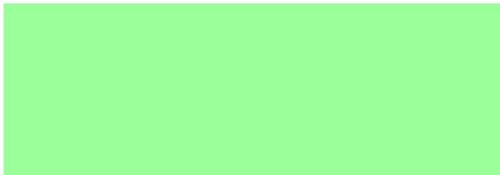


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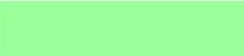


U.S. Citizenship
and Immigration
Services

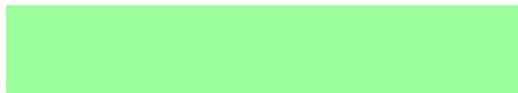


DATE: **DEC 30 2014**

Office: VERMONT SERVICE CENTER

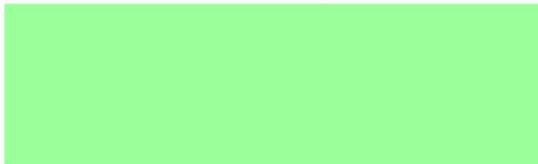
FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now again before us on a motion to reopen.

The petitioner filed the Petition for a Nonimmigrant Worker (Form I-129), seeking to extend the beneficiary's employment as an L-1B 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, a Delaware corporation, is engaged in custom computer programming services. The petitioner states that it is an affiliate of [REDACTED] located in Russia. The petitioner seeks to extend the beneficiary's authorization to work as a functional analyst for a period of two years.

The director denied the petition, concluding that the petitioner had failed to demonstrate that the beneficiary possesses specialized knowledge or that she would be employed in a capacity requiring specialized knowledge. Further, the director found that the evidence submitted by the petitioner was insufficient to establish that the beneficiary's employment in the United States would not be labor for hire as defined in the L-1 Visa Reform Act of 2004.

In our previous decision, we affirmed both of the director's findings. First, with respect to whether the petitioner is and will be employed in a specialized knowledge capacity, we pointed to the petitioner's failure to specifically compare the beneficiary against over sixty similarly placed professionals assigned to the company's client [REDACTED] or other employees placed in similar positions in the industry. Further, we noted that the petitioner did not corroborate its assertion that the beneficiary developed 35% of the referenced [REDACTED] application or articulate how long it would take to train another to the level of the beneficiary, as requested by the director. We also found that the evidence indicated that the beneficiary had gained most of her knowledge from employment outside of the foreign entity, indicating that her knowledge was not primarily based in the processes or proprietary systems of the foreign entity, but in knowledge commonly held throughout the industry.

Furthermore, we affirmed the director's conclusion that the weight of the evidence suggested that the beneficiary would be employed as labor for hire. *See* Section 204(c)(2) of the Act, 8 U.S.C. § 1184(c)(2). In denying the petition on this ground, we pointed to the fact that the petitioner had failed to articulate how the beneficiary was supervised at the client's location and that she was primarily supervised and controlled by the petitioner. We further noted evidence on the record reflecting that the petitioner was hired to maintain the client's system, established approximately fifteen years prior, rather than to develop the application as asserted.

The current matter is now before us again on a motion to reopen. The petitioner submits a letter from its client [REDACTED] dated September 15, 2014 in which its "SSG Supplier Management, IT Procurement" manager states the following:

Under no circumstances are any of the employees [the petitioner] designates to undertake these services to be considered employees of the [REDACTED]. There will be no

employer/employee relationship between [REDACTED] employees whatsoever. Specifically, [REDACTED] is not and will not be responsible for paying, supervising, terminating, or controlling the work of the [petitioner] employee sent to [REDACTED] to meet the terms of the TAA and specific Statement of Work. Each [petitioner] employee's daily duties, reporting structure, and conduct will remain the sole responsibility of [the petitioner].

The purpose of a motion to reopen is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of the AAO's decision to dismiss the petitioner's previous appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

We find that the petitioner has submitted sufficient new evidence to reopen the issue of whether the beneficiary will be employed as labor for hire as defined in the Visa Reform Act of 2004. However, following a review of new evidence, we will affirm our previous decision.

As added by the L-1 Visa Reform Act of 2004, section 214(c)(2)(F) of the Act states:

- (F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—
 - (i) the alien will be controlled and supervised principally by such unaffiliated employer; or
 - (ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge of the petitioning employer is necessary.

Although the letter from [REDACTED] sufficiently clarifies that the beneficiary is more likely than not primarily controlled and supervised by the petitioner while engaged at the client location, we do not find that the petitioner has submitted sufficient evidence to establish that the work of the beneficiary will be primarily in connection with the provision of a product or service for which the specialized knowledge of the petitioning employer is necessary. As noted in our previous decision, the evidence submitted demonstrates that the beneficiary will predominantly provide knowledge of the client's software, methodologies and procedures, rather than specialized or advanced knowledge of her company's products or services. The petitioner states

that the petitioner developed the [REDACTED] application for [REDACTED] benefit and that this represents a proprietary product of the petitioner. However, the agreement between the petitioner and [REDACTED] states otherwise, indicating that that all “inventions, discoveries, and improvements” created pursuant to the petitioner’s services will remain the “sole and exclusive property of [REDACTED]”. The petitioner has not submitted statements of work, work orders, emails, or other such documentation to corroborate its claim that the beneficiary will primarily provide its own processes and products, and not simply maintain those already owned and developed by [REDACTED].

As noted in our previous decision, the preponderance of the evidence suggests that the petitioner is significantly engaged in providing maintenance and support of [REDACTED] application, rather than developing this system. Organizational charts indicate over 60 employees assigned to this function and the petitioner had failed to demonstrate with supporting evidence that the beneficiary will primarily develop an application for [REDACTED]. Indeed, the petitioner confirms that its employees receive specialized training from [REDACTED] in its systems. Therefore, the evidence is more suggestive that [REDACTED] has outsourced the maintenance its [REDACTED] function to the petitioner and its foreign affiliates, rather than relