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U.S. Department of Justice
Immigration and Naturalization Service

Identifying data omitted to
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invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: EAC 99 169 50683 Office: VERMONT SERVICE CENTER Date: JAN 11 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:
[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Weimann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed the subsequent appeal. The matter is now before the Associate Commissioner for Examinations on motion to reopen. The motion is granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner engages in the design and manufacture of advanced helicopters for commercial, industrial and military uses. On May 1, 1999, the petitioner sought authorization to continue the employment of the beneficiary temporarily in the United States in a specialized knowledge capacity. The director requested additional evidence because it appeared that the beneficiary had spent the maximum amount of time (5 years) in the United States under the L-1B classification. The petitioner acknowledged that the beneficiary had spent the maximum amount of time in the United States in the L-1B classification and that the authorization would expire May 13, 1999. The petitioner requested, however, that the authorization be allowed to continue an additional five months in the national interest.

On September 29, 1999, the petitioner, in anticipation of the director's denial of the request to extend the authorization of L-1B status, filed a motion to reopen requesting that the denial be reconsidered. The petitioner also referenced an amended petition in the motion to reopen. The amended petition apparently requested that the beneficiary receive L-1A status and that the approval be given, *nunc pro tunc*, to May 13, 1999. The amended petition is not in the record before the Associate Commissioner. The director denied the petition on October 5, 1999.

The director considered the motion to reopen and on December 2, 1999 determined that the petitioner was not entitled to extend the L-1B status of the beneficiary. The director also noted that the record did not support a finding that the beneficiary was acting in a managerial or executive capacity or that the beneficiary had been employed, for at least six months, in a managerial or executive capacity in order to qualify for a sixth or seventh year in the United States.

On appeal the petitioner asserted that the denial of the petition to classify the beneficiary as an L-1A was in error. The Associate Commissioner determined, based on regulation, that in order to change the beneficiary's classification from an alien employed in a specialized knowledge capacity to that of a manager or executive, the petitioner was required to file a petition six months prior to the expiration of the beneficiary's L-1B status. The Associate Commissioner determined that the petitioner had not met the burden of proof on this issue and dismissed the appeal.

On motion, the petitioner asserts that the Associate Commissioner's determination is in error as the regulation was

inappropriately applied to the facts. The petitioner, in addition, indicates that the beneficiary was not admitted to the United States in a specialized knowledge capacity. Further that at the time the beneficiary was admitted he held a managerial or executive position and could have been classified as an L-1A manager or executive at the outset. Finally, the petitioner requests that the Service recognize that it had approved an L-1A classification of this beneficiary on October 13, 1999.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(l)(12)(i) states, in pertinent part, that:

An alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in managerial or executive capacity under section 101(a)(15)(L) and/or (H) of the Act may not be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15)(L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year...

8 C.F.R. 214.2(l)(15)(ii) states:

An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When the alien was initially admitted to the United States in a specialized knowledge capacity

and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

The record clearly shows that the beneficiary was admitted into the United States in an L-1B classification. Therefore, 8 C.F.R. 214.2(1)(15)(ii) is applicable. The beneficiary was approved for admission into the United States as an individual with specialized knowledge. The original L-1B petition and subsequent extension requests were adjudicated on the basis of the beneficiary's eligibility for the specialized knowledge classification. The record contains insufficient information to demonstrate the beneficiary's job duties are also managerial or executive in nature.

The amended petition apparently filed October 6, 1999, requesting L-1A classification for the beneficiary as a manager or executive is not in the record. However, the petitioner, in order to change the beneficiary's classification from an alien employed in a specialized knowledge capacity to that of a manager or executive, must file the petition with the Service at least six months prior to the expiration of the beneficiary's status in a specialized knowledge capacity. The beneficiary's L-1B status expired May 13, 1999. The petition approved by the Service on October 13, 1999 was apparently approved in error and is subject to revocation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.