



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF IT-S- USA, INC.

DATE: JUNE 13, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an IT servicer provider, seeks to temporarily employ the Beneficiary as a “Sr. MES Software 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 California 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 and would be employed in the United States in a specialized knowledge capacity.

On appeal, the Petitioner contends that the Director failed to properly consider the evidence, which shows that the Beneficiary was one of “over thousands” who was chosen to share his “advanced/specialized knowledge” with its U.S. employees. Although the Petitioner indicated that a supplemental brief would be submitted within 30 days of filing the appeal, the record does not show that a brief was actually submitted. Therefore, we will base our decision on the Petitioner’s short appeal statement (at Part 7 No. 3.d of the Form I-290B) and all previously submitted evidence.

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(I)(3).

II. BACKGROUND

The Petitioner is an IT company that creates software to support automation in manufacturing through the use of a proprietary manufacturing execution system ("MES"). The Petitioner referred to its "sophisticated proprietary tools" stating that developing these tools took "years of research" and "ground experience." Although the Petitioner claimed that the Beneficiary is "one of few employees within our group of over 9,000 employees" who acquired knowledge in the use of its proprietary tools, it did not describe the tools' functionality or distinguish them from the software tools used by other IT companies who support automation in manufacturing. The Petitioner also discussed the Beneficiary's education and work experience referring to his master's degree in general mathematics in 2005 and his work in the manufacturing IT industry starting with his work in 2006 as an external consultant and MES software developer for [REDACTED], a customer of the foreign entity. The Petitioner explained that the Beneficiary's foreign employment involved "analysis and development of MES solutions for large manufacturers," indicating that the Beneficiary acquired specialized knowledge in [REDACTED] services and the [REDACTED] production suite of software.

The Petitioner also claimed that the Beneficiary has in-depth knowledge of the foreign employer's operating conditions and a "deep involvement with the design of MES software," which is not generally found within the U.S. organization. The Petitioner anticipates that the Beneficiary's "specialized knowledge of [engineering] MES solutions lifecycle" will critically impact the U.S. operations and will allow the Beneficiary to train other engineers in the use of the foreign entity's proprietary tools to design, test, and implement MES solutions. The Petitioner has proffered an annual salary of \$85,000 to the Beneficiary.

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 proficiency in the use of an unaffiliated entity's proprietary software tools equates to specialized knowledge. The Director also questioned how the approximately six weeks of training that the Beneficiary received for his foreign position equates to specialized knowledge. Lastly, the Director determined that the Petitioner did not adequately describe the process for gaining the knowledge that is claimed to be specialized.

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 provided a supporting cover letter claiming that the Beneficiary is an experienced technical leader “in the design of [redacted] and [redacted] environments,” which involved implementing MES solutions for manufacturers of food and beverages as well as agricultural chemicals. Although the Petitioner referred to the Beneficiary’s “extensive experience” in coordinating and monitoring projects at all phases and his ability to design “specialized manufacturing environments” and work with a “wide variety of software technologies and computer hardware,” it did not distinguish the Beneficiary’s experience and knowledge from that of other IT professionals who similarly work with clients in the automation manufacturing industry, nor did it

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. The Petitioner emphasized the Beneficiary's practical knowledge of programming and networks noting that his "mathematical background" has served as a "natural professional outlet."

The Petitioner also provided a copy of the Beneficiary's résumé, which lists his professional skills and work experience. The résumé indicates that the Beneficiary has held the position of MES software developer with the foreign entity from 2005 through the present; it also indicates that from 2005-2011 the Beneficiary acted as an IT developer in a consulting capacity for [REDACTED] where he "followed the internal training courses" of the entity for which he was consulting.

With regard to the Beneficiary's proposed U.S. employment, the Petitioner again pointed to his "specialized knowledge" of the [REDACTED] software, which would ultimately benefit the U.S. subsidiary by providing its clients with automation solutions and frameworks. Although the Petitioner claimed that the Beneficiary has had "proprietary and on-the-job training" and is experienced in "a wide variety of proprietary software technologies" and internally developed computer hardware, it did not describe the training process or point to specific characteristics of the software or hardware to establish that the Beneficiary's experience with either resulted in his acquiring specialized knowledge.

