U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20504047

Date: JUNE 30, 2022

Appeal of California Service Center Decision

Form I-129, Petition for L-1B Specialized Knowledge Worker

The Petitioner, a lithography solutions provider in the semiconductor industry, seeks to continue to employ the Beneficiary temporarily in the position of a "customer support engineer" under the L-1B nonimmigrant classification for intracompany transferees.[1] *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary possesses specialized knowledge and was employed abroad and would be employed in the United States in a specialized knowledge capacity. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner did not establish that the Beneficiary held a specialized knowledge position for at least one year during his employment abroad. Therefore, we will dismiss the appeal. Because the identified basis for dismissal is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's proposed employment. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, a qualifying organization must have employed the beneficiary in a managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for

[1] The record shows that the Beneficiary presented Forms I-129S, Nonimmigrant Petitions Based on Blanket L Petition, at the U.S. Consulates in Osaka, Japan, in 2016 and in 2019. Both times, the petitions were approved by U.S. Department of State (DOS) consular officers. Under the most recent deference policy, "USCIS officers consider, but do not defer to, previous eligibility determinations on petitions or applications made by . . . DOS. Officers make determinations on the petition filed with USCIS and corresponding evidence on record." 2 *USCIS Policy Manual* A.4(B)(2), https://www.uscis.gov/policymanual. There is no indication in the record that the Director's actions were not consistent with this guidance.

admission into the United States and 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. Section 101(a)(15)(L) of the Act. The Petitioner must provide, "Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge." 8 C.F.R. § 214.2(l)(3). 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. *Id.*

II. EMPLOYMENT ABROAD IN A SPECIALIZED KNOWLEDGE CAPACITY

In the denial, the Director observed that in the initial supporting statement, the Petitioner stated that the Beneficiary was employed by its Japanese affiliate, [redacted], from April 1, 2011 until June 30, 2016, and that within this timeframe he assumed the position of "Customer Support Engineer" (CSE) from October 1, 2015 until June 30, 2016, a total of nine months. Because the Beneficiary is required to have held a specialized knowledge position abroad[2] for at least one year and his role as CSE lasted only nine months, that position alone is not sufficient to establish that the Beneficiary met the foreign employment requirement. As such, the Director determined that the field service engineer position, which the Beneficiary is claimed to have held prior to that of CSE, must also be considered in determining whether he was employed abroad in a specialized knowledge capacity for one year in the three years that preceded his application for admission to the United States.

Based on the Beneficiary's June 2016 admission to the United States to work for the petitioning entity, the three-year period during which the one year of qualifying foreign employment must have taken place is from June 2013 to June 2016.[3] Accordingly, the issue we will address in this decision is whether the Petitioner established that during those three years, the Beneficiary was employed in a specialized knowledge capacity for at least one year.

As a preliminary matter, 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.

A beneficiary is deemed to have specialized knowledge if they have: (1) a "special" knowledge of the petitioning organization's product and its application in international markets; or (2) an "advanced" level of knowledge of the processes and procedures of the petitioning organization. Section 214(c)(2)(B) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(D). 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

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

[3] The Petitioner provided a record of the Beneficiary's arrivals to and departures from the United States. The record shows that prior to the Beneficiary's U.S. arrival on June 30, 2016, he arrived to the United States on February 28, 2016, and remained until March 24, 2016. It is unclear whether that stay was related to the Beneficiary's employment.

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 their 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 such knowledge is typically gained within the organization and explain how and when the individual beneficiary gained such knowledge.

In the present matter, the Petitioner provided a supporting statement claiming that the Beneficiary has special and advanced knowledge with respect to various proprietary tools, processes, products, and systems, which were listed and described in a corresponding chart. The Petitioner also claimed that the Beneficiary has specialized knowledge in various processes and procedures that were required to execute his daily tasks and provided a separate chart containing a percentage breakdown listing the Beneficiary's previously assigned job duties. However, the Petitioner did not specify which of the Beneficiary's positions – that of field service engineer or the more recently held position of CSE – involved the listed job duties and implementation of the various proprietary tools, processes, products, and systems or the processes and procedures described in the provided charts. Likewise, the Petitioner stated that the Beneficiary assumed the role of "shift leader" with respect to a particular project, took trainings "to gain and expand his specialized knowledge," and provided training to other employees with whom he shared his "specialized skillset and knowledge," but it did not state when these actions were completed or establish that they were completed within the context of the Beneficiary's position as field service engineer. This detail is critical given the facts and circumstances presented herein; if the elements of what is claimed to comprise the Beneficiary's specialized knowledge were exclusive to his most recent foreign position of CSE, then the Beneficiary would be precluded from meeting the statutory requirement of at least one year of employment in a specialized knowledge capacity, given that he only held the CSE position for nine months.

