

COMPLAINT FOR DECLARATORY JUDGMENT

INTRODUCTION

Plaintiff LabVantage Solutions, Inc. (“LabVantage USA”) brings this action to challenge an unwarranted immigration denial. Fully lacking in record support, the denial pulls the rug out from under Plaintiff’s U.S. operations, dealing a harsh blow to its relations and agreements with U.S. customers, including those in the pharmaceutical space fighting the COVID-19 pandemic who are seeking to bring products to market as part of the LabVantage Pharma solution. Customers such as DNA Diagnostics Center and Roche. For example, LabVantage USA recently announced a new SaaS solution designed to jump-start the ability of laboratories everywhere to enter biospecimens into a biobank and rapidly begin conducting COVID-19-related testing and research. The LabVantage COVID-19 Biobanking Accelerator is built on the company’s industry-leading laboratory information management system and Biobanking platforms used by clinical laboratories around the globe.

Here, the immigration agencies—U.S. Citizenship and Immigration Services (USCIS) and its Texas Service Center—arbitrarily and capriciously denied a petition for LabVantage USA’s employee, Debjit Chakrabarty (“Mr. Chakrabarty”), who qualifies as an alien having “specialized knowledge” pursuant to the L-1B non-immigrant visa category. Because this agency action was arbitrary and capricious, without legal or factual basis, and ignored the evidence presented, LabVantage USA is entitled to relief from this Court.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff LabVantage Solutions, Inc. is a Delaware corporation registered to do business in the State of Delaware. It maintains its U.S. headquarters at 265 Davidson Avenue, Suite 220 Somerset, NJ 08873.

2. Defendant U.S. Citizenship and Immigration Services (USCIS) is an agency of the Department of Homeland Security and is responsible for overseeing the adjudication of immigration benefits. Pursuant to Fed. R. Civ. P. 4(i), USCIS may be served by sending a copy of the summons and complaint by certified mail to (i) the civil-process clerk at the United States attorney's office for the District of Columbia, located at 555 4th Street NW, Washington, D.C., 20530, (ii) the Attorney General of the United States, located at 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, and (iii) USCIS, Office of the Chief Counsel, located at 20 Massachusetts Avenue NW, Room 4210, Washington, DC 20529.

3. Defendant U.S. Department of Homeland Security (DHS) is a cabinet department of the U.S. federal government responsible for immigration-related services, enforcement, and investigations. DHS oversees USCIS and its implementation of federal law and policy with respect to immigration benefits. Pursuant to Fed. R. Civ. P. 4(i), DHS may be served by sending a copy of the summons and complaint by certified mail to (i) the civil-process clerk at the United States attorney's office for the District of Columbia, located at 555 4th Street NW, Washington, D.C., 20530, (ii) the Attorney General of the United States, located at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, and (iii) DHS, Office of the General Counsel, located at 2707 Martin Luther King Jr. Ave.

SE, Mail Stop 0485, Washington, DC 20528-0485.

4. Defendant Gregory Richardson is the Director of the USCIS Texas Service Center (TSC) and signed the denial at issue in this case. Defendant Richardson is being sued in his official capacity. Pursuant to Fed. R. Civ. P. 4(i), Defendant Richardson may be served by sending a copy of the summons and complaint by certified mail to (ii) the civil-process clerk at the United States attorney's office for the District of Columbia, located at 555 4th Street NW, Washington, D.C., 20530, (ii) the Attorney General of the United States, located at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, and (iii) USCIS, Office of the Chief Counsel, located at 20 Massachusetts Avenue NW, Room 4210, Washington, DC 20529.

