U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-C-[redacted] INC.

DATE: JULY 23, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of industrial and electrical [redacted] components, seeks to temporarily employ the Beneficiary as a customer support engineer 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 Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that he was employed abroad in position involving specialized knowledge, and that he will be employed in a specialized knowledge capacity in the United States. The Director further determined that the Petitioner did not establish that the Beneficiary's proposed assignment to the worksites of several unaffiliated employers would be in compliance the provisions of the L-1 Visa Reform Act.

On appeal, the Petitioner asserts that the Director incorrectly applied the law regarding specialized knowledge and made errors of fact by either misinterpreting or failing to consider all relevant evidence submitted in support of the petition.

Upon *de novo* review, we will dismiss the appeal, as the Petitioner did not establish that the Beneficiary was employed abroad in a position involving specialized knowledge and did not respond to the Director's request for additional evidence of the Beneficiary's eligibility under the L-1 Visa Reform Act. As the Petitioner did not meet these eligibility requirements and cannot overcome all bases for denial, we will reserve the remaining issues.

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 a manufacturer of [redacted] leads, [redacted] sub-assemblies, radiant glass heaters, and power cords for customers in the home appliance, automotive, HVAC products, and agricultural and construction equipment manufacturing industries. The Petitioner's Mexican subsidiary employed the Beneficiary in the position of "quality supervisor" from April 1999 until December 2004. From January 2005 until 2018, the Petitioner employed the Beneficiary in the United States in TN nonimmigrant status.[1] The Petitioner now seeks to employ the Beneficiary in the position of customer support engineer in L-1B status at an annual salary of $73,920. The Beneficiary will work primarily at the worksites of several unaffiliated employers with locations in Tennessee, Kentucky, Alabama, and Mississippi.

The Beneficiary's resume indicates that he has a bachelor's degree in informatics from a Mexican institution. Prior to joining the Petitioner's Mexican subsidiary, the Beneficiary had four years of experience as a "traffic administrator" and "traffic controller manager" with responsibility for distribution and logistics activities for another Mexican company.

III. EMPLOYMENT ABROAD

The primary issue we will address is whether the Petitioner established that the Beneficiary was employed abroad in a position involving specialized knowledge. As noted, the Beneficiary last worked for the foreign entity in 2004. However, because the Beneficiary has been working for the Petitioner in the United States, we will look at the three year period preceding his initial entry in TN status rather than the three year period preceding the filing of this petition. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A) (stating that "[p]eriods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof . . . shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement").

Under the statute, a beneficiary is considered to have specialized knowledge if they have: (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, 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).

[1] The nonimmigrant NAFTA Professional TN status allows citizens of Mexico and Canada to work in the United States as NAFTA professionals.

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 and was employed in a position that required such knowledge. We cannot make a factual determination 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 gained during the period of foreign employment. The petitioner should also describe how an employee is able to gain specialized knowledge within the organization, and explain how and when the individual beneficiary gained such knowledge.

Here, the Petitioner claims that the Beneficiary's position involved both special knowledge that is uncommon in the industry, and advanced knowledge that surpasses that of similarly employed workers in the company.

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 position requires knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Determinations concerning "advanced knowledge" require a review of a beneficiary's knowledge of the petitioning organization's processes and procedures. A petitioner may meet its burden through evidence that a given 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. Knowledge that is commonly held throughout a petitioner's industry or that can be easily imparted from one person to another is not considered special or advanced.

Initially, the Petitioner offered little information regarding the Beneficiary's position abroad, describing his "quality supervisor" position as follows:

> This position required collaboration, advising, and consulting responsibilities to our production, engineering quality management, and testing teams at [the Mexican subsidiary]. He studied quality problems, crimping issues, devised solutions and made recommendations to our managerial teams in Mexico. He created process control plans for quality problems. He also supervised the in-process products inspection and developed internal ISO 9000 audits. He developed testing specifications and analysis techniques (for root cause analysis of defective products).

The Petitioner stated that its company has (1) unique processes related to product launches and product quality assurance, as well as related testing methodologies and (2) unique [redacted] technology that it developed over decades of industry experience. The Petitioner stated that the Beneficiary specifically developed "an uncommon level of specialized knowledge" of:

- Crimping and related connection techniques and assembly processes;
- Monitoring, measurement and evaluation procedures;
- Design upgrade protocols (as defined by [the Petitioner's] acceptance criteria);
- Process oriented testing specifications and procedures for [redacted] as required by industry standards;

- Root-cause analysis techniques and
- The company's "unique" testing techniques for component/product integrity and tolerance.

In a request for evidence (RFE), the Director advised the Petitioner that its initial statement was not sufficiently detailed and was not supported by evidence to establish that the Beneficiary's duties with the foreign company required him to have either special or advanced knowledge. Further, the Director emphasized that the Petitioner did not compare the Beneficiary's knowledge to that possessed by others performing similar duties in the electrical components industry.

