



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

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

In Re: 1098833

Date: OCT. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, describing itself as a tooling service company, seeks to temporarily employ the Beneficiary as a “Process Technician and Trainer” in the United States under the L-1B nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary has been employed abroad in a specialized knowledge capacity. Further, the Director determined the Petitioner did not demonstrate that the Beneficiary’s position in the United States would involve specialized knowledge.

On appeal, the Petitioner asserts that the Beneficiary’s position abroad involved specialized knowledge due to its proprietary nature and the lack of this knowledge in the marketplace. The Petitioner asserts that the Beneficiary’s knowledge is “distinct and uncommon when compared to other companies operating the same industry.” The Petitioner also contends that the Beneficiary is the only employee in the United States qualified to train other technicians, emphasizes his ability to provide efficient and timely services to U.S. clients, and states that his knowledge could not be easily imparted to another employee.

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 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(1)(3).

II. BACKGROUND

The Petitioner indicated that the foreign employer is engaged in “creating innovative and proprietary [redacted] tools” and providing “optimal tooling service to clients in the [redacted] markets,” including “excellent solutions through the use of innovative tool design, precision tool manufacturing, and versatile tool adapters.” The Petitioner also noted the foreign employer’s “[redacted],” indicating that this technology allows clients to improve efficiency and quick changeover of tools not available through other vendors in the U.S. marketplace. The Petitioner further stated that it “relies on the foreign [employer’s] expertise and specialized techniques and processes to manufacture [redacted] tools” and that it was transferring the Beneficiary to provide specialized training in its proprietary and unique manufacturing process “known only by a few numbers of workers.”

In response to the Director’s request for evidence (RFE), the Petitioner explained the Beneficiary’s knowledge as follows:

The beneficiary is not simply a skilled work – he possesses special expertise and knowledge of the [company’s] unique and proprietary 3D CAD modeling, machine program development, machine program implementation, machine set-up (including milling, EDM, and surface grinding), machine operation (including High Speed Milling [covering Direct Finishing], EDM, and surface grinding) and polishing. This detailed process knowledge is subsequently applied to the tooling systems supplied to our clients in the US. This specialized knowledge is unique to [redacted]’s manufacturing of [redacted] [redacted] tools processes and must be taught through a combination of practical hands on work with a seasoned supervising technician/operator such as [the Beneficiary].

The Petitioner indicated that the U.S. position “requires in-depth knowledge and experience in all of the above processes” and indicated that this knowledge is not available outside of its organization. It further stated that the knowledge is “known infrequently and only a very small talent pool,” noting that this knowledge was held by none of its employees in the United States. In addition, it explained that the Beneficiary had already trained two employees working for the foreign employer and that they are now who “fully autonomous.” The Petitioner further discussed the Beneficiary’s management of “a team of technicians” abroad. The Petitioner provided a photograph of an example of the type of “customized tool sets” the Beneficiary creates for clients indicating that he “developed the interior of the tooling, using our proprietary high-speed milling, erosion and polishing that allowed this project to be a success.” In a support letter provided with the petition, the Petitioner also emphasized that it would “take more than three years of in-depth training and mentored experience in the machining industry to gain a general understanding in the related disciplines.”

The Petitioner also stated that the Beneficiary has 20 years of experience and 14 years “specifically working in the [foreign employer’s] processes.” The Petitioner provided several documents related to trainings completed by the Beneficiary in April 2018, including “PowerSHAPE base” (21 hours), “Refinement in PowerMILL (35 hours), “Automation of PowerMILL” (7 hours), and Electrode in

PowerSHAPE (14 hours). Lastly, it submitted a certificate from 2005 reflecting the Beneficiary's completion of 700 hours of training in "Building conception by a computer level 5."

III. SPECIALIZED KNOWLEDGE

The primary issue in this matter is whether the Petitioner established that the Beneficiary possesses specialized knowledge and whether he was employed in a specialized knowledge capacity. As a threshold matter, if the Beneficiary does not possess specialized knowledge, then his position abroad and in the United States would not involve specialized knowledge as necessary to qualify him.

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 special 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).

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 an employee is able to gain specialized knowledge within the organization and explain how and when the individual beneficiary gained such knowledge.