5. Defendant Kenneth T. Cuccinelli is the Senior Official Performing the Duties of the Director of USCIS, and is responsible for USCIS' policies, practices, and procedures, and oversees the USCIS officer responsible for making the decisions at issue in this case. Defendant Cuccinelli is being sued in his official capacity. Pursuant to Fed. R. Civ. P. 4(i), Defendant Richardson may be served by sending a copy of the summons and complaint by certified mail to (i) the civil-process clerk at the United States attorney's office for the District of Columbia, located at 555 4th Street NW, Washington, D.C., 20530, (ii) the Attorney General of the United States, located at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, and (iii) USCIS, Office of the Chief Counsel, located at 20 Massachusetts Avenue NW, Room 4210, Washington, DC 20529.

6. Defendant Chad Wolf is the Acting Secretary of the DHS, the department encompassing USCIS, which is responsible for administration and enforcement of the

immigration and nationality laws of the United States. Defendant Wolf is being sued in his official capacity. Pursuant to Fed. R. Civ. P. 4(i), Defendant Richardson may be served by sending a copy of the summons and complaint by certified mail to (i) the civil-process clerk at the United States attorney's office for the District of Columbia, located at 555 4th Street NW, Washington, D.C., 20530, (ii) the Attorney General of the United States, located at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, and (iii) Defendant Wolf, located at DHS, Attention: Chad Wolf, 2707 Martin Luther King Jr. Ave. SE, Mail Stop 0485, Washington, DC 20528-0485.

7. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101, *et seq.* and the Administrative Procedure Act (APA), 5 U.S.C. § 701, *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as a civil action arising under the laws of the United States, and 28 U.S.C. § 1361. This Court also has the authority to grant declaratory relief under 28 U.S.C. §§ 2201-02. The United States has waived sovereign immunity under 5 U.S.C. § 702.

8. USCIS' decision to deny Plaintiff's immigration petition is a final agency action under the APA, making it ripe for judicial review. Plaintiffs need not seek an appeal before USCIS' Administrative Appeals Office (AAO) before invoking the jurisdiction of this Court.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1)(A) and 5 U.S.C. § 703 because this is a civil action in which the Defendants are agencies and officers of the United States, acting in their official capacity, and the Defendant agencies are located in the District of Columbia.

FACTUAL BACKGROUND

THE L-1B VISA

10. In 1970, Congress created the L visa classification for multinational firms to “eliminate problems . . . faced by American companies having offices abroad in transferring key personnel freely within the organization.” H.R. Rep. No. 91-851, § 1(b), at 5 (1970), as reprinted in 1970 U.S.C.C.A.N. 2750, 2754.

11. The L-1B immigration classification allows a U.S. entity to temporarily transfer a foreign national employee, who is the “beneficiary” of an L-1B petition, from a related entity abroad to work for the U.S. entity, in order to render services in a capacity that involves “specialized knowledge.” The L-1B beneficiary is referred to as an “intracompany transferee.” To qualify for an L-1B visa, the employee must have worked abroad for at least one year continuously in the preceding three years for the related foreign entity. 8 U.S.C. § 1101 (a)(15)(L).

12. An L-1B petition must demonstrate that the beneficiary’s prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the beneficiary’s prior education, training, and employment qualifies him to perform the intended services in the United States; however, the work in the United States need not be the same work which the beneficiary performed abroad.

13. A petitioner must prove compliance with these criteria by a preponderance of the evidence. Under this standard, it is not necessary that a petitioner “remove all doubt from the adjudication.” USCIS Policy Memorandum PM-602-0111, *L-1B*

Adjudications Policy, 5 (August 17, 2015). Rather, they are merely required to submit “relevant, probative, and credible evidence...that leads to the conclusion that the claim is...probably true.” *Id.* at 6 (internal quotations omitted). *See also Matter of Chawathe*, 25 I. & N. Dec. 369, 375-376 (AAO 2010).

14. While providing proof of the beneficiary’s employment with the petitioning organization is generally straightforward, a determination of whether the employee possesses “specialized knowledge” represents a more nuanced inquiry. Although “specialized knowledge” is statutorily 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[,]” the statute does not provide guidance on the meaning of “special” or “advanced” as used within the definition of “specialized knowledge.” 8 C.F.R. § 214.2(l)(1)(ii)(D).

