U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19804367

Date: MAR. 09, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of information technology consulting services, seeks to temporarily employ the Beneficiary as a Senior AI Solution Engineer 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary possesses specialized knowledge, that she was employed abroad in a capacity involving specialized knowledge, and that she would be employed in a specialized knowledge capacity in the United States. The matter is now before us on appeal. On appeal, the Petitioner contends that the Director's decision did not properly apply the statute, regulations, and relevant U.S. Citizenship and Immigration Services (USCIS) policy guidance to the facts presented.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 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).

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, 8 U.S.C. § 1184(c)(2)(B). 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.

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).

II. BACKGROUND

The Petitioner is an IT consulting company that provides "digital transformation solutions" for client businesses in various industries. The Petitioner's supporting letters and published company materials indicate that its primary core capability is "Cognitive Business Automation," which involves using Artificial Intelligence (AI), Machine Learning (ML), Natural Language Processing (NLP), and Computer Vision technologies to automate tasks and implement an "intelligent digital labor force" for its clients. The Petitioner indicates that it has close partnerships with Amazon Web Services (AWS) and IBM, which allow its staff to use its partners' "industry-defining tools and platforms" to deliver tailored software solutions.

The Petitioner provided evidence that its Lebanese affiliate has employed the Beneficiary as a Senior AI Solution Engineer since May 2016. It now seeks to transfer her to its New York office to serve in the same capacity. The Beneficiary received a bachelor's degree in computer science in 2015 and had less than one year of professional experience as a junior software developer when she joined the foreign affiliate's staff. In addition, the record contains evidence that the Beneficiary completed six online, non-credit courses made available by IBM through the Coursera digital learning platform. Completion of these courses resulted in her receipt of an IBM Specialization (AI Foundations for Everyone) and a Professional Certificate (IBM Applied AI). The Petitioner also provided a certificate indicating that the Beneficiary is a "Neo4j Certified Professional" based on her passing score on a certification test offered by "Neo4j Graphing Academy."

III. SPECIALIZED KNOWLEDGE

The primary issue to be addressed is whether the Petitioner established that the Beneficiary possesses specialized knowledge, that she has been employed abroad in position involving specialized knowledge,[1] and that she will be employed in a specialized knowledge capacity in the United States.

In the denial decision, the Director determined that the Petitioner did not establish that the Beneficiary's knowledge of the company's internal and proprietary processes, tools, and methodologies equates to specialized knowledge, and did not demonstrate how the Beneficiary's

[1] The Petitioner did not claim, in the alternative, that the Beneficiary was employed abroad in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv).

previous position abroad or current position in the United States require her to possess knowledge that is truly different, uncommon, or advanced compared to that possessed by similarly employed engineers in the company or in the IT consulting industry.

On appeal, the Petitioner asserts that the Director's decision did not adequately consider the supporting statements or other evidence submitted in support of the petition or properly apply the relevant law, regulations, and USCIS policy relating to specialized knowledge. It maintains that the Beneficiary has "internal expertise in the petitioner's proprietary business activities, systems, processes, and methodologies gained as a result of five years of progressive experience in AI Software Engineering" and that, based on her advanced knowledge, she is the "sole person" who can fulfill the requirements for the offered position. The Petitioner further asserts that the facts of this case are similar to those in a non-precedent decision in which we sustained the appeal of a petitioner that had filed an L-1B classification on behalf of one of its software engineers. In addition, the Petitioner contends that the Director failed to consider evidence that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), https://www.uscis.gov/laws-and-policy/policy-memoranda.

A. Evaluating 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 she possesses specialized knowledge, then we cannot conclude that she has been employed abroad in a position involving specialized knowledge and would be employed in the United States in a specialized knowledge capacity.

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 beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. With respect to "advanced knowledge," 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. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Knowledge that is commonly held throughout a petitioner's industry or that can be readily imparted from one person to another is not considered special or advanced knowledge.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether 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 an employee is able to gain specialized knowledge within the organization and explain how and when the individual beneficiary gained such knowledge. Here, for the reasons discussed below, the Petitioner has not established that the Beneficiary possesses specialized knowledge.

B. Special or Advanced Knowledge

On appeal, the Petitioner claims that the Beneficiary possesses both special and advanced knowledge of the company's "proprietary business activities, systems, processes and methodologies" for delivering AI-based solutions to its clients. However, notwithstanding this reference to the Beneficiary's proprietary knowledge, most of the Petitioner's assertions regarding her specialized knowledge are based on her knowledge, experience and skills in technologies that have not been shown to be either proprietary or specific to the petitioning organization[2] nor demonstrated to be uncommon or distinct among similarly employed software engineers who develop client solutions based on the same widely available AI platforms developed by IBM, Microsoft, Google and AWS. The Petitioner indicates that it enjoys "close partnerships" with the aforementioned "top performers" in the field which enable it to provide customers with the "best experience in using their industry-defining tools and platforms." However, it does not otherwise attempt to differentiate its tailored Cognitive Business Automation solutions from those provided by other IT consulting organizations who develop customized client solutions based on the same AI technologies.

The Petitioner generally claims that the AI field itself is more complex compared to other engineering fields, emphasizing that the Beneficiary's knowledge is more advanced than "most engineers" because it relates to Artificial Intelligence." However, the Petitioner does not elaborate on this claim or attempt to support a contention that the field itself is so specialized that that any engineer who is well-versed in AI technologies should be deemed to possess specialized knowledge. For example, the Petitioner explained that the Beneficiary "possesses more skills and specialized knowledge than a similar [senior] engineer with the same years of experience because she has gained both experience and certifications in working with the top 3 AI vendors in the market (IBM, Microsoft and AWS)." The Petitioner also noted that the Beneficiary "recently completed a series of course certifications in her field, specifically AI applications and programming, which furthers her specialized knowledge in AI services that enable business like [the Petitioner] to apply pre-built AI smarts to their solutions." The Petitioner has not supported its claim that it is unusual or uncommon for a software engineer specialized in AI technologies consulting to obtain experience and certifications in the industry-leading AI platforms in this field. The Petitioner has documented the Beneficiary's recent certifications in IBM AI technologies and Neo4j technologies, but does not explain how such third-party certifications, while valuable and relevant to the services the company provides, constitute "specialized knowledge" as defined in the statute and regulations.

In addition, we observe that the Petitioner indicates that the company's overall core capabilities include development of customized AI, Machine Learning, NLU and Computer Vision solutions built on the leading platforms in the Cognitive Business Automation field. The Petitioner indicates that the Beneficiary possesses experience building AI models (using machine learning algorithms and deep learning neural networks), knowledge of "conversational AI frameworks," experience with "extracting, processing and transforming data from various sources for machine learning inputs through different algorithms, and "extensive knowledge in cloud development and DevOps principles

[2] The Petitioner provided the Beneficiary's resume, which lists her experience in programing languages such as Java, Javascript, Python, C, HTML/CSS, Swift, .NET, SQL, Node JS and Springboot, and a variety of third-party software and tools, including IBM Watson, Microsoft Azure Cognitive Services and MLOps, Azure DevOps, MS SQL, Google AutoML, Azure AutoML, IBM BPM, Blockchain and Git.

which are critical to build and deploy AI solutions." While these software development skills are relevant to the "core capabilities" of the Petitioner's business and enable the Beneficiary to customize solutions based on the industry-leading platforms in the industry, the Petitioner's claim that possession of this skillset constitutes "special knowledge" among its own software engineers, or among software engineers working in the same field, lacks sufficient explanation and support in the record.

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. Further, it is the petitioner's burden to establish a favorable comparison. As already discussed above, the record does not establish how the duties performed by the Beneficiary require her to possess knowledge that is uncommon or distinct compared to similarly experienced engineers who work for consulting companies in the AI and Cognitive Business Automation sectors.

With respect to internal comparisons, the Petitioner maintains that the Beneficiary has a broader and deeper skillset in third-party platforms, tools, and software in this field compared to other engineers within the company after accruing more than four years of experience developing customized solutions for its clients based on these technologies. However, this claim also lacks support as the Petitioner has not provided evidence that would allow us to compare the Beneficiary's knowledge and skills to that of other engineers employed by the U.S. or foreign entities. The Petitioner maintains on appeal that the Director did not consider the fact that the Beneficiary holds a "senior" software engineering position and maintains that this fact alone is sufficient to be indicative of her specialized or advanced knowledge. We disagree, as neither the Beneficiary's job title nor her position on the submitted organizational charts provides sufficient explanatory information needed to make the required comparison.

