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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying documents related to
prevent unauthorized entry
invasion of the United States

D7

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



AUG 06 2003

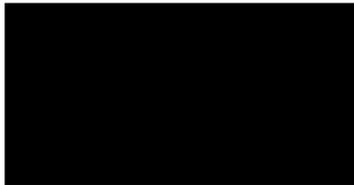
File: SRC 01 185 53218 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of yarn carriers for textile manufacturers. It seeks to employ the beneficiary temporarily in the United States as its marketing manager for a period of three years. It is noted that the beneficiary has been in the United States in L-2, spouse of an intracompany transferee, status since March 30, 1998. The director determined that the petitioner had not established that the beneficiary had been employed in a primarily managerial or executive capacity for one continuous year with a qualifying firm abroad within the three years immediately preceding the filing of the petition.

On appeal, the petitioner explains that the beneficiary is a spouse of an L-1 nonimmigrant and argues that she should not be denied the possibility to work in the United States because she gave up her career to come to the United States with her husband. The petitioner states that the employment eligibility period abroad for the beneficiary should begin on January 27, 1998 when she made application for admission in the United States in L-2 nonimmigrant status and not on May 21, 2001, the date this visa petition was filed.

The regulations at 8 C.F.R. § 103.2(a)(1) state that every petition submitted on the form prescribed shall be executed and filed in accordance with the instructions on the form. The regulation also states that the incorporations on that petition are incorporated into the particular section of the regulation requiring its submission.

The regulations at 8 C.F.R. 214(1)(3)(iii) state the petition shall be accompanied by evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

The regulations at 8 C.F.R. 214.2(1)(1)(ii)(A) state:

Intracompany Transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate or subsidiary thereof

and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

The record shows that the beneficiary once worked for [REDACTED] the parent company abroad and was last employed by that entity in 1993. The record also shows that the beneficiary entered the United States on March 30, 1998, and that the beneficiary has remained in the United in L-2 status. The record contains no evidence that the beneficiary was employed in the United States by a qualifying U.S. entity of the foreign organization. Therefore, the beneficiary's three years and one month stay in the United States in L-2 status was clearly an interruption of her employment abroad. Therefore, the petitioner has not established that the beneficiary has been employed abroad by the parent company for one continuous year within the three-year period immediately preceding May 21, 2001, the filing date of the petition. For this reason, the petition may not be approved.

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.