15. In order to fill that gap, USCIS provides the following guidance:

[S]pecial knowledge...is knowledge of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests and its application in international markets that is *distinct or uncommon in comparison* to that generally found in the particular industry[.] USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy*, 7 (August 17, 2015) (emphasis in original)

[A]dvanced knowledge...is knowledge of or expertise in the petitioning organization’s specific processes and procedures that is not commonly found in the relevant industry and is *greatly developed or further along in progress, complexity and understanding* than that generally found within the employer. *Id.* (emphasis in original)

16. USCIS has also clarified that “special” or “advanced” knowledge need not

be proprietary. *Id.* at 9. However, knowledge of propriety systems unique to the petitioning organization provides significant evidence that the beneficiary's knowledge is "distinct or uncommon in comparison to that generally found in a particular industry." *Id.* USCIS has further clarified that "special" or "advanced" knowledge "need not be narrowly held within the petitioning organization[,]" such that even widespread knowledge of a proprietary system within the organization does not preclude a finding of "specialized knowledge." *Id.* at 10.

17. To complement the above guidance, USCIS also established a list of factors for determining whether a beneficiary's knowledge is specialized. Those factors include whether:

- The beneficiary's claimed specialized knowledge can be gained only through prior experience with the petitioning organization;
- The beneficiary possesses knowledge of a product or process that cannot be easily transferred or taught to another individual without significant economic cost or inconvenience;
- The beneficiary has knowledge of a process or a product that either is sophisticated or complex, or of a highly technical nature, although not necessarily unique to the petitioning organization; and
- The beneficiary possesses knowledge that is particularly beneficial to the petitioning organization's competitiveness in the market place. *Id.* at 8.

**MR. CHAKRABARTY'S EMPLOYMENT WITH LABVANTAGE USA AND
THE USCIS' DENIAL OF MR. CHAKRABARTY'S L-1B VISA**

18. LabVantage USA is part of the worldwide LabVantage Group and has been operational in the United States for 20 years. LabVantage Group includes operations in Europe, the United Kingdom, Asia, Middle East and Africa. They are a leading global

provider of laboratory information management systems (LIMS). The LabVantage Group offers a comprehensive portfolio of products and services that enable companies to innovate faster in the R&D cycle, run labs more efficiently, improve manufactured product quality, achieve accurate record keeping, and comply with regulatory requirements. As the leading global laboratory informatics provider, they serve thousands of labs around the world from industries such as pharmaceuticals, biotech, food & beverage, chemicals, and, consumer-packaged goods. The LabVantage Group employs approximately 435 individuals worldwide, including approximately 90 in the United States.

19. Through its investment in the United States, LabVantage USA employs approximately 90 individuals at its headquarters in New Jersey. To date, USCIS has approved eight (8) L-1B petitions for LabVantage USA. It is essential that LabVantage USA be able to design, develop, and implement software solutions to enhance and expand the capabilities of the LabVantage Group's unique and propriety LIMS product, including its specialized modules, for U.S. customers. The LabVantage LIMS has at its foundation a thin-client based architecture, developed to provide LabVantage customers, both internal and external to the laboratory, with the ability to access their solution from any Internet access device utilizing Microsoft Internet Explorer. It enables the open flow of information between internal and external systems and enables the integration of third-party instruments and applications.

20. To support its operations here in the United States, the demand for services, and the highly customized and specialized functionality of their proprietary LIMS,

LabVantage USA requires the specialized knowledge and talent of a few key professionals, including Mr. Chakrabarty.

21. Mr. Chakrabarty is a citizen of India. Since October 2013, Mr. Chakrabarty has been continuously employed by LabVantage USA's affiliate, LabVantage Solutions Pvt. Ltd. ("LabVantage India") in progressively more responsible and specialized positions. He currently serves in the senior position of Associate Consultant. His progression included roles as Associate Software Developer, Associate Solution Engineer, Solution Engineer, and starting in January 2018, the role of Associate Consultant. The principal reason LabVantage USA seeks his transfer to the United States is because of his specialized and advanced knowledge of the LabVantage LIMS, the unique and *proprietary* LIMS which is currently in version 8.4. Mr. Chakrabarty has five (5) years of experience with LabVantage's LIMS, including knowledge of the technical specifications, developmental requirements, and procedures unique to the LabVantage LIMS. This is experience he could have gained only through his work at LabVantage India and is not transferable, nor can it be possessed by someone outside of LabVantage, given that the LIMS is unique and proprietary. The LabVantage LIMS is the result of a multi-year development effort with a significant financial investment by the company. As stated in the record, "the most current version of LabVantage LIMS, LabVantage 8.2, has been in development for 15 years. Due to competitiveness of the LIMS markets and the cost of development of LabVantage 8.2, the LabVantage Group maintains extensive restrictions on access to the LIMS software. The only way to gain expertise on these LIMS solutions is through employment with the LabVantage Group." Therefore, in just one

example of a misapplication of the facts to the requirements for an L-1B visa, USCIS's characterization in the denial that the responsibilities of the positions Mr. Chakrabarty is in, and will hold, are "common" is not true. At this time, because technology evolves quickly, the most current released version of LabVantage is LabVantage 8.4 and the unreleased version of LabVantage 8.5 is due to be released shortly.

22. One example from the record with USCIS of the type of specialized knowledge that Mr. Chakrabarty possesses is that he was co-author of a 435-page manual for Roche entitled Group Informatics Functional Specification *SAMi*. Roche is one of the lead global laboratories working on the COVID-19 response, including through antibody testing. This manual documents the requirements for the Roche project, the different laboratory use cases to be handled, and the correct mapping with the Roche laboratory process and requirements with the LabVantage 8.4 project. The filings with USCIS are replete with examples of manuals, test specifications, data modeling, routing, and other documentation indicating Mr. Chakrabarty as the author due to his specialized and advanced knowledge. In these publications, Mr. Chakrabarty imparts knowledge to LabVantage's customers that is of a highly technical nature.

23. LabVantage USA seeks to transfer Mr. Chakrabarty to fill the role of Senior Software Engineer, a position of "specialized knowledge," from his position of "specialized knowledge" as Associate Consultant in India, as was described in the multiple letters from LabVantage USA's Vice President of Professional Services (Craig Bowie), LabVantage India's Managing Consultant (Kousik Samanta), and LabVantage India's Managing Consultant (Shubhaprava Chakrabarti). Mr. Chakrabarty will draw

upon his experience abroad to engage in the design, development, implementation, testing, customization, troubleshooting, and documentation of LabVantage LIMS solution for LabVantage USA's customers as they roll-out the latest version of LabVantage LIMS (which will be LabVantage 8.5) and its corresponding new capabilities and enhancements. Thereby allowing laboratories to operate in an automated environment, producing greater efficiency, effectiveness, and quality. Mr. Chakrabarty is part of the LabVantage Global Product Development Team and his presence in the United States is critical to LabVantage USA's operations and competitiveness in the U.S. market.

24. For these reasons, the inability of LabVantage USA to transfer Mr. Chakrabarty from its operations in India to the United States to work as a Senior Software Engineer negatively affects the company's customers and operations as well as its competitiveness in the U.S. market.

**USCIS REQUEST FOR EVIDENCE AND DENIAL OF LABVANTAGE'S PETITION FOR MR.
CHAKRABARTY'S L-1B VISA**

25. On February 8, 2019, LabVantage USA filed an L-1B petition with the USCIS, Texas Service Center, via premium processing. A true and correct copy of the filing is attached hereto as Exhibit A.

26. By letter dated February 26, 2020, USCIS requested that LabVantage USA submit additional evidence in support of its petition. A true and correct copy of USCIS's Request for Evidence (RFE) is attached hereto as Exhibit B.

27. In response to the RFE, and in addition to what was submitted with the

original request in support of Mr. Chakrabarty's L-1B nonimmigrant petition, LabVantage USA submitted the following documentation (i) a lengthy letter from LabVantage USA's counsel regarding the specialized knowledge possessed by Mr. Chakrabarty to serve as Senior Software Engineer, more details about the position in the United States, and more details about the position of Associate Consultant held by Mr. Chakrabarty; (ii) a detailed letter from Craig Bowie, Vice President, Professional Services, about the specialized role of Senior Software Engineer and Mr. Chakrabarty's specialized knowledge of LabVantage USA's proprietary LIMS products; (iii) a detailed letter from Shubhaprava Chakrabarti, Managing Consultant, about Mr. Chakrabarty's specialized knowledge gained in his time with LabVantage India, particularly in the LIMS solution modules; (iv) voluminous training records indicative of how Mr. Chakrabarty gained his specialized knowledge; (v) a detailed letter from Shubhaprava Chakrabarti, Managing Consultant, with specific customer examples of Mr. Chakrabarty's experience with the LabVantage LIMS based on project experience and details about the proprietary nature of the LIMS; (vi) LabVantage marketing materials related to their proprietary LIMS as well as the LabVantage Electronic Laboratory Notebook and Laboratory Execution System (to mention a few); (vii) multiple highly technical documentation authored by Mr. Chakrabarty about LabVantage's solutions. True and correct copies of the supplemental evidence submitted in support of LabVantage's petition for Mr. Chakrabarty's L-1B nonimmigrant status are attached hereto as Exhibit C.

28. On March 26, 2020, USCIS denied LabVantage's L-1B petition on behalf of Mr. Chakrabarty. A true and correct copy of the agency's decision is attached hereto as

Exhibit D.

29. The USCIS represented that it denied LabVantage USA's petition on the alleged basis that (i) Mr. Chakrabarty was supposedly not employed abroad in a position that was "managerial, executive, or involving specialized knowledge" when he was employed by LabVantage India; (ii), Mr. Chakrabarty does not possess "specialized knowledge"; and (iii) the position of Senior Software Engineer is not one for which "specialized knowledge" is required.

30. However, as set forth in LabVantage USA's original L-1B petition and the supporting evidence provided in response to the RFE, the record was replete with documentation addressing each of these grounds and supporting approval of the L1-B petition by LabVantage USA. This fulsome record leads to the inevitable conclusion that denial of Mr. Chakrabarty's L-1B was incorrect and misapplied the law. It was arbitrary and capricious and based on factors other than the documentary evidence.

31. While petitioner bears the burden to submit sufficiently probative evidence to meet the applicable evidentiary standard, that standard does not permit an officer to entirely disregard credible evidence, or deny an L-1B petition merely because he or she believes different or additional evidence could have been submitted to further corroborate the claim. It is not even necessary that the documentation submitted provide clear and convincing evidence of specialized knowledge. All that is required of a petitioner is the submission of credible documentation demonstrating that the applicant's claims are "probably true." The standard is preponderance of the evidence. *Matter of Chawathe*, 25 I. & N. Dec. 369, 376 (AAO 2010). In light of the record in this case, the

proprietary nature of the LabVantage LIMS, and Mr. Chakrabarty's specialized and advanced knowledge of that system, there can be little doubt that such evidence was properly submitted and improperly ignored.

32. USCIS disregards multiple letters in the record describing the positions both in India and the United States—including the specialized knowledge required to carry out both—and sums up its arguments by saying that the responsibilities listed “appear to be common” for the position, which is clearly arbitrary and capricious in light of the record. The record contains a letter from LabVantage India that includes 13 pages of detailed, specific customer examples written by Shubhaprava Chakrabarti, Managing Consultant, which describes in detail the specialized knowledge held by Mr. Chakrabarty in the position of Associate Consultant, tying it to customer projects, and the proprietary nature of LabVantage's solutions.

