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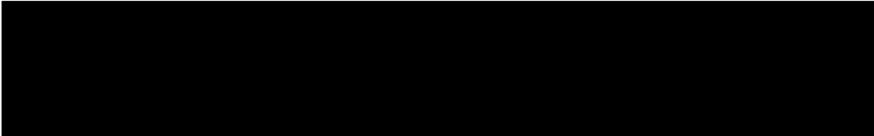
File: SRC 04 199 50075 Office: TEXAS SERVICE CENTER Date: JUN 05 2007

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)

IN 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa in part. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to change the beneficiary's classification from specialized knowledge worker (L-1B) to manager (L-1A), to extend the petition, and to extend the beneficiary's 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). A petition was first approved for the beneficiary as an intracompany transferee having specialized knowledge (L-1B) from October 20, 1999 until October 20, 2000 (SRC 00 007 52627). This L-1B petition, and the beneficiary's stay, were subsequently extended until October 18, 2002 (EAC 00 265 51413) and, thereafter, until October 18, 2004 (SRC 02 245 50645). Consequently, the beneficiary's current L-1 classification as a specialized knowledge worker (L-1B) expired on October 18, 2004 (EAC 03 163 52478), the maximum period of validity for an L-1B petition.<sup>1</sup>

The petitioner filed the instant petition seeking a change of classification to L-1A status and an extension of stay on July 15, 2004, or 95 days before the expiration of the petition's validity. The petition seeks to extend the petition and the beneficiary's stay until December 3, 2006. December 3, 2006 would have been the seventh anniversary of the beneficiary's first admission into the United States in L-1 status and is, thus, the maximum period of validity for an L-1A petition. The director approved the change of classification to L-1A and extended both the petition and the beneficiary's stay until December 2, 2004, the fifth anniversary of the beneficiary's admission into the United States. However, the director declined to extend the petition, and the beneficiary's stay, beyond December 2, 2004 because the petitioner did not file the instant petition at least six months prior to the expiration of the beneficiary's stay as an L-1B nonimmigrant pursuant to 8 C.F.R. § 214.2(l)(15)(ii).

On appeal, counsel asserts that the petitioner indicated in documents attached to two prior petitions (EAC 00 265 51413 and SRC 00 007 52627) that the beneficiary would be employed in both a specialized knowledge and a managerial capacity. Counsel asserts that the approval of these petitions satisfies the criterion in 8 C.F.R. § 214.2(l)(15)(ii) that CIS "approve" the change to managerial capacity from specialized knowledge capacity in an amended, new, or extended petition. Therefore, according to counsel, both the petition and the beneficiary's stay may be extended for a full seven years based on the instant petition because it had already secured an "approval" of the change from CIS prior to six months before the L-1B petition's expiration.

Upon review, counsel's assertions are not persuasive and the appeal will be dismissed.

As a threshold matter, 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. However, while the AAO may not normally enter a decision on the appeal of the beneficiary's extension of stay, the AAO will review

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<sup>1</sup>It is noted that the record indicates that the beneficiary was first admitted into the United States in L-1 status on December 3, 1999. Therefore, while the most recent L-1B petition extension expired on October 18, 2004 (SRC 02 245 50645), the petition could have been approved until the fifth anniversary of the beneficiary's admission into the United States, i.e., December 2, 2004. See 8 C.F.R. § 214.2(l)(15)(ii). However, as the petitioner in filing SRC 02 245 50645 only requested approval until October 18, 2004, Citizenship and Immigration Services (CIS) did not commit an error in setting an earlier expiration date.

this matter as it pertains to the extension of the underlying petition beyond the fifth anniversary of the beneficiary's admission into the United States in L-1 status, which is a proper basis for the appeal.

The regulation at 8 C.F.R. § 214.2(l)(15)(ii) states 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 this matter, counsel submitted evidence that two prior petition extensions (EAC 00 265 51413 and SRC 00 007 52627) included correspondence and associated evidence indicating that the beneficiary would be employed in "a position that is both specialized and managerial in nature." Both of these petition extensions were approved by CIS. Counsel claims that these approvals amount to "approvals" by CIS of the beneficiary's change to a managerial capacity. However, the petitioner clearly requested an extension of the beneficiary's L-1B classification in both of the previously approved petition extensions. These requests appeared on both page 1 of the Forms I-129 and on the L Classification Supplements. Importantly, the petitioner never requested, and CIS never addressed, a change to L-1A classification. Moreover, a beneficiary may not be classified as both a specialized knowledge worker and a manager for purposes of this visa classification. 8 U.S.C. § 1101(a)(15)(L). An intracompany transferee must render his or her services in a "capacity that is managerial, executive, *or* involves specialized knowledge." *Id.*; 8 C.F.R. § 214.2(l)(1)(ii)(A) (emphasis added). Therefore, the petitioner needed to choose one classification, and it chose specialized knowledge.

In this matter, the petitioner clearly chose to extend the petitions for a beneficiary classified as one rendering his services in a specialized knowledge capacity (L-1B). Therefore, the issue of whether the beneficiary had changed from a specialized knowledge capacity to a managerial capacity was never properly before CIS, and the approval of the L-1B petition extensions may not be construed as "approvals" of this change. CIS never "approved," or even addressed, a "change" to managerial capacity because, simply put, the petitioner never requested that CIS do so. If the petitioner had wanted to document the change to managerial capacity, it would have needed to file a petition which affirmatively requested a change to L-1A status. This was not done until the petitioner filed the instant petition which, as noted by the director, was filed too late under 8 C.F.R. § 214.2(l)(15)(ii) to permit an extension beyond the fifth anniversary of admission. In order to extend an L-1B nonimmigrant petition beyond the fifth anniversary of admission, a petitioner must file two petitions. First, the petitioner must secure an approval of a change to managerial or executive capacity through an amended, new, or extended petition. 8 C.F.R. § 214.2(l)(15)(ii). Second, the petitioner must then file a petition seeking an extension beyond the fifth year which establishes that the beneficiary has been employed in a CIS approved managerial or executive capacity for at least six months. *Id.*

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.