

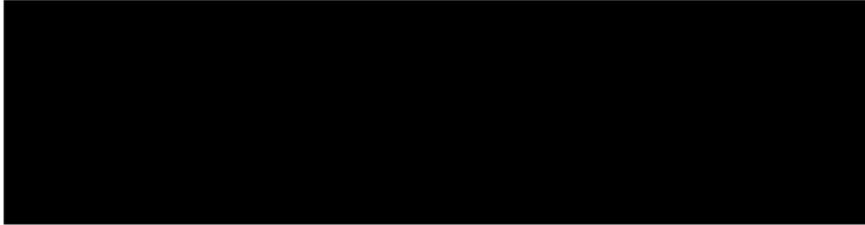
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



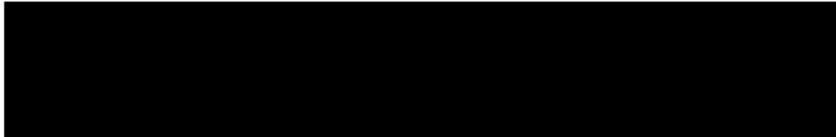
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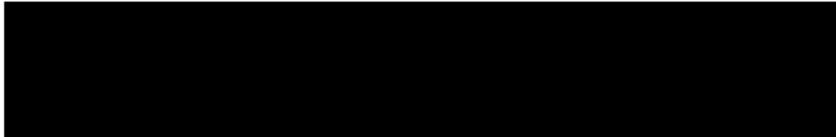
DATE: FEB 07 2012

Office: CALIFORNIA SERVICE CENTER

FILE: 

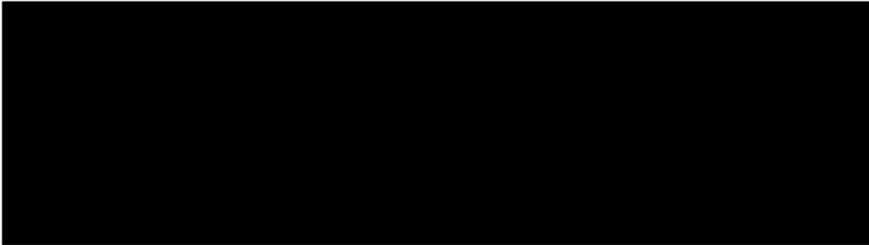
IN RE:

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)

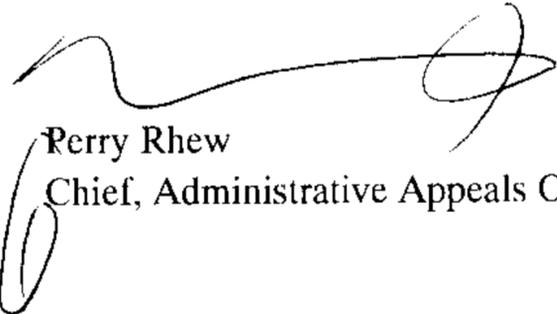
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Missouri limited liability company, established in 1998, that is engaged in the commercial insurance business. The petitioner is a subsidiary of [REDACTED] located in [REDACTED] Switzerland. USCIS previously granted the beneficiary L-1A status for a period of three years, from April 2008 to March 2011, 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 filed this nonimmigrant petition seeking to amend the previously approved petition to reflect the petitioner's new corporate name. The petitioner also seeks to extend the beneficiary's status with the amended petition.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 17, 2009. At the time of filing, the beneficiary was physically present in the United States pursuant to an approved L-1A petition granting him employment authorization with the petitioning company through March 31, 2011. In addition to submitting this amendment, the petitioner requested that USCIS take the action of extending the beneficiary's stay from "ASAP to 24 months."

The director denied the petition, concluding that the petition was improperly filed by the petitioner because the beneficiary's L-1A status remained valid through March 31, 2011. The director noted that the USCIS form instructions, which have the force and effect of a regulation in accordance with 8 C.F.R. § 103.2(a)(1), state that "a Form I-129 petition may not be filed more than six months prior to the date employment is scheduled to begin." In denying the petition, the director concluded that the extension of stay could not be granted because the petition was filed one and a half years prior to the expiration of the beneficiary's valid L-1A status. The director found that the beneficiary may continue his employment with the petitioner through March 31, 2011.

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 amendment to change the petitioner's corporate name is properly filed and the service center should have entered separate decisions for the amendment and the extension of stay. Counsel submits a brief in support of the appeal.

The regulation at 8 C.F.R. § 214.2(l)(7)(i)(C) states:

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 regulation at 8 C.F.R. § 214.2(l)(15)(i) states the following, in pertinent part, with respect to requests for extensions of stay:

In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. . . . Even though the requests to extend

the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. . . .

Upon review, counsel's assertions are persuasive. The director's decision dated November 18, 2009 will be withdrawn and the petition will be amended. The AAO notes that the director's decision is vague in terms of discussing the amendment of the petitioner's corporate name, but the director acknowledges that the petitioner's name has changed and the Federal Employer Identification Number (FEIN) remains the same. On appeal, counsel states that although the FEIN remains the same, USCIS statute and regulations do not preclude the petitioner from filing an amended petition in order to obtain an acknowledgment from USCIS of the corporate name change. Counsel further states, and the AAO agrees, that even if the service center were to deny the extension of stay, the amended petition should still be approved pursuant to 8 C.F.R. § 214.2(l)(15)(i).

On the separate issue of the extension of stay, the regulation at 8 C.F.R. § 214.1(c)(5) states that there is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. The director denied the extension of stay as improperly filed and, as there is no appeal, that determination remains final.

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 been met.

ORDER: The appeal is sustained.