The Director requested additional information and evidence related to the Beneficiary's job duties, the training he completed, the job duties and qualifications of other company employees performing similar work, and an explanation of the specific special or advanced knowledge required to perform the duties of the foreign position and how it compares to that of similarly employed workers within the company and within the industry. The Director also asked that the Petitioner identify the minimum time required to obtain the knowledge needed for the foreign entity's quality supervisor position, including the amount of training and actual experience accrued after completion of training.

In response to the RFE, the Petitioner provided an additional support letter, a letter from the foreign entity, a foreign entity organizational chart dated 1999, and copies of training certificates.

The letter from the foreign entity's representative reiterated the initial job duties as stated above, adding that the Beneficiary "successfully performed" the responsibilities and that such duties "particularly in a supervisory role, cannot be performed without a superior level of advanced, unique, and specialized knowledge of our products and processes." He emphasized that the Mexican subsidiary does not "place persons in supervisory roles . . . if the candidate does not have this high and unique level and quality of experience."

The accompanying organizational chart from 1999, the same year the Beneficiary joined the Mexican company, identifies the Beneficiary as one of four quality supervisors reporting to a quality manager. The chart does not identify any lower-level positions in the quality department, but does appear to reflect that two of the quality supervisors reported to the Beneficiary. The Petitioner did not submit information regarding the other employees in the quality supervisor role and their respective duties and qualifications. Based on the broad statement in the foreign entity's letter, it appears that the company considers all persons with supervisory roles or job titles to possess specialized knowledge.

However, the foreign entity's claim that the quality supervisor role inherently requires special or advanced knowledge is not persuasive. We cannot overlook the fact that the Beneficiary himself was hired for this role with no prior experience with the Petitioner's group of companies, and no prior work experience in the [redacted] industry. In fact, if the submitted organizational chart is accurate, it reflects that the Beneficiary was immediately put in charge of supervising other quality supervisors when hired despite his lack of company and industry experience. The Petitioner did not explain how the Beneficiary himself was qualified to fill the role based on his background and therefore has not adequately supported the foreign entity's claim that the duties of the quality supervisor position "cannot be performed without a superior level of advanced, unique and specialized knowledge of [the company's] products and processes." The Beneficiary did not possess

this knowledge when hired for the position, and the Petitioner did not reconcile this fact with its claim that its supervisory positions inherently require special and advanced knowledge. Rather, it appears that he was hired for the position and expected to quickly acquire the job-related skills needed to perform the assigned duties. Knowledge that is easily transferred and acquired through a short period of training or on-the job experience does not qualify as special or advanced knowledge.

The letter from the foreign entity also highlighted that the Beneficiary was "especially an expert" in the company's "Crimping methods and related quality, testing and engineering functions." The foreign entity's representative explained that crimping relates to the building of custom industrial cable assemblies, and noted that "successful crimping results from the correct relationship between wire, terminal and crimping tool." He stated that the Beneficiary "was recognized for his expertise in crimping as it related to . . . for our companies" and noted that "his knowledge surpassed that of others in and outside the company."

This brief explanation was not sufficiently detailed to stand alone as evidence that the quality supervisor position required the Beneficiary to have special or advanced knowledge of the company's crimping methods. Based on the explanation provided, it is reasonable to conclude that any company in the Petitioner's industry would use crimping techniques in their product design and manufacture. Further, although the Petitioner indicates that it has its own methods for crimping, the Petitioner indicates that the Beneficiary received his training in crimping as part of a "Certified IPC Specialist" course. The training certificate for this course includes the Beneficiary's name and states that he completed a course of study on "IPC Notably, many fields on the certificates are incomplete and as such it does not identify the date the Beneficiary completed the course, the date of expiration, or the identity of his trainer or his employer.

Further, this course was not an internal training course specific to the company and its methods. Rather, based on the information provided on the certificate, it appears to be an industry standard course developed by the "Association Connecting Electronics Industries" and the Manufacturing Association. The Petitioner did not establish that this industry qualification, assuming that the Beneficiary completed it, led to his acquisition of advanced or special knowledge of the Petitioner's own crimping methods, and there are no additional references to crimping in the Beneficiary's training history. Further, the Petitioner did not explain whether or how its crimping methods differ from the industry standard to the extent that working with such techniques would require knowledge that is special or advanced. The fact that the Petitioner had its employee complete the referenced IPC course and did not offer additional training suggests that the industry standard course provided the Beneficiary with the necessary skills in crimping and related techniques.

The Petitioner also submitted its own letter in response to the RFE which primarily focused on the Beneficiary's training in support of its claim that he is "an expert and has superior knowledge of" the Petitioner's manufacturing operations system, abbreviated ." The Petitioner described the system as proprietary and unique, and stated that it is the "central operating methodology for the company's business and manufacturing operations." It further explained that all of the Beneficiary's training and knowledge relates to and that "[t]his is precisely why [the Beneficiary's] knowledge is specialized."

