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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 06 109 50436 Office: CALIFORNIA SERVICE CENTER Date: OCT 04 2007

IN RE: Petitioner: [redacted]
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:

[redacted]

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, California 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 dismissed.

The petitioner seeks to extend the employment of its broadcasting promotion and sales manager as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of California and claims to be a radio broadcaster, and claims to be the affiliate of Media Sports de Mexico, located in Tijuana, Baja California, Mexico.

The beneficiary's period of authorized status as an L-1B employee expired on February 25, 2006. The petitioner filed the petition seeking to extend the beneficiary's stay for an additional two years. Because the beneficiary had been employed in the United States as an L-1B employed for five years, the director determined that the beneficiary was ineligible for an extension and denied the petition pursuant to 8 C.F.R. § 214.2(l)(12)(i).

The regulation at 8 C.F.R. § 214.2(l)(12)(i) states the following, in pertinent part:

> An alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in a 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 section 101(a)(15)(L) 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. 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. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year.

In addition, 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.

In the denial, the director noted that the beneficiary had been employed by the petitioner in the United States in an L-1B capacity since February 2001. The director noted that, since the total period of stay for an alien employed in a specialized knowledge capacity may not exceed five years, the beneficiary was not eligible for an extension of stay.

On appeal, counsel asserts that the beneficiary's current and permanent domicile has been Mexico, not the United States, and that two to three days of every week for the past two years have been spent in Mexico with

his family. As a result, counsel requests on appeal that the beneficiary be allowed to recapture these days and have them added back to his total maximum period of stay. In support of this contention, counsel submits copies of property tax payments, bank statements, utility bills, and credit card statements addressed to the beneficiary and his family at his claimed foreign address.

Upon review, the director properly denied the petition pursuant to 8 C.F.R. § 214.2(l)(12)(i). While the AAO acknowledges that trips outside of the United States, whether for business or pleasure, are generally not deemed to detract from the beneficiary's total period of authorized stay in L-1B classification, the point is moot, since this claim is introduced for the first time on appeal as an attempt to overcome the basis for the director's denial. It is noted that the extension request filed on Form I-129 lists a residential address for the beneficiary in Chula Vista, California, and makes no claim or assertion that the beneficiary did not live in the United States on a full-time basis at the time of filing or in the two years prior to filing. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In the event that such a claim had been introduced at the time of the filing of the extension, the petition would still have been denied. While counsel submitted copies of documents, such as property tax payment records and utility bills addressed to the beneficiary's Mexican address, these documents are insufficient to support the claim that the beneficiary was absent from the U.S., on average, for two to three days per week. Evidence of such trips must be accompanied by independent documentary evidence showing the beneficiary was physically outside of the United States on the days he is seeking to recapture. *See* Memo. from Michael Aytes, Acting Assoc. Commr., *Procedures for Calculating Maximum Period of Stay Regarding the Limitations on Admission for H-1B and L-1 Nonimmigrants*. (October 21, 2005).

It cannot be determined from the documentation submitted that the beneficiary actually left the United States for the generally claimed periods, nor did the petitioner submit a list of the dates the beneficiary claimed to have been absent in the first place. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For this reason, the appeal will be dismissed.

Furthermore, the petitioner further asserts that no records are available to document the beneficiary's ongoing entry and exit into the country.

Finally, the AAO notes that counsel simultaneously requests to amend the petition on appeal to reflect that the position offered to the beneficiary is in fact a part-time position in anticipation of the beneficiary recapturing the days discussed above. This request is an attempt to allow the beneficiary to continue working in the United States under the exception afforded to part time, seasonal, and intermittent employees. Counsel's request to amend the petition on appeal must be rejected. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

> The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original job offer as part-time instead of full-time on appeal is therefore rejected. As stated above, the proper manner in which to amend a petition is not to amend on appeal, but alternatively to file an amended petition, with fee, at the service center where the original petition was filed.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *see also* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Here, that burden has not been met.

ORDER: The appeal is dismissed.