The Petitioner's proposed organizational chart shows that the Beneficiary will report to an "AI Solution Lead" and personally oversee a team of three AI Solution Engineers. However, it also indicates that all three team members, like the Beneficiary, have completed relevant bachelor's degrees and are responsible for developing AI software across "multiple cognitive services." The Petitioner does not sufficiently explain how their relative knowledge and experience supports a determination that the Beneficiary possesses special or advanced knowledge by comparison. The Petitioner's organizational chart also depicts several other teams of software engineers and senior software engineers who report to department leads for Architecture and Intelligent Automation, and no information has been provided regarding these employees to support the Petitioner's claim that the Beneficiary possesses knowledge that is uncommon or advanced compared to other engineers within the company. We acknowledge that the Petitioner has provided award certificates indicating that the Beneficiary has been recognized within the company for "Technical Excellency" and as a "Top CBA Performer," but we cannot conclude based on the evidence that these awards were based on her possession of specialized knowledge and not solely on her job-related performance.

Given the nature of the Petitioner's business and the services it provides, it is reasonable to believe that it requires its engineers to be well-versed in software development skills and third-party technologies needed to tailor AI-driven solutions for its customers. While the record reflects that the Beneficiary has worked on projects that required her to develop customer-specific solutions based on industry-leading AI platforms, the Petitioner has not identified with specificity any specialized training

or internal systems, tools, products, or processes, specific to the petitioning company itself, that have resulted in the Beneficiary acquiring specialized knowledge. Instead, the Petitioner generally claimed that the Beneficiary possesses knowledge of its "proprietary business activities, systems, processes and methodologies." Knowledge that is proprietary or company-specific must still be either special or advanced in order to be deemed specialized knowledge. Accordingly, the Petitioner must establish that qualities of its activities, systems, processes and methodologies, require this Beneficiary to have knowledge beyond what is common in the industry. For example, if a Petitioner establishes that its proprietary systems, processes and methodologies are sufficiently complex that all of its employees who work with them have to undergo considerable training in order to perform their assigned duties, this fact may support a finding that knowledge of the proprietary tools and methodologies alone constitutes "special knowledge" of the company's services. Here, however, the Petitioner did not explain or document the claimed proprietary knowledge, nor has it identified any training or other methods by which its employees acquire such knowledge or how long it takes for them to do so.

In fact, despite indicating that it would take five years to train another individual to fill the offered position in the United States, the Petitioner has neither identified nor documented any internal or company-specific training completed by the Beneficiary. As noted above, a petitioner seeking to classify a beneficiary as an L-1B specialized knowledge worker should 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, after stating that a new employee could gain the required knowledge through five years of company training, the Petitioner implies that the Beneficiary herself gained her claimed specialized knowledge on the job. For example, the Petitioner notes that she "advanced quickly through increasingly responsible specialized knowledge positions." However, the Petitioner has also indicated that she has held the position of Senior AI Solutions Engineer since she was first hired by the foreign entity in 2016; it has not explained her progressive experience in different roles, nor has it identified what other roles within the company it regards as "specialized knowledge positions."

While we do not doubt that the Petitioner and foreign entity have their own internal methodologies, tools and processes for delivering IT services and solutions, the Petitioner has not supported its claim that knowledge of these methodologies alone constitutes specialized knowledge. It has not submitted evidence to corroborate a claim that its own tools, processes, and methodologies are so distinct and complex that it would take a significant amount of time to train an experienced software engineer in the AI field who had no prior experience with the Petitioner's family of companies.

We also acknowledge the Petitioner's assertion that "the technical assets and application development frameworks/tools which [the Beneficiary] helped build in Lebanon [have] empowered [its] consultants in the U.S. to be more efficient and better equipped to succeed in tackling any solutions." This statement suggests that the Beneficiary has been involved in the development of internal, company-specific intellectual property that is used by others in the organization; however, the record is lacking any further explanation or documentation regarding any "technical assets" and "application development frameworks/tools" to which the Beneficiary contributed. Without additional information, the Petitioner did not meet its burden to establish that the Beneficiary possesses special or advanced knowledge based on such contributions. The Petitioner repeatedly refers to the Beneficiary's knowledge as proprietary but has neither articulated this claim in sufficient detail nor

submitted supporting evidence of her knowledge of or contribution to the company's proprietary products, services, technologies, methodologies, or other interests.

