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U.S. Citizenship
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Services

MAR 11 2004

FILE: LIN 02-050-56708 Office: NEBRASKA SERVICE CENTER Date:

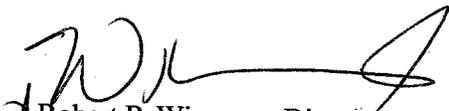
IN RE: Petitioner: [REDACTED]
Beneficiary [REDACTED]

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)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

www.uscis.gov

DISCUSSION: The Director, Nebraska Service Center, denied the application to extend the beneficiary's period of stay in nonimmigrant status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks to change the beneficiary's status from specialized knowledge worker (L-1B) to manager or executive (L-1A) and extend his period of stay as a nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The beneficiary's period of stay as an L-1B expired on May 12, 2002. The petitioner filed the petition seeking the change of status and extension of stay on November 30, 2001 or 163 days before the expiration of the beneficiary's stay. Because the petitioner did not file the petition at least six-months prior to the expiration of the beneficiary's stay as an L-1B, the director determined that the petitioner had not filed timely and denied the application for an extension of stay pursuant to 8 C.F.R. § 214.2(l)(15)(ii).

The regulations at 8 C.F.R. § 214.2(l)(15)(ii) state the following, in pertinent part:

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 an 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 [CIS] in an amended, new, or extended petition at the time that the change occurred.

In the denial, the director determined that the beneficiary is not eligible for the total period of stay of seven years because he has not been employed in a managerial or executive position for the required six months. Specifically, the director found the record indicated that the beneficiary was initially admitted to the United States in a specialized knowledge capacity on May 12, 1997 and on February 15, 2002 the beneficiary will be promoted to a managerial position. The director found that the beneficiary has been in the United States in an L-1B status for a total of 4 years and six and one half months.

It is noted that 8 C.F.R. § 214.1(c)(5) states that there is no appeal from the denial of an application for extension of stay, whether filed on a Form I-129 or Form I-539. Although the AAO may not enter a decision on the appeal of the beneficiary's extension of stay, the AAO will review the matter and make notes for the record.

On appeal, counsel asserts that the director's decision to deny the petition contradicts the applicable regulation governing the extension of stay. First, counsel claims the beneficiary was already promoted to maintenance manager at the time Form I-129 was filed with CIS on November 30, 2001. Second, the director failed to consider that the beneficiary was abroad forty-six days for training purposes from the date of his initial entry under L-1B status on May 16, 1997; therefore, the petition was filed more than six months prior to the end of the beneficiary's total period of stay of five years. Third, the petitioner has provided additional evidence that the beneficiary spent a total of ninety days abroad for both personal and training purposes from the date of his initial admission of L-1B status on May 16, 1997 and five years of authorized stay would not expire until August 8, 2002, rather, the petition was not filed with CIS before the six month statutory deadline. Fourth, the director's interpretation of 8 C.F.R. § 214.2(l)(15) is

contrary to established policy in that it counts the time period from November 30, 2001 when the petition was filed to February, 2002 against the beneficiary's eligibility for change of status from L1-B to L-1A.

Counsel's assertions are not persuasive. If a petitioner seeks to extend a specialized knowledge beneficiary's stay beyond the five-year limitation by changing a beneficiary's status from L-1B to L-1A manager or executive, the beneficiary must have been in that executive or managerial position for at least six months prior to the expiration of the original period of stay. Furthermore, the regulations clearly require CIS approval for the change in the beneficiary's employment position at the time of the promotion or change in position. Accordingly, an extension of stay may not be approved based on a change from L-1B to L-1A unless the employer files and CIS approves an amended, new, or extended petition no later than six months prior to the expiration of the beneficiary's period of stay as an L-1B.

In the present matter, the petitioner filed the petition for change of status 163 days prior to the expiration of the beneficiary's stay. The petitioner indicated on Form I-129 that the beneficiary will perform his assigned U.S. job duties from February 15, 2002 until February 14, 2004. 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 CIS before the change occurs and at least six months prior to the expiration of the beneficiary's status in a specialized knowledge capacity. The beneficiary was initially admitted in a specialized knowledge capacity on May 12, 1997. The petition to extend his stay was filed on November 30, 2001. At the time the petition for an extension was filed, the beneficiary had been in the United States for four years and six and one half months. According to the petitioner, the beneficiary will serve in the capacity of a maintenance manager as of February 15, 2002, less than six months prior to the expiration of the beneficiary's status in a specialized knowledge capacity.

The AAO notes that there are discrepancies in the record as to when the beneficiary was promoted to maintenance manager. Counsel claims the beneficiary was already promoted to maintenance manager at the time of filing on November 30, 2001. However, a supporting letter submitted with Form I-129 indicates that the petitioning entity now wishes to employ the beneficiary as a maintenance manager and does not indicate that a promotion has already occurred. In addition, the beneficiary's resume claims that to the present date, the beneficiary's job title and duties are those of a maintenance supervisor. Finally, Form I-129 indicates the beneficiary's dates of intended employment are from February 15, 2002 until February 14, 2004, six months less than required by the statute. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant, through counsel, filed a Form I-290B in an attempt to appeal the decision of the director. It is noted that 8 C.F.R. 214.1(c)(5) states that there is no appeal from the denial of an application for extension of stay. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.