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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

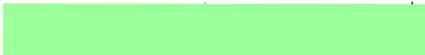


U.S. Citizenship
and Immigration
Services



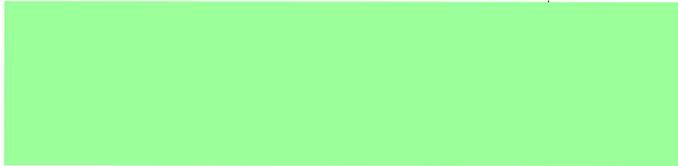
DATE: FEB 11 2013

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)

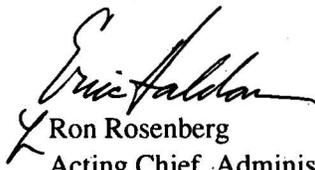
ON BEHALF OF PETITIONER:



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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter remanded to the service center for additional action and a new decision.

The petitioner seeks to extend the beneficiary's status as a specialized knowledge worker (L-1B) nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary has been physically present in the United States in L-1B status from December 26, 2004 until August 12, 2006, from September 15, 2006 to July 5, 2008, and from August 2, 2008 until April 19, 2009.

The director denied the petition without issuing a request for evidence. Citing the regulations at 8 C.F.R. §§ 214.2(l)(12)(i) and (l)(15)(ii), the director found that the beneficiary has been physically present in the United State beyond the five-year authorized period of admission and is therefore ineligible for an extension of the L-1B petition or request for an extension of stay. The director noted in the decision that although the petitioner indicated on the Form I-129 that the beneficiary's first admission to the United States in L-1B status was on December 26, 2004, it stated in a supporting letter that the beneficiary "worked from December 2003 to May 2004" as a team member for a client based in New Jersey. Therefore, the director concluded that the beneficiary's period of nonimmigrant stay began on December 1, 2003.

The petitioner subsequently filed a timely appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner contends that the beneficiary's first admission to the United States was in fact on December 26, 2004. Counsel explains that the beneficiary worked remotely in India on a project for a U.S. client during 2004, but never traveled to the United States during that time period. Accordingly, counsel asserts that the beneficiary is eligible for an extension of his L-1B status until December 25, 2009 based on the date of his first admission alone. In addition, counsel asserts that the beneficiary is eligible to "recapture" time, as he spent a total of sixty-two (62) days outside of the United States since his first admission in L-1B status. The petitioner requests that the petition be approved and that the director grant the beneficiary an extension of L-1B status through February 25, 2010.

In support of the appeal, the petitioner submits complete copies of the beneficiary's current and expired Indian passports, copies of his pay slips from his foreign employer in India for the period December 2003 through December 2004, and copies of his Indian tax returns for the period in question.

On review, the petitioner's assertions are persuasive. The record does not support the director's conclusion that the beneficiary has been physically present in the United States for more than five years, as the petitioner has provided sufficient evidence to establish that his first admission in L-1B status was on December 26, 2004, approximately four years and four months prior to the date the instant petition was filed.

As the director denied the petition pursuant to the regulation at 8 C.F.R. § 214.2(l)(12)(i), the director did not evaluate the petitioner's claim that it will continue to employ the beneficiary in a specialized knowledge capacity. Therefore, the AAO will withdraw the director's decision dated July 8, 2009 and remand the petition to the director. The director is instructed to review the record of proceeding and issue a new decision addressing the beneficiary's eligibility for L-1B classification under the applicable regulations.

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At this time, the AAO takes no position on whether the petition is approvable. The director must make the initial determination on this issue. So far, the director has not done so. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.