



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

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

In Re: 15840621

Date: MAR. 29, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a restaurant, seeks to employ the Beneficiary temporarily as its “Executive Pastry Chef/Head Chef” 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 Texas 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 meet that burden. Therefore, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1B nonimmigrant visa classification, 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 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 U.S. subsidiary of a restaurant catering enterprise which is comprised of 14 restaurants located throughout various regions in China. The Petitioner plans to compensate the Beneficiary \$50,400 annually for his “advanced skills,” which he will apply to create “high-quality dishes” and “seasonally rotating menus.”¹ The Petitioner highlights the Beneficiary’s ability to not only “innovate the menu” with “new seasonal dishes” but to also hire and train kitchen staff to assist in food preparation, stating that the Beneficiary’s knowledge is “advanced” with respect to creating a

¹ The petition shows the Beneficiary’s proffered wage as \$4200 per month, which is equivalent to annual compensation of \$50,400.

menu that “conforms to the company’s unique multi-regional and authentic cultural style” and is in line with the company’s “philosophy and principles” which one can learn only through “extensive experience” while working “at a senior Chef level” within the foreign organization. The Petitioner claims that the Beneficiary “developed processes and methodologies” to create “artistically appealing desserts and pasty dishes” and “acquired advanced knowledge of [the foreign entity]’s proprietary and unique style and design and the culinary specialties for which it has become renowned.” The Petitioner states that the Beneficiary continued to develop his advanced knowledge after being promoted to the sous chef position with the foreign entity; it indicates that the Beneficiary’s employment abroad resulted in “unique and advanced knowledge” of the organization’s “procedures, principles and practices” which the Beneficiary needed to oversee the kitchen staff in their food preparation. The Beneficiary’s knowledge of the foreign organization’s “culture and its unique creation, decoration and presentation of the dishes” is claimed to be critical to the Petitioner’s ability to implement and maintain the same unique “style” within its restaurants in the United States.

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether the Beneficiary has been employed abroad and will be employed in the United States, in a specialized knowledge capacity.

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.²

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 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

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

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, although the Petitioner claims that the Beneficiary has advanced knowledge with respect to its organization’s menus and dishes, it does not state or provide supporting evidence establishing that the Beneficiary’s knowledge concerns its organization’s processes and procedures. Rather, the Petitioner’s repeated use of the term “advanced” to describe the Beneficiary’s level of function and knowledge was generally applied to his knowledge and expertise in food preparation and menu creation. For instance, in a supporting statement, the Petitioner claimed that the Beneficiary has “advanced knowledge to the creation of our menu ensuring it conforms to the company’s unique multi-regional and authentic cultural style and is strictly in adherence to our company’s philosophy and principles.” The Petitioner did not describe its “philosophy and principles” or explain how this reference pertains to the organization’s processes and procedures, which is fundamental to establishing the claim that the Beneficiary’s knowledge is advanced.

The Petitioner also emphasized the Beneficiary’s prolonged period of employment with the foreign entity, claiming that the four and a half years he spent working as the foreign entity’s “Sous/Chief Pastry Chef” resulted in the acquisition of advanced knowledge of the foreign entity’s “proprietary” brand culinary specialties in terms of their “unique style and design.” Again, the Petitioner’s use of the terms “advanced” and “proprietary” was not in reference to the organization’s processes and procedures, but rather to its “culinary specialties.” The Petitioner also claimed that the Beneficiary “developed processes and methodologies for the creation of artistically appealing desserts and pastry dishes that are unique” to the foreign organization and provided the “Unified and Standard Preparing Procedure” sheets that list ingredients and preparation instructions for various pastry dishes. However, the Petitioner did not explain how its organization’s preparation procedures are uncommon as compared to the processes and methodologies used by others in the restaurant industry. Likewise, the Petitioner claimed that the Beneficiary’s experience with the foreign entity resulted in advanced knowledge of the organization’s “procedures, principles and practices,” but it did not describe the “procedures, principles and practices” or distinguish them from those that are common among restaurants with similar food offerings. Further, although it is relevant to point out that the Beneficiary

acquired knowledge and skills that “took years to develop” and are “impossible to replace or transfer easily,” these are not dispositive factors as they do not impart relevant information about the foreign employer’s processes and procedures, which is fundamental to establishing that the Beneficiary acquired and used advanced knowledge during his employment abroad.

In a request for evidence (RFE), the Director noted that the Petitioner did not provide sufficient evidence showing that the Beneficiary received training or that the training he is claimed to have received conveyed specialized knowledge. Although the Director acknowledged the Petitioner’s submission of media reviews of its organization as well as evidence showing that the Beneficiary received a year-end bonus in 2015, this evidence was deemed insufficient to demonstrate that the Beneficiary’s knowledge is both uncommon within the industry and further along in progress as compared to others within the organization. The Director stated that the Petitioner can address these areas of concern by: submitting evidence of the Beneficiary’s prior education and training; explaining how the Beneficiary’s education and training relate to the knowledge that is claimed to be specialized; establishing the number of years the Beneficiary has been using or developing the knowledge that is claimed to be specialized; and providing a comparison of the Beneficiary’s knowledge to that of other employees within the same organization and within the industry.