The Petitioner also emphasizes that the Beneficiary has worked with key clients in the retail, health insurance and healthcare industries and therefore holds an understanding of the AI and automation needs of its customers in these sectors. However, an individual's familiarity with clients' projects and functional requirements, while valuable to the Petitioner, cannot be considered knowledge specific to the petitioning organization and cannot form the basis of a determination that the Beneficiary possesses specialized knowledge. All software engineers employed within the petitioning organization would reasonably be familiar with the company's internal processes and methodologies for designing and delivering custom software solutions. Similarly, most employees would also possess project-specific or industry-specific knowledge relative to one or more clients. However, this type of client or project-specific knowledge does not equate to "specialized knowledge" as defined in the statute and regulations.

Even if the Beneficiary's knowledge of the application of AI technologies to specific clients or the automation needs of a specific industry sector could be considered knowledge that is specific to the petitioning company, the Petitioner would still need to distinguish how her position requires software development knowledge or skills that are not commonly found among similarly trained and experienced software engineering professionals. It has not attempted to demonstrate why the knowledge required to, for example, develop an AI-driven "chat bot" for a retail pharmacy is uncommon or would not be held by an experienced software engineer with a similar professional background and skills in the same third-party AI platforms, programming languages and development tools.

Overall, the Petitioner did not adequately support a claim that a combination of a bachelor's degree in computer science, knowledge of industry-leading AI platforms and related software technologies, programming languages and tools, and knowledge of specific clients and industries with which the Petitioner's group have worked, have resulted in the Beneficiary's possession of special knowledge that is truly distinct or uncommon compared to knowledge generally possessed among similarly trained software engineers working in the Petitioner's industry. The Petitioner's claims that the Beneficiary possesses considerable proprietary or company-specific knowledge that can only be gained through extensive training or experience are overly broad and not supported by sufficient evidence to meets its burden of proof.

On appeal, the Petitioner cites to a non-precedent decision in which we overturned the denial of an L-1B petition filed on behalf of a software engineer who was demonstrated to hold an instrumental role in the development of a new proprietary cloud computing platform for his employer. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Further, we disagree with the Petitioner's assertion that the facts of this case are substantially similar to those in the non-precedent decision. The Petitioner emphasizes that the Beneficiary plays a "crucial role" in "formulating AI software for the Employer's particular clients." However, as discussed above, the record does not establish that development of customized AI software solutions for clients on a project-by-project basis requires the

Beneficiary to possess knowledge that is uncommon or distinct among software engineers working for consulting companies in the AI or Cognitive Business Automation sector.

We also acknowledge the Petitioner's claim that the Beneficiary possesses characteristics of a specialized knowledge employee consistent with the above-referenced 2015 USCIS policy memorandum addressing L-1B adjudications. The Petitioner maintains that the Beneficiary's "deep knowledge" of its clientele, coupled with the comprehensive knowledge she possesses of all the AI platforms leveraged by the company, makes her an indispensable asset to the company's functioning.

While we do not doubt that the Petitioner has internal tools, processes, and methodologies for delivering client projects which contribute to its productivity and competitiveness in the marketplace, and the Beneficiary is skilled in providing services that rely on these methodologies, this characteristic alone is not probative of the Beneficiary's specialized knowledge. Nor is the Petitioner's assertion that the Beneficiary is an invaluable employee who has served in key assignments sufficient to establish that she qualifies for the benefit sought. As noted in the memorandum, the "characteristics" listed by the Petitioner are only "factors that USCIS may consider when determining whether a beneficiary's knowledge is specialized." USCIS Policy Memorandum PM-602-0111, *supra*. The memorandum emphasizes that "ultimately, it is the weight and type of evidence that establishes whether the beneficiary possesses specialized knowledge." *Id*. at 13. The Petitioner here has not submitted sufficient evidence to establish how the Beneficiary's knowledge qualifies as either "special" or "advanced."

For the reasons discussed, the Petitioner has not established that the skills and knowledge needed to develop AI-driven solutions for its customers based on industry-leading third-party platforms meet the definition of "specialized knowledge," even when combined with knowledge of its clientele and any internal tools and methodologies the company has implemented for delivery of such solutions. It has not shown that such knowledge is sufficiently distinct or uncommon or that it could not be readily transferred to another IT professional with the requisite functional and technological background. The Petitioner's claim that it would require many years of training to acquire the claimed specialized knowledge needed for the U.S. position is simply not supported by the record. Accordingly, the appeal will be dismissed.

Because the Petitioner has not demonstrated that the Beneficiary possesses specialized knowledge, we need not further address whether she has been employed abroad in a position involving specialized knowledge or would be employed in the United States in a specialized knowledge capacity.[3]

ORDER: The appeal is dismissed.

[3] *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).