A. Advanced Knowledge

The Petitioner does not clearly indicate on appeal whether the Beneficiary's knowledge is advanced as defined by the regulations. However, in response to the Director's request for evidence (RFE), the Petitioner did emphasize the Beneficiary's 20 years of experience and indicated that "his level of knowledge in operating [foreign employer] [redacted] machines [is] more advanced than the knowledge of other technicians at [the foreign employer]." Therefore, we will analyze whether the Petitioner has established that the Beneficiary's knowledge is advanced.

Determinations concerning "advanced knowledge" require 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. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others. Also, as with special knowledge, the petitioner ordinarily must demonstrate that a

beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another.

In the RFE, the Director emphasized that in order to demonstrate that the Beneficiary's knowledge is advanced the Petitioner must explain how his knowledge compared to his colleagues, list these coworkers, as well as their names, job titles, duties, education levels, and salaries. However, in support of the petition, the Petitioner only provided an untranslated and generic organizational chart that did not effectively convey the Beneficiary's place within the organization. Further, in response to the RFE, the Petitioner did not remedy this deficiency despite the Director's direct request. In denying the petition, the Director concluded that the Petitioner did not demonstrate that the Beneficiary's knowledge is advanced since it did not effectively differentiate him from those within his organization.

We agree with the Director's conclusion. The Petitioner did not sufficiently establish how the Beneficiary's knowledge is greatly developed as compared to similarly placed colleagues within the organization. Determining whether knowledge is "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. The Petitioner bears the burden of establishing such a favorable comparison. The Petitioner emphasizes the foreign employer's proprietary [redacted] [redacted] tools; therefore, it is reasonable to conclude that many others within the organization have knowledge of these products and their manufacture and maintenance. The Petitioner only vaguely stated that there are "only a few workers" and a "very small talent pool" in the organization holding the Beneficiary's level of knowledge. However, the Petitioner has not substantiated the Beneficiary's advanced knowledge by specifically comparing it against that of the knowledge, experience, duties, training, and education of the other coworkers within the company as necessary to differentiate it as greatly developed in comparison.

As noted, the Petitioner also did not even submit a definitive and fully translated organizational chart to demonstrate the Beneficiary's place within the organization nor did it articulate how many others within multinational organization perform duties similar to his. The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the its claims. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3).

For instance, the Petitioner stated that the Beneficiary oversaw a "team" and noted that he trained two colleagues, indicating they "are now fully autonomous." However, the untranslated foreign organizational chart did not reflect that the Beneficiary had any subordinates. Further, it did not substantiate the Beneficiary's provision of training to others, nor did specifically identify and explain these asserted team members or trainees, including their experience, duties, education, and training. It appears clear from the Petitioner's assertions and its marketing materials that the foreign employer's proprietary [redacted] tools as well as the expertise and knowledge required to service and maintain them are at the core of its business. Therefore, although the Beneficiary's tenure of employment with the foreign employer looks to be substantial, the Petitioner has offered few credible specifics to corroborate that his knowledge of the company's proprietary products and processes is greatly developed when compared to his colleagues.

To further illustrate, the Petitioner submitted documentation reflecting asserted trainings completed by the Beneficiary, including what appears to have been 700 hours of entry level training completed at the beginning of his employment and several trainings related to “PowerSHAPE” and “PowerMILL” approximately one year prior to the date the petition was filed. However, it does not specifically explain what “PowerSHAPE” and “PowerMILL” are and how knowledge of these products or applications is significant to the performance of the Beneficiary’s duties, how many others within the organization have completed these trainings, or how these trainings provide him with greatly developed knowledge in comparison. In addition, it did not articulate how many others have completed the apparent entry level training completed by the Beneficiary and it not clear without further explanation and evidence how this elementary training would differentiate him.

Likewise, the Petitioner provides few details as to actual projects or assignments of the Beneficiary completed to sufficiently substantiate his knowledge and experience as greatly developed compared to his colleagues. For instance, the Petitioner submitted a photograph of what appears to be one of the foreign employer’s machines and stated that this represents “a highly specialized and customized tool set for [a] Client” and that the Beneficiary “developed the interior of the tooling, using our proprietary high-speed million, erosion and polishing that allowed this project to be a success.” However, the Petitioner provided few credible details to give this asserted project probative value and to differentiate the performance of these tasks as representative of greatly developed knowledge within the organization. First, the Petitioner did not state for which client these services were provided, nor did it explain the nature of these services, beyond providing a photograph of the machine. Although we acknowledge that the photographed “tooling” looks technically complex, it is not clear from this generic photograph and the Petitioner’s explanation how the Beneficiary’s work on this unnamed project sets his knowledge apart as greatly developed in comparison to his colleagues.