In response, the Petitioner addressed the issue of education and training, noting that the Beneficiary earned a degree in “Techniques and Western Pastry” from a vocational collage in China where he received at least three years of classroom and experiential training, which consisted of a 17-month apprenticeship and approximately 1500 hours working at a five-star restaurant. The Petitioner also listed the Beneficiary’s work experience with the foreign entity, starting in October 2011 when he engaged in “intensive work and training” and assumed the position of “Dim Sum Supervisor,” followed by a promotion to sous chef in June 2012, and a subsequent promotion to “Sous Chef and Dim Sum Leader,” a position that the Beneficiary held from October 2013 to November 2015. Given the organization’s requirement of 1000 hours of experience with the foreign organization to gain an understanding of “the menu design process” as a prerequisite for allowing an employee to contribute to the development of the foreign entity’s menu, the Petitioner pointed to the Beneficiary’s work history as evidence that he exceeded that requirement.

Despite emphasizing the Beneficiary’s training and years of work experience, which the Beneficiary accumulated both prior to and during his employment with the foreign organization, the Petitioner did not outline a specific path for gaining specialized knowledge within its organization. The Petitioner did not provide a training schedule, nor did it specify or describe the content of the “intensive” work trainings the Beneficiary is claimed to have undergone. Although the Petitioner provided a chart summarizing the Beneficiary’s positions and training, the information about the training was vague and lacked details, such as the specific dates and covered content. For instance, in addressing the Beneficiary’s training during his role as “Dim Sum Supervisor,” the Petitioner merely stated that the Beneficiary “gained extensive experience” as well as “exposure to menu design [and] traditional dim sum styles” while working under the foreign entity’s head chef. Similarly, in addressing the Beneficiary’s training prior to his role as sous chef, the Petitioner merely pointed to the Beneficiary’s nine months of experience as “Dim Sum Supervisor/Head Pastry Chef” and the vocational training he received prior to commencing employment with the foreign entity. Since assuming as sous chef, the Petitioner broadly referenced the Beneficiary’s continued effort “to gain mastery” in the organization’s “pan-regional [] and multiple additional regional styles” of Chinese cuisine as well as the

organization's "menu design concepts and [] philosophy of cuisine." Although the information provided indicates that the Beneficiary's knowledge progressed since the time he commenced his employment with the foreign entity in October 2011, the Petitioner did not adequately outline the knowledge progression explaining when the Beneficiary attained a level of knowledge that is claimed to be advanced. Likewise, without more precise information about the content of the Beneficiary's training, we cannot determine how that knowledge was obtained.

The Petitioner also highlighted the Beneficiary's ability to study and adapt "other styles of cooking" to the foreign entity's "style" and to create new menu items, pointing to recipes, preparation sheets, and manuals that the Beneficiary developed "at various points in his tenure"; the Petitioner indicates that the Beneficiary's ability to develop these items supports the claim that his knowledge is advanced. We disagree. The focus of an advanced knowledge claim is the processes and procedures of the employing organization. *See* USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy* (Aug. 17, 2015), <https://www.uscis.gov/laws/policy-memoranda>. In the matter at hand, the Petitioner does not identify or describe the processes and procedures of the employing organization; instead, it focuses on the Beneficiary's vocational training and work experience, which enabled him to "master[] many cuisine profiles and styles," gain an "expert grasp" of the organization's "cuisine design philosophy," and create recipes that enhanced the petitioning organization's image and competitiveness in the restaurant industry. Notwithstanding these achievements and contributions to the petitioning organization, the Petitioner has not established that the knowledge the Beneficiary acquired was with respect to its organization's processes and procedures, which are at the heart of an advanced knowledge claim.

On appeal, the Petitioner asserts that the Beneficiary's specialized knowledge should be assessed under the advanced knowledge criteria and argues that the Beneficiary meets this criteria because of the formal classroom training he received in pursuit of his vocational degree and the subsequent experience he gained by working for the foreign parent entity. The Petitioner claims that the Beneficiary has "expanded and advanced knowledge on [*sic*] various types of Chinese cooking styles" and highlights a favorable review from the president of the Asian American Restaurant Association, who praised the Beneficiary's level of knowledge of "authentic Chinese cuisine." The Petitioner further states that "[t]he specialized knowledge lies in the approach [the Petitioner] took in its philosophy and management style."

While we acknowledge the Petitioner's claims regarding the Beneficiary's culinary experience and abilities as well as its claims regarding its "philosophy and management style," these elements do not establish that the Beneficiary acquired advanced knowledge during his employment abroad. As noted earlier, the Petitioner has not identified or described its organization's processes and procedures, nor has it claimed that the Beneficiary's knowledge pertains to the organization's processes and procedures. As such, the Petitioner has not met the threshold requirement for demonstrating that the Beneficiary acquired advanced knowledge which he used for at least one year during his employment abroad and which he would continue to use in his proposed position with the petitioning entity. Without meeting this threshold requirement, we need not proceed with an analysis of whether the

Beneficiary possesses knowledge that is uncommon within the relevant industry and is greatly developed in comparison to others within the employing organization. *Id.*

Accordingly, in light of the evidentiary deficiencies described herein, the Petitioner has not established that the Beneficiary possesses specialized knowledge or that the Beneficiary was employed abroad and would be employed in the United States in a specialized knowledge capacity.

ORDER: The appeal will be dismissed.