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File: EAC 03 211 52758 Office: VERMONT SERVICE CENTER

Date: **SEP 06 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 her 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 September 13, 2003. The petitioner filed the petition seeking the change of status and extension of stay on July 16, 2003, or 59 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 five year stay as an L-1B nonimmigrant, 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 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 the denial was erroneous because the petitioner had filed an immigrant petition on behalf of the beneficiary more than six months prior to the expiration of her L-1B stay.

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 determined that the beneficiary is not eligible for the total period of stay of seven years because the petition was not filed at the time the change from specialized knowledge employee to managerial employee occurred.

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. Thus, while 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 beneficiary was promoted to a managerial position before February 10, 2003. Counsel further asserts that after the promotion, the petitioner filed an I-140 Immigrant Petition for Alien Worker seeking to classify the beneficiary as a multinational manager pursuant to section 203(b)(1)(C) of the Act. Based on the fact that this immigrant petition was filed with CIS more than six months prior to the

expiration of the beneficiary's L-1B status as an intracompany transferee with specialized knowledge, counsel claims that CIS was on notice of the beneficiary's change to managerial employment and the fact that the I-129 petition to change her status from L-1B to L-1A and extend her stay was not filed until July 2003 is irrelevant.

Counsel's assertion is not persuasive. 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 claims in its letter dated July 1, 2003 that the beneficiary was promoted to a managerial position in December 2000, yet did not file the I-129 petition for change of status until 59 days prior to the expiration of the beneficiary's stay.¹ The regulation at 8 C.F.R. § 214.1(c)(1) provides that an employer seeking the services of an L-1 nonimmigrant beyond the period previously granted must petition for an extension of stay on Form I-129. There is no provision in the regulations which absolves the petitioner from this filing requirement.² Since the petitioner did not file its I-129 petition to extend the beneficiary's stay until July 2003, the petitioner is thereby ineligible for the benefit sought.

Although the director did not enter a decision on the issue of the beneficiary's claimed managerial or executive position or the beneficiary's overseas experience, the issue is moot at this time since the beneficiary's period of stay may not exceed five years. The AAO will not address this issue further.

Furthermore, as of the date of this decision, it appears that the beneficiary adjusted her status from nonimmigrant to immigrant on February 18, 2005 (SRC 05 102 52499; [REDACTED]). For this additional reason, the appeal in this matter will be rejected as moot.

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.

¹ Although the petitioner did file an I-129 petition on behalf of the beneficiary on July 23, 2001, it did not seek with that petition to change the classification of the beneficiary's position from one involving specialized knowledge to that of a managerial or executive capacity. Instead, the petitioner waited until two years after the beneficiary was promoted to file the instant petition to request this change.

² Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

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ORDER: The appeal is rejected.