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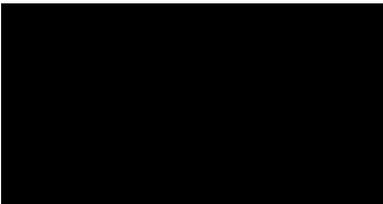
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File: SRC 04 179 50232 Office: TEXAS SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

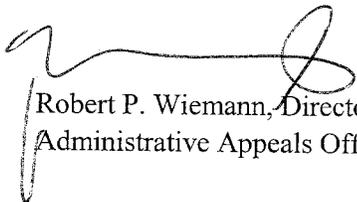
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Director  
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A 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 was incorporated under the laws of the State of Texas and claims to be engaged in the retail, wholesale and supply of consumer goods. The petitioner claims that it is the subsidiary of ██████████, located in Karachi, Pakistan. The petitioner seeks to employ the beneficiary as its general manager for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had at least one continuous year of full-time employment with a qualifying entity abroad during the three-year period preceding the filing of the petition. The director observed that the beneficiary had been in the United States in F-2 nonimmigrant status for approximately 25 months during the three years preceding the filing of the petition on June 15, 2004, and therefore could not have completed one year of qualifying employment abroad.

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 acknowledges that the beneficiary was in the United States for a total of 25 months in F-2 nonimmigrant status. However, counsel asserts that during this time, the U.S. company has been training the beneficiary for her future appointment as the petitioner's general manager. Counsel further states that the foreign entity has kept the beneficiary on its payroll during her periods of stay in the United States. Relying on *Matter of Continental Grain Co.*, 14 I&N Dec. 140 (D.D. 1972), counsel contends that the beneficiary's training period should be counted towards fulfilling her one year of employment abroad. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) 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.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in this matter is whether the beneficiary was employed continuously with a qualifying organization abroad for one year within the three years preceding the filing of the petition.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) defines "intracompany transferee" as:

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.*

(Emphasis added).

The I-129 Petition was submitted on June 15, 2004. The petitioner indicated on Form I-129 that the beneficiary was last admitted on March 15, 2003 and was in the United States in F-2 status at the time of filing. The petitioner indicated that the beneficiary was employed with the foreign entity from "1999 till Present." In a supporting letter dated May 18, 2004, the petitioner stated: "[The beneficiary] is currently the General Manager/Administrator of our parent organization in Karachi, Pakistan." The petitioner also submitted a partial copy of the beneficiary's passport, which includes an F-2 visa stamp issued at the U.S. Consulate in Islamabad on September 19, 2000, and a page with two U.S. admission stamps dated January 28, 2002 and March 15, 2003.

On June 23, 2004, the director instructed the petitioner to submit evidence of a valid nonimmigrant status for the principal F-1 student, such as a new Form I-20 or valid employment authorization document. In response, the petitioner submitted two Forms I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, for the beneficiary's spouse. One Form I-20 shows the principal student's initial entry to the United States in August 1995, and the second Form I-20 authorized the F-1 student's transfer to a different school in October 2002. The beneficiary is identified as a dependent spouse on both Forms I-20.

The director denied the petition on August 18, 2004 concluding that the petitioner had not established that the beneficiary was employed abroad for the required continuous one-year period within the three years preceding the filing of the petition on June 15, 2004. The director noted that the beneficiary was in the United States from January 28, 2002 to November 28, 2002, and from March 15, 2003 until the present, and therefore could have been employed abroad for no more than 11 months since June 15, 2001.

On appeal, counsel acknowledges that the beneficiary has been in the United States for 25 months out of the 36 months immediately preceding the filing of the petition. However, counsel asserts that during her periods of stay in the United States in F-2 status, the beneficiary has received training from the petitioner in preparation for her future appointment as general manager of the U.S. company. Counsel cites *Matter of Continental Grain Co.*, 14 I&N Dec. 140 (D.D. 1972) to stand for the proposition that periods spent in training in the United States should be counted towards the one year of qualifying employment abroad requirement. Finally, counsel contends that the beneficiary has received her salary from the foreign entity "during all her time of physical presence in the United States."

Upon review, counsel's assertions are not persuasive. A determination as to whether the beneficiary was employed by the foreign entity on a full-time continuous basis for at least one year in the three years preceding the filing of this petition rests on two separate issues. First, the AAO must weigh counsel's claim that the beneficiary's F-2 "training period" in the United States can be counted towards the fulfillment of her one-year of qualifying period abroad requirement. Second, the AAO must determine if the beneficiary's periods of stay in F-2 status are interruptive of her continuous employment pursuant to the definition of "intracompany transferee" at 8 C.F.R. § 214.2(l)(1)(ii)(A).

Counsel's expansive interpretation of 8 C.F.R. § 214.2(l)(1)(ii)(A) is not supported by the statute, precedent decisions, or Citizenship and Immigration Services (CIS) policy. The AAO notes that counsel has misinterpreted the director's findings in *Matter of Continental Grain Co.* Counsel incorrectly states that the *Matter of Continental Grain Co.* decision permits beneficiaries to count periods spent in the United States toward fulfilling the one year of continuous employment abroad requirement. In *Matter of Continental Grain*, the beneficiary had worked for a foreign entity continuously for a one-year period, spent 28 months in the United States receiving training in the United States pursuant to section 101(a)(15)(H)(iii) of the Act, and had then returned to the foreign entity for an additional seven months immediately prior to submission of the L-1 petition. The issue was whether the period of time the beneficiary spent in the United States prohibited a finding that he was employed by the foreign entity within the one-year period immediately preceding the filing of the petition, as was required under section 101(a)(15)(L) of the Act (1970). The director concluded: "The beneficiary's period of training within the United States . . . should not be regarded as interruptive of the concept that he 'has been employed continuously for one year by . . . the same employer or a subsidiary thereof' within the meaning of section 101(a)(15)(L)." Contrary to counsel's assertions, there is no precedent for allowing a period of training in the United States to count towards fulfilling a beneficiary's one year of qualifying employment abroad.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A) periods spent in the United States in a 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. Accordingly, the AAO must consider whether an alien admitted in F-2 status as the spouse of an F-1 nonimmigrant student can undertake a vocational training program and be considered to be “in a lawful status” with a qualifying organization, for the purpose of maintaining “continuous employment abroad.”

Again, the facts of this case can be distinguished from *Matter of Continental Grain Co.* The beneficiary in *Matter of Continental Grain Co.* was lawfully admitted to the United States as a nonimmigrant trainee for the specific purpose of undergoing training with the U.S. company pursuant to section 101(a)(15)(h)(iii) of the Act. The beneficiary in this case was admitted to the United States as the spouse of an F-1 nonimmigrant student pursuant to 8 C.F.R. § 214.2(f)(3). The regulations at 8 C.F.R. §§ 214.2(f)(15)(i) and (ii) expressly prohibit an F-2 nonimmigrant from accepting employment or engaging in full-time study other than avocational or recreational study. If the beneficiary was engaged in paid, full-time vocational training for a 25-month period while in F-2 status, CIS would not deem her period of stay in the United States to be a “period spent in the United States in a lawful status for the same employer or a parent, affiliate or subsidiary thereof.” Accordingly, the beneficiary’s periods of stay in F-2 status must be considered interruptive of her qualifying employment abroad, and the petitioner has not established that she was employed for one continuous year with the foreign entity in the three years preceding the filing of the petition.

Furthermore, the AAO notes that the petitioner has submitted no evidence to establish that the beneficiary actually received “training” in the United States and in fact never mentioned the beneficiary’s participation in a training program prior to counsel’s assertions on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner initially claimed that the beneficiary was an experienced employee who was prepared to serve as general manager of the U.S. company based on her more than four years of experience as general manager/administrator for the foreign entity. Neither counsel nor the petitioner have clarified why the beneficiary would require more than two years of training with the petitioner to undertake the position of general manager in the United States or why such training requirements were not mentioned at the time the petition was filed.

The AAO also notes that the record contains no payroll records to support counsel’s assertion that the beneficiary has continued to receive her salary from the foreign entity during her periods of stay in the United States. Again, 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)).

Based on the foregoing discussion, the beneficiary was not employed abroad continuously for one year by a qualifying organization within the three years preceding the filing of this petition. Thus, she does not meet the criteria for classification as an intracompany transferee pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(A). For this reason, the appeal will be dismissed.

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. The petitioner has not met this burden.

**ORDER:** The appeal is dismissed.