33. Even setting aside the sheer volume of credible documentation demonstrating specialized knowledge, there remains the incontrovertible fact that LabVantage LIMS is a *proprietary* system. By its very nature, it would be impossible for knowledge of such a system to be “common.” Further, the very factors expressly identified by USCIS for determining specialized knowledge conclusively demonstrates a heavy presumption in favor of Mr. Chakrabarty's eligibility for an L-1B visa. Factors that were apparently ignored or disregarded by USCIS.

34. It is clear that Mr. Chakrabarty's knowledge of the proprietary LIMS system “can be gained only through prior experience with the petitioning organization [,]” as it is a system developed by that organization and utilized exclusively for its customers.

USCIS Policy Memorandum PM-602-0111, *L-1B Adjudications Policy*, 8 (August 17, 2015). Further, Mr. Chakrabarty's knowledge of the LabVantage LIMS "cannot be easily transferred or taught to another individual without significant economic cost or inconvenience[,]” as it was developed over many years of employment with LabVantage, and such knowledge does not exist outside of the petitioning organization. *Id.* Mr. Chakrabarty also has knowledge of a process/product that is “sophisticated...complex, [and] of a highly technical nature[,]” and that knowledge “is particularly beneficial to the petitioning organization's competitiveness in the market place” as efficient and effective use of its LIMS system is one of the hallmarks that set LabVantage apart from its competitors. *Id.*

35. While LabVantage USA has been left to wonder why USCIS choose to ignore its own guidelines and the credible evidence contained in the record, it is apparent that USCIS denied LabVantage USA's petition for L-1B nonimmigrant status on behalf of Mr. Chakrabarty for arbitrary and capricious reasons. The stated grounds for the USCIS' decision are directly contradicted by the evidence in the administrative record, and fail to account for USCIS' own guidelines regarding appropriate considerations when evaluating “specialized knowledge.”

36. Based on the arbitrary and capricious denial of his L-1B petition LabVantage USA is facing the business disruption caused by their inability to transfer to the United States an employee with highly specialized and advanced skills to work with U.S. based customers. Made all the more disruptive given the fact that his temporary assignment in the United States will benefit American companies, the American public

and U.S. workers, including those working on COVID-19 research.

**COUNT ONE:
Declaratory Judgment**

37. Plaintiff realleges and incorporates the factual allegations of the preceding paragraphs 1 to 36 as if fully set forth herein.

38. Defendants' denial of Plaintiff's nonimmigrant visa petition constitutes a final agency action. The Administrative Procedure Act (APA) empowers this Court to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

39. USCIS' decision to deny LabVantage USA's petition to grant Mr. Chakrabarty's L-1B nonimmigrant status runs counter to the evidence, relied on factors Congress did not intend to be considered, lacked a rational explanation, was implausible, and was arbitrary, capricious, an abuse of discretion, and not in accordance with law.

40. LabVantage USA's requests a declaration that the USCIS' denial of LabVantage USA's petition for nonimmigrant status for Mr. Chakrabarty's L-1B visa is arbitrary and capricious, not supported by substantial evidence in the record, contrary to established legal precedents, and constitutes an abuse of discretion.

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

1. Hold unlawful and set aside Defendants' decision denying the Petition for a Nonimmigrant Worker (Form I-129) filed by LabVantage USA on behalf of Debjit Chakrabarty to classify him as an L-1B intracompany transfer;
2. Enter an Order requiring Defendants to approve LabVantage USA's Form I-129

petition filed on behalf of Debjit Chakrabarty;

3. Grant reasonable attorney's fees and costs as provided under the Equal Access to Justice Act and the APA and as otherwise permitted by law; and
4. Grant such further relief as the Court deems just and proper.

Dated: June 16, 2020.

Respectfully Submitted,

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