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. The Director also noted that the Petitioner did not establish how and when the Beneficiary gained his claimed specialized knowledge, or compare and contrast the Beneficiary's duties and knowledge from those of others employed in the organization or within the industry. Accordingly, the Director instructed the Petitioner to identify the products or services that the Beneficiary worked with that required specialized knowledge, explain how such knowledge or expertise is either "special" or "advanced," state the minimum time required to obtain that knowledge, and compare the knowledge required to perform the duties of the Beneficiary's foreign position with that of similarly employed individuals within the employer or within the industry.

In response, the Petitioner provided a statement from the foreign entity claiming that the Beneficiary has "advanced and specialized knowledge" of the company's "sophisticated proprietary tools" and that he acquired such knowledge through "extensive training" at the company's own IT and management school, which is said to offer "200 certified lecturers and 363 courses" through its offices in Europe, the United States, and South America. The Petitioner did not establish that the Beneficiary was one of few employees who was offered this training, nor did it establish that such training was a necessary step in the acquisition of specialized knowledge. Thus, despite claiming that the Beneficiary is "the only one" among thousands of employees who "possess [*sic*] advance [*sic*] and specialized knowledge and skills," it did not specifically define the nature of the specialized knowledge or describe a path for acquiring such knowledge. Further, the Petitioner did not describe the foreign entity's "sophisticated development tools"; instead, it discussed the Beneficiary's position as an "external consultant" at [REDACTED] as well as his knowledge of the [REDACTED] "sophisticated developer tools." The Petitioner did not, however, describe those tools, point to distinct features that make the tools

sophisticated in comparison to other tools, or establish that other employees within the same industry do not have similar knowledge of comparable products and tools.

The Petitioner reiterated the Beneficiary's experience with [redacted] and his role as an "external consultant" for that entity, claiming that being selected for this role was in itself evidence of the Beneficiary's "unique abilities" in automation software for manufacturing. The Petitioner did not, however, specify how the Beneficiary's abilities were unique, state precisely how and when he acquired those abilities, or establish that such abilities applied to the foreign employer's products or tools. In fact, the Petitioner focused on training that the Beneficiary received after being assigned the external consultant role at [redacted] thereby indicating that the Beneficiary's claimed specialized knowledge was acquired at [redacted] and was with respect to [redacted] tools and products, as opposed to the tools and products of the employing entity. Although the Petitioner claimed that the Beneficiary's position at [redacted] led him to acquire skills that were "unique and fundamental" to the foreign entity's development of custom products for its manufacturing clients, it did not elaborate on this claim or explain how the Beneficiary's experience at [redacted] resulted in specialized knowledge of the foreign employer's software tools or products. Despite claiming that specialized knowledge is required to develop automation software for manufacturing, the Petitioner did not specify or describe the elements of the Beneficiary's knowledge that are claimed to be specialized, nor did it distinguish his knowledge from that of others within the employing entity or within the industry.

Further, the Petitioner did not provide a detailed explanation to support the claim that the Beneficiary's "advance[d] knowledge and specialization in the analysis and development of MES solutions for large manufacturers" equates to specialized knowledge. Although the Petitioner provided a list of trainings and certifications the Beneficiary acquired, the record indicates that after getting his master's degree in mathematics in 2005, he underwent approximately six weeks of training within a three-year period, which included two weeks of basic training in [redacted] in 2006 and three days of an introductory Microsoft course in 2008. The Petitioner did not explain how the Beneficiary's prior training, which included basic and introductory courses, contributed to the acquisition of specialized knowledge. Lastly, although the Petitioner provided a list of the Beneficiary's typical job duties, it did not indicate that his duties progressed in levels of difficulty that corresponded with any increased levels of knowledge, nor did it point to specific job duties that required specialized knowledge to execute.

On appeal, the Petitioner emphasized the size of its organization, noting that the Beneficiary was the only employee out of thousands who was selected to "share his advanced/specialized knowledge" with employees at the U.S. entity. The Petitioner contends that the Director capriciously denied the petition by not taking into account these specific circumstances.

We find that the Petitioner's broadly stated objection is not sufficient to overcome the above-noted deficiencies, which point to the lack of a detailed description of the tools and products in which the Beneficiary arguably acquired specialized knowledge, the lack of evidence showing how the Beneficiary acquired the knowledge that is claimed to be specialized, and the lack of a nexus between the work the Beneficiary performed as an external consultant for [redacted] and the specialized knowledge he is claimed to have acquired with regard to the tools and products of the foreign entity where he was employed.

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 IT-S- USA, Inc.*, ID# 3592091 (AAO June 13, 2019)