It is reasonable to conclude without additional explanation and evidence that many of the Beneficiary’s other colleagues also likely provide similar services given the central nature of its products, and their maintenance, to its business. The submitted evidence reflects that the Petitioner’s proprietary products are widely provided to many other clients suggesting that knowledge of these technologies is more likely than not widely held within the company. In fact, the Petitioner only states that the Beneficiary’s knowledge is not held within the United States, suggesting it may be widely held abroad within the foreign employer. Further, although the Petitioner is not required to demonstrate that the Beneficiary developed the company’s proprietary technologies, it is notable that it does not assert that he did so, suggesting that there are other professionals within the company who developed and created these proprietary technologies. Although we acknowledge that the Beneficiary’s knowledge of the company’s proprietary machines and processes appears complex, complexity alone does not demonstrate that knowledge is advanced according to the regulations. The Petitioner has not effectively set the Beneficiary’s knowledge apart from his colleagues with detailed and probative comparisons.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary possesses advanced knowledge.

B. Special Knowledge

We will next discuss whether the Petitioner has demonstrated that the Beneficiary's knowledge is "special." 8 C.F.R. § 214.2(l)(1)(ii)(D).

Determining whether a beneficiary has "special knowledge" requires review of a given beneficiary's knowledge of how the petitioning organization manufactures, produces, or develops its products, services, research, equipment, techniques, management, or other interests. 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. 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 knowledge.

On appeal, the Petitioner asserts that its "procedures and tools...are created internally," "highly specialized," and "not available in the market." Further, as discussed, the Petitioner emphasizes the proprietary nature of its products and procedures. However, the Petitioner provides little information on why knowledge of its products and procedures should be considered distinct and uncommon within the industry. In fact, it is not clear whether there are other companies within the foreign employer's industry providing similar products and services, and without such explanation, it is reasonable to conclude that there are. It is not alone sufficient to establish that the Beneficiary's knowledge is proprietary to the company, as it is common in various industries and within most companies to hold this type of knowledge. The Petitioner must set the Beneficiary's knowledge apart as distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. Here, the Petitioner has not provided this required detail and these necessary comparisons to demonstrate that the Beneficiary's knowledge is uncommon.

Furthermore, it is noteworthy that the Petitioner only emphasizes that the Beneficiary's knowledge is not available in the U.S. market. However, analyzing whether a beneficiary's knowledge is specialized requires considering the petitioning organization's products or services and their application into *international* markets. The Petitioner provided no indication how common the Beneficiary's knowledge is when compared to the international market, leaving substantial uncertainty whether his foreign employment can be considered specialized as defined by the regulations. In fact, the Petitioner stated in its RFE response letter that "some of the customers buying tools from us have design ability in-house," suggesting that similar knowledge is likely held outside the company and within the greater industry. Further, in the Beneficiary's duties, the Petitioner also states that there is "regular training by Swiss, French & Japanese specialists in the process of production of electrodes" and that this is "permanently ongoing." Again, this statement leaves question as to whether the knowledge held by Beneficiary can be considered distinct or uncommon within this particular international marketplace absent other specific discussion and documentary evidence. The Petitioner provides no specific comparisons of the Beneficiary's knowledge in relation to the greater industry; within which, it is reasonable to conclude that other similar professionals likely hold their own proprietary knowledge they also use to provide products and services to clients.

Therefore, the Petitioner has not established that the Beneficiary's knowledge is "special" as defined by the regulations.

Again, as a threshold matter, if the Beneficiary does not possess specialized knowledge, then his position abroad and in the United States would not involve specialized knowledge as necessary to qualify him. For the foregoing reasons, the Petitioner has not sufficiently established that the Beneficiary possesses specialized knowledge.

ORDER: The appeal is dismissed.