The Petitioner provided a one-page slide briefly describing [redacted] as "a standard enterprise-wide collection of business processes used in all functional areas to have common structure, principles and practices necessary to drive the organization." It also provided a brief description of the different trainings for which it provided certificates and explained how several of them related to [redacted] The submitted certificates were for courses titled "Process Mapping," "The 33 Standard Operating Elements of Lean Manufacturing," "Strategy Deployment," "Workplace Organization Standards," "Leader Standard Work," Problem Solving, Six Sigma Module I," "Yamazumi Mapping," "8Ds," and "Development of Supervisory Skills." The Petitioner identified several other courses completed by the Beneficiary but did not provide certificates or indicate when he completed them. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner stated that the training the Beneficiary received was "unique" but did not provide sufficient information to establish that his position abroad involved knowledge that was truly different or uncommon within the industry or advanced within the company. For example, the Petitioner stated that the "process mapping" certification "helps to identify and make more effective our processes or the customer's processes," while the "8Ds certification" relates to skills needed "to develop problem solving skills towards the correct and effective root cause analysis" for quality issues. We cannot determine based on these explanations how the training contributed to the Beneficiary's specialized knowledge or how the training establishes that the quality supervisor position required specialized knowledge.

The Petitioner did not identify the length of the training courses, and as noted above, did not provide information that would allow us to make comparisons between the Beneficiary's knowledge of company processes and that of others in the industry or company. Any company of a comparable size[2] in the Petitioner's industry would reasonably implement internal processes and systems based on industry standards and lean manufacturing principles, and expect its employees to perform their duties in accordance with the employer's operating system. Mere familiarity with a company's internal processes does not establish specialized knowledge absent evidence that the knowledge is truly different or uncommon in the industry.

Alternatively, the Petitioner could establish that the quality supervisor position required the Beneficiary to have advanced knowledge by showing how the Beneficiary was expected to possess knowledge of processes and procedures not possessed by other employees within the company. However, it did not provide information that would allow us to compare the Beneficiary's company-specific knowledge to that of others employed by the Mexican entity. As noted, the foreign entity simply claimed that the Beneficiary held a supervisory role and that all supervisors inherently have special and advanced knowledge of company processes and procedures. Again, the claim that the quality supervisor position inherently requires and involves specialized knowledge is undermined by the fact that the foreign entity hired the Beneficiary for the role despite his lack of company or industry experience. While he completed several training courses during his tenure in Mexico, the record does

[2] A company overview submitted by the Petitioner states that there are approximately 13,200 employees in Mexico and approximately 19,700 employees worldwide.

not establish that he was required to participate in any lengthy period of training upon assuming the position in order to carry out his duties.

Based on the foregoing discussion, the Petitioner submitted insufficient evidence to support its claim that the Beneficiary's position with the foreign entity involved specialized knowledge. Accordingly the appeal will be dismissed.

IV. L-1 VISA REFORM ACT

The remaining issue we will address is whether the Beneficiary's proposed L-1B employment is in compliance with the terms of the L-1 Visa Reform Act.

Under the L-1 Visa Reform Act, if a specialized knowledge beneficiary will be primarily stationed at the worksite of an unaffiliated employer, the petitioning employer must establish both: (1) that the beneficiary will be controlled and supervised principally by the petitioner, and (2) that the placement is related to the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary. Section 214(c)(2)(F) of the Act.

If a petitioner fails to establish both of these elements, the beneficiary will be deemed ineligible for classification as an L-1B intracompany transferee. As with all nonimmigrant petitions, the petitioner bears the burden of proving eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *see also* 8 C.F.R. § 103.2(b)(1).

The Petitioner stated on the petition and in its supporting letter that the Beneficiary will be stationed primarily offsite to provide technical services to clients that use the Petitioner's components in their products, and that he will be "entirely controlled and supervised by [the company's] managerial personnel." It provided a list of five customer locations in four different states and indicated that approximate percentage of time it expects the Beneficiary to spend at each location.

In the RFE, the Director requested additional documentation related to the Beneficiary's offsite employment, such as an organizational chart showing the hierarchy at the unaffiliated employer's website; a detailed statement explaining who will primarily supervise and control the Beneficiary's work and how they will carry out that supervision; and copies of contracts, statements of work, end-client letters, work agreements or service agreements and the clients.

The Petitioner's response to the RFE did not acknowledge the Director's request for evidence related to the L-1 Visa Reform Act requirements or include the requested evidence related to the Beneficiary's control and supervision. Accordingly, the Director denied the petition.

On appeal, the Petitioner states that it addressed the Beneficiary's control and supervision in its initial letter and states that the denial "may be the notorious example of USCIS' failure to read the evidence submitted by the Petitioner."

The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that a director may request additional evidence in appropriate cases. Here, the Director's request for a more detailed explanation of the Beneficiary's

control and supervision and/or additional documentary evidence of the offsite employment arrangement with its clients was within the discretionary authority granted to her by regulation. The Petitioner opted not to acknowledge this request or submit the requested evidence and has not supplemented the record on appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the Petitioner has not overcome this ground for denial.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. 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 E-C- Inc.* ID# 4269828 (AAO July 23, 2019)