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**U.S. Citizenship
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Services**

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File: LIN 04 190 50989

Office: NEBRASKA SERVICE CENTER

Date:

NOV 10 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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 filed this petition seeking to extend the beneficiary's status as an intracompany transferee with specialized knowledge pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L). The director denied the petition on the basis that the beneficiary had been in L-1B status for five years at the time of the petition's filing, and that an extension was not possible since it would exceed the maximum time period set forth in 8 C.F.R. § 214.2(l)(12)(i).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that due to miscommunication between counsel, the petitioner, and the petitioner's former counsel, the petition erroneously requested extension of the beneficiary's L-1B status while the beneficiary was lawfully in L-1A status. Specifically, counsel contends that the petitioner had previously amended the beneficiary's status from L-1B to L-1A in May 2002 and that, due to the petitioner's ignorance of immigration law, incomplete records, and former counsel's unavailability, an L-1B extension request was inadvertently filed. Relying on the petitioner's recent discovery of the L-1A approval notice from May 2002, counsel now claims that the petition should be reviewed by the AAO as a petition to extend the beneficiary's L-1A status.

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 [Citizenship and Immigration Services (CIS)] in an amended, new, or extended petition at the time that the change occurred.

In the denial, the director based his conclusions on the evidence presented by the petitioner. Specifically, the director concluded that, based on the petitioner's response to the request for evidence which outlined the beneficiary's stay in the United States, the beneficiary had been in L-1B status for five years at the time of filing. Thus, the director concluded, the petitioner was ineligible by law for any further extension since it had not previously filed a petition to amend the beneficiary's status from specialized knowledge worker to intracompany transferee working in a primarily managerial or executive capacity. While the director's decision would be correct in the event that the beneficiary's status had not been amended to L-1A, that is not the issue before the AAO.

On appeal, counsel submits evidence of the beneficiary's prior change of status from L-1B to L-1A. As a result, counsel requests the AAO to treat this petition as an extension request for a multinational manager or executive, and not an extension of status for a specialized knowledge worker as claimed in the petition and on

Form I-129. Counsel's request to amend the petition on appeal, however, is not properly before the AAO. 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 petition on appeal as a petition for L-1A classification is, therefore, rejected.

Furthermore, as discussed briefly by the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on May 9, 2004. However, the petition for an extension of the beneficiary's status was filed on June 18, 2004, over one month following the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. The petitioner's claims of extraordinary circumstances which contributed to the delay, introduced for the first time before the AAO, are not persuasive. As the extension petition was not timely filed, it is noted for the record that the beneficiary is ineligible for an extension of stay in the United States.

The petitioner, 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. The appeal must be rejected.

ORDER: The appeal is rejected.