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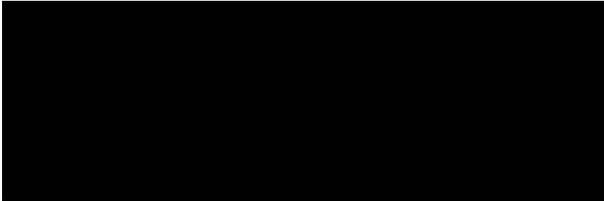
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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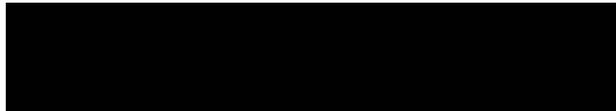
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File: EAC 08 118 52035 Office: VERMONT SERVICE CENTER Date:

JUN 23 2009

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)

ON 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1B nonimmigrant intracompany transferee with specialized knowledge 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 an information technology consulting firm. The petitioner claims to be subsidiary of KPIT Cummins Infosystems, Ltd. Located in Pune, India. The petitioner seeks to employ the beneficiary as an Oracle Applications Support Specialist and has requested that he be granted L-1B status for a period of two years commencing on April 15, 2008.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary completed at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition. In denying the petition, the director observed that the beneficiary joined the foreign entity only eight months prior to the filing of the instant petition. The director further noted that the petitioner failed to provide requested evidence to document the beneficiary's period of employment with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the petition is approvable notwithstanding the fact that the beneficiary had been employed by the foreign entity for less than one year at the time the petition was filed. Counsel submits a brief and a new letter from the petitioner in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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 sole issue addressed by the director is whether the petitioner submitted evidence that the beneficiary 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, as required by 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 19, 2008. The petitioner indicated on the Form I-129 Supplement L that the beneficiary had been employed by its parent company in India since July 2007.

In a letter dated February 18, 2008, the petitioner stated: "[The beneficiary] has been employed at [the foreign entity] for over one year (from July 2007 to the Present) . . ." The AAO notes that as of February 2008, the beneficiary had in fact been employed by the foreign entity for only approximately eight months.

On May 7, 2008, the director issued a request for evidence (RFE), the director advised the petitioner that it does not appear that the beneficiary qualifies for L-1B nonimmigrant status in light of his July 2007 hire date with the foreign entity. The director advised the petitioner as follows:

Submit additional evidence to establish that the beneficiary has been employed abroad, by a qualifying organization, in a specialized knowledge capacity for one continuous year of full-time employment within the three years prior to March 19, 2008, the filing date of the petition.

The documents to submit should include, but are not limited to:

- a) The beneficiary's last annual tax return, and, if applicable, tax withholding statement reflecting the employer
- b) Copies of payroll documents of the business entity reflecting the beneficiary's period of employment and salary
- c) Other unequivocal evidence establishing the foreign employment by the beneficiary

In a letter dated July 18, 2008, counsel for the petitioner stated:

The one year of required experience has to be prior to the application for admission and neither at the time of filing the petition nor at the time of applying for a visa – as the plain language of the statute and the Definition section of regulations state. [The beneficiary] will apply for admission only after 1 year of employment with the overseas parent, i.e. after August 1, 2008.

Counsel referred to section 101(a)(15)(L) of the Act and the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) in support of his statement.

In a letter dated July 18, 2008, the petitioner also addressed this issue as follows:

We filed the petition prior to [the beneficiary] have one year of qualifying overseas employment since we were under the impression that only six months was required because our Blanket L was approved on April 17, 2003 prior to the effective date of the L-1 Visa Reform Act of 2004. It now appears that our L-1 petitions are not grandfathered. However, it is our understanding that the one year of the required qualifying overseas employment has to be prior to the application for admission. We accordingly, hereby modify the petition to reflect a start date of August 8, 2008 and state that [the beneficiary] will not apply for admission on an L-1B prior to August 1, 2008.

Finally, in a letter dated July 17, 2008, the foreign entity's Manager-Resourcing stated:

We are aware that at the time of the filing of the instant petition, [the beneficiary] had been employed with [the foreign entity] for more than six months but less than one year. The instant petition was filed on the basis of six months qualifying overseas employment since we believed that we were covered under the six month rule because [the petitioner's] Blanket L was originally approved on April 17, 2003. Since we have now been advised that the qualifying overseas employment has to be for one year, we will send [the beneficiary] to the USA after the end of July by which time he will have been employed for over 1 year.

The director denied the petition on July 29, 2008, concluding that the petitioner did not establish that the beneficiary completed one continuous year of full-time employment with a qualifying organization within the three years preceding the filing of the petition. The director also observed that, although specifically requested, the petitioner failed to submit a copy of the beneficiary's latest annual tax return reflecting the employer, copies of payroll documents reflecting the beneficiary's period of employment, or other unequivocal evidence establishing the beneficiary's period of employment with the foreign entity.

On appeal, counsel for the petitioner sets forth a two-part argument in support of his assertion that the instant petition is approvable. First, counsel argues that the beneficiary "is required to have at least six months of full-time employment with a qualifying entity within the three year period." Specifically, counsel states:

The Blanket L approval that includes [the foreign entity] was originally approved for an indefinite period on April 17, 2003 . . . . In 2001, the overseas employment requirement for Blanket L beneficiaries was six months. This exception was crafted into law in 2001. The L-1 Reform Act was signed into law on December 8, 2004 with an effective date of June 6, 2005. This law did away with the six month exception and re-instated the 1 year overseas employment requirement. However USCIS communicated with AILA (the American Immigration Lawyer's Association) that Blanket Ls approved prior to December 8, 2004 were "grandfathered" and could benefit from the six month rule. However only very recently has the Service reverted back to the "Yates memo on Ls" as of July 28, 2005. Our understanding is that USCIS approved several Petitions of Beneficiaries of Blanket Ls with six months of overseas experience but has

stopped doing so only recently. Accordingly, it would be appropriate to require six months of overseas experience for petitions filed prior to the date when USCIS reverted to the 1 year rule.

