demonstrating that extensive training is required to perform the duties it claims are different from that of other technicians, either within or outside of the organization. While there likely are no 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 professionals in the Petitioner's industry, or that it would require up to a full year or longer to acquire the knowledge needed for the position.

For the foregoing 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 asserts that during the Beneficiary's employment with the foreign entity, he gained an advanced level of specialized knowledge of the petitioning organization's proprietary software solutions and services and the ability to implement them in international markets. 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.

In response to the Director's RFE, the Petitioner provided its customer service support model and noted that it has "numerous different divisions offering specialized support to [its] customers." The foreign entity claimed that the Beneficiary is skilled in the SaaS working environment and that this is

not a skill any of its employees in the United States possesses. The foreign entity claimed further that there "is no other 3rd line [redacted] side support person in the U.S. who is familiar with the processes and tools that [the Beneficiary] knows" and that "it is anticipated that he will conduct trainings for the second line support and delivery teams." However, the Petitioner does not explain how the Beneficiary's work and responsibilities differed from other employees in the second and third line support sector of the petitioning organization. The Petitioner does not provide evidence that the Beneficiary received training or performed specific tasks that resulted in specialized knowledge necessary to train and share knowledge with the other support employees. The Beneficiary's skill at training others is not equivalent to knowledge of the petitioning 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. The Petitioner has not provided the length of such trainings or established that the knowledge the Beneficiary would convey in such trainings is specialized knowledge.

On appeal, the Petitioner asserts that the Beneficiary has gained specialized knowledge of its proprietary platform, services and products through his coursework and experience with the Petitioner and that "his knowledge is advanced because of his education, skill, background, and level of experience with the Petitioner's products." To differentiate the Beneficiary's knowledge from other employees within the petitioning organization, we review the duties of those employees in similar positions, as well as their training, education, and length of experience with the petitioning organization's products. The Petitioner submitted its customer service support model and organizational charts depicting the customer service departments and their subordinate components in different geographical areas. The Beneficiary is depicted on the organizational chart labeled as a "service desk 3rd line support" and is one of 17 employees in the [redacted] division. The record also includes a one-page document the Petitioner claims includes all the employees in the Beneficiary's division and which identifies the employees by name, title, and salary;[2] however, the 20 names on this list do not correspond to the names of the 17 employees in the [redacted] division on the petitioning organization's "service desk 3rd line support" chart. In any event, neither list identifies the other employees' duties, training, education, or depicts when the employees were hired or how long they have been employed. The Petitioner has not established that the Beneficiary's knowledge is advanced within the Petitioner's own operations.

In sum, the record does not include sufficient evidence demonstrating that the Beneficiary's combination of professional experience, work assignments, and knowledge of the Petitioner's proprietary software and methodologies has resulted in his possession of knowledge that is distinct or uncommon compared to similarly employed workers in the industry or others within the petitioning company or that it is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in the employer's operations.

[2] The one-page document does not list the Beneficiary.

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.

III. CONCLUSION

The appeal will be dismissed because the Petitioner has not established that the Beneficiary possesses specialized knowledge. As the evidence does not establish that the Beneficiary possesses specialized knowledge, we also cannot conclude that he has been employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of B-, Inc.*, ID# 706460 (AAO Sept. 28, 2017)