After reviewing the record, the Director issued a request for evidence (RFE). In response, the Petitioner provided two statements from the "EUV Shift Group Lead." Although one of the statements focused primarily on the Beneficiary's employment in the United States, it included a brief reference to the Beneficiary's foreign employment, noting that his previously held positions included those of "EUV engineer" and "shift manager." No mention was made of the field service engineer position, which was the only position specified in the initial supporting statement. As such, it is unclear whether the position of field service engineer was interchangeable with one of the other positions or whether it was altogether a separate position, thus potentially making it one of three positions held during the Beneficiary's employment with the foreign affiliate. The Petitioner must resolve this incongruity with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the second statement from the "EUV Shift Group Lead" listed processes, procedures, and methodologies in which the Beneficiary is claimed to have gained specialized knowledge, that knowledge appears to have been specifically attributed to the Beneficiary's CSE position, which he held for less than one year. None of the other positions was specifically discussed, nor was a timeline provided showing when and for how long the Beneficiary held each position prior to assuming his position as CSE.

Further, the response statements do not clarify which of the Beneficiary's positions with the foreign affiliate are claimed to have been in a specialized knowledge capacity. This deficiency is particularly noteworthy, given that at least one full year of employment in a specialized knowledge capacity is required to meet the statutory requirements for the benefit sought herein. Because the Beneficiary held multiple positions during his employment with the foreign affiliate, it is critical for the Petitioner to establish a timeline for each position and to specify which position(s) is or are deemed to be in a specialized knowledge capacity. Merely listing the Beneficiary's job duties and training or specifying the processes, procedures, and methodologies in which he is claimed to have gained specialized knowledge is insufficient without information as to which of the Beneficiary's positions entailed the use of such knowledge and the length of time such position was held. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Ho*, 19 I&N Dec. 582, 588-89 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019).

The Petitioner's RFE response also included an organizational chart reflecting the Beneficiary's position with the foreign affiliate as of March 1, 2015. One of the Petitioner's RFE response statements referenced that chart, claiming that it shows the Beneficiary's specialized knowledge position within the foreign entity. We disagree. Although the chart identifies the Beneficiary by name and shows his position title as "FSE," which presumably represents "field service engineer," no information was provided regarding the duties associated with that position, nor did the Petitioner establish that the position required specialized knowledge. As noted above, only the Beneficiary's latest position abroad as CSE was specifically addressed in the Petitioner's submissions.

In the denial, the Director quoted information that the Petitioner provided in one of its original supporting statements, where the Petitioner identified two positions that the Beneficiary is claimed to have held during his period of employment with the foreign entity. The Director highlighted the portion of the supporting statement where the Petitioner focused on the Beneficiary's latest position

as CSE and stated that he held that position for less than one year. The Director explained that because the Beneficiary did not hold the position of CSE for one full year, he would consider the position the held prior to that of CSE in order to ascertain whether the Beneficiary acquired the requisite one year of specialized knowledge employment abroad with the qualifying foreign entity.

On appeal, the Petitioner contends that the Beneficiary acted as shift leader and used "his specialized knowledge and expertise in [the organization]'s proprietary tools, processes, and methodologies." However, the Petitioner primarily relies on excerpts from one of the RFE response statements to support this claim, despite the statement's focus on the Beneficiary's position as CSE to establish that he was employed in a specialized knowledge capacity. Although the Petitioner reiterates the job duty chart and list of the proprietary tools, processes, and methodologies that it claims are indicators of the Beneficiary's specialized knowledge, it is unclear how this information pertains to any position other than that of CSE. As noted above, because the Beneficiary only held the CSE position for only nine months, that position, by itself, is not sufficient to establish that he was employed abroad in a specialized knowledge capacity for at least one year. *See* 8 C.F.R. § 214.2(l)(3)(iv) (Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge). Likewise, the Petitioner's reiteration of the Beneficiary's trainings also does not advance the claim that the Beneficiary was employed in a specialized knowledge capacity for the required duration, as it is not clear when those trainings took place or that they conveyed knowledge pertaining to a position the Beneficiary held for at least one year. As stated earlier, the Petitioner bears the burden of establishing eligibility for the benefit sought herein. *See id*.

Furthermore, the appeal brief contains statements that undermine the Petitioner's claim regarding the Beneficiary's employment with the foreign affiliate. Namely, we point to the Petitioner's claim that the Beneficiary was employed abroad "from January 04, 2011 to June 30, 2016 in the specialized knowledge role of Technical Support Engineer."[4] This employment start date is inconsistent with the dates provided in the petition form, the initial supporting statements, and with the statements provided in response to the RFE, all of which identify April 2011 as the start of the Beneficiary's employment with the foreign affiliate. Also, if the Beneficiary assumed a specialized knowledge position from the start of his employment with the foreign affiliate, as claimed, we can only assume that the knowledge was obtained prior to, rather than during, the Beneficiary's employment with the qualifying entity. If so, this would undermine the Petitioner's claim that the Beneficiary's specialized knowledge pertains to the foreign entity's proprietary tools, systems, and processes, as the Beneficiary could not have had training or experience in those tools, systems, and processes as of the date his employment commenced. The Petitioner must resolve the discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the Petitioner's broad reference to the Beneficiary's "role of Technical Support Engineer" belies the fact that this role appears to have been comprised of multiple positions, as discussed above. It is the Petitioner's burden to establish that at least one of those positions required specialized knowledge and was held by the Beneficiary for at least one year during the relevant three-year period. Equally critical is the Petitioner's reliance, in part, on the Beneficiary's training to support the claim that he acquired specialized knowledge. Despite claiming that training contributed to the Beneficiary

[4] Because the Beneficiary was admitted to the United States to work for the petitioning entity in June 2016, the Petitioner must establish that his continuous one year of qualifying employment abroad took place between June 2013 and June 2016.

obtaining specialized knowledge, the record lacks information about the dates and duration of the training. Without this information, we cannot conclude that the Beneficiary used the knowledge he gained through training to work in a specialized knowledge position for at least one year during the relevant three-year period. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In this matter, although the record contains four training certificates showing that the Beneficiary completed four training courses, the dates on the certificates indicate that three of those courses were completed in 2019, when the Beneficiary was already working for the U.S. entity. Given that the Beneficiary arguably onboarded with the U.S. entity after having acquired specialized knowledge abroad, any trainings he would have taken once already in the United States would not be relevant for the purpose of establishing how he acquired specialized knowledge that resulted in at least one year of specialized knowledge employment abroad. Although one of the Beneficiary's four courses was completed in May 2011, thus during his employment with the Japanese affiliate, the Petitioner did not discuss that course's length or content. As such, the completion certificate for the 2011 course is not sufficient evidence to establish that the Beneficiary acquired specialized knowledge and thus held a specialized knowledge position with the foreign entity for at least one year during the three years prior to his admission to the United States to work for the Petitioner.

Lastly, the appeal brief recreates a previously submitted chart which lists the Beneficiary's foreign job duties and provides a brief description of the claimed specialized knowledge each duty requires and the number of years it took to obtain such knowledge. For instance, one of the Beneficiary's duties was to "execute[] multiple complex repairs," which required the ability to "recognize each work's complexity and assign the proper resources based on each one's competencies." According to the chart, this knowledge took seven years to acquire; if so, it is unlikely that the knowledge pertained specifically to the Japanese affiliate since the Beneficiary's employment with that entity lasted no more than five and a half years. The chart also lists duties that are associated with knowledge that the Petitioner claims takes five years to acquire. Given that the Beneficiary's entire period of employment with the foreign affiliate was just over five years, if the knowledge that is claimed to be specialized was acquired over the course of five years, then it cannot be said that the Beneficiary used that knowledge for at least one year prior to commencing employment with the Petitioner. Although several duties are associated with knowledge that the Petitioner claims took the Beneficiary three years to acquire, it did not clarify when the knowledge was acquired or whether it was acquired during the Beneficiary's employment with the foreign affiliate. It is critical for the Petitioner to establish precisely when the Beneficiary acquired the knowledge that it claims is specialized. Only then would we have the information needed to determine whether the Beneficiary used the claimed specialized knowledge for at least one year during his employment with the foreign affiliate.

In sum, the Petitioner primarily focused on the Beneficiary's position as CSE to establish that the Beneficiary was employed abroad in a specialized knowledge capacity. However, the record indicates that the Beneficiary did not occupy that position for at least one year. Because the Petitioner did not adequately discuss any other position the Beneficiary previously held within the same organization or establish when he acquired the knowledge that it deems specialized, we cannot conclude that the Beneficiary was employed in a specialized knowledge capacity for the requisite one-year period.

In light of the evidentiary deficiencies described above, the Petitioner has not established that the Beneficiary was employed abroad in a specialized knowledge capacity for one year within the three years that preceded the Beneficiary's application for admission to the United States.

ORDER: The appeal will be dismissed.