Thus the instant beneficiary is required to have six months of overseas experience and does have the required experience.

Counsel's argument is not persuasive for two reasons. First, and most importantly, the instant petition is an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, and therefore the evidentiary requirements at 8 C.F.R. § 214.2(l)(3)(iii), *Evidence for Individual Petitions*, apply. The fact that the petitioner provided evidence that it has an approved Blanket L petition is irrelevant. The regulations provide for different filing procedures, for individual petitions as opposed to applications for individual beneficiaries under approved Blanket L petitions. If the petitioner sought to classify the beneficiary as an L-1B worker under its Blanket L petition, it should have form I-129S, Nonimmigrant Petition based on Blanket L Petition, with the U.S. consular office having authority over the beneficiary's place of residence, pursuant to 8 C.F.R. § 214.2(l)(5)(ii).

The regulations governing individual L-1 petitions have *never* included a provision requiring that a beneficiary complete only six months of employment with a qualifying foreign entity. Counsel's argument that the instant individual petition is subject to a Blanket L "grandfathering" policy clearly has no legal basis.

Second, although the issue is moot, the AAO notes that counsel's reliance on an alleged "grandfather" policy is misplaced. Counsel acknowledges that a July 28, 2005 memorandum from William R. Yates "specifically states (pages 11 and 12) that Blanket L Beneficiaries are required to have 1 year of overseas experience," but counsel claims that "USCIS communicated to AILA that Blanket Ls approved prior to December 8, 2004 could continue to benefit from the six month exception." 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 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).

The 2005 Yates memorandum does in fact recognize that the six-month exception would continue to apply to any L-1 petition pending as of June 6, 2005, and to petitions involving extensions or changes in job duties within the L classification filed after the effective date, but in which the original status was obtained through a blanket petition prior to the effective date based upon the then-existing eligibility requirements. *See* Memorandum from William R. Yates, Assoc. Dir. of Operations, USCIS, "Changes to the L Nonimmigrant Classification Made by the L-1 Reform Act of 2004" (July 28, 2005). Thus, individual Blanket L-1 beneficiaries with only six months of qualifying experience with a foreign entity have likely continued to obtain extensions of status so long as their initial petitions were filed on or before June 5, 2005. These exceptions apply to individual beneficiaries who obtained their L-1 status under Blanket L petitions, not to the underlying Blanket L petitions. Counsel's argument that any company that had a Blanket L petition approved prior to June 6, 2005 can continue to file for beneficiaries with only six months of experience with a qualifying employer abroad is simply incorrect.

The second prong of counsel's argument on appeal is that "the one year of required experience has to be prior to the application for admission and neither at the time of filing the petition nor at the time of applying for a visa – as the plain language of the statute and the Definition section of regulations clearly state." Counsel asserts that the beneficiary will apply for admission after August 1, 2008. Counsel further states that, as of the date the appeal

was filed, the beneficiary has been employed by the foreign entity for more than one year and therefore the petition is now approvable.

In addition, counsel asserts:

INA Section 101(a)(15)(L) requires one year of qualifying overseas employment prior to admission presumably on the day an application for entry is made at a port of entry into the USA. The regulations, too, at 8 C.F.R. 214.2(l)(1)(ii)(A) require one year of the qualifying overseas employment prior to admission and not prior to filing the petition.

(Emphasis in original.)

Counsel's assertions are not persuasive. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, the required initial evidence for an individual L-1 petition includes evidence that the beneficiary 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*. 8 C.F.R. § 214.2(l)(3)(iii). (Emphasis added.)

Here, the beneficiary had approximately seven months of employment with the petitioner's foreign parent company as of the date the petition was filed, and the beneficiary is therefore ineligible for the benefit sought. Pursuant to 8 C.F.R. § 214.2(l)(1)(i), "[t]he Service has responsibility for determining whether the alien is eligible for admission . . . ." A beneficiary who has completed less than one year of employment with a qualifying foreign entity is clearly not eligible for admission under the regulations governing adjudication of L-1 petitions, and therefore the director's decision was correct.

If the petitioner believes that the beneficiary is now eligible for L-1 classification based on completion of one full year of employment with the foreign entity, it is not prohibited from filing a new Form I-129 with filing fee and supporting documentation.<sup>2</sup>

Based on the foregoing discussion, the petitioner has not established that the beneficiary has completed the required one continuous year of full time employment abroad with a qualifying employer within three years prior to the filing of the instant petition on March 19, 2008. Accordingly, 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO notes that the beneficiary in this matter was in fact admitted to the United States in B-1 status sometime in 2008, as evidenced by his filing of a Form I-539 Application to Extend or Change Nonimmigrant Status on October 2, 2008. He has been granted a one-year extension of B-1 status. If the beneficiary was admitted to the United States as a nonimmigrant visitor prior to completing one year of employment with the foreign entity, he remains ineligible for L-1 classification. *See generally*, 8 C.F.R. § 214.2(l)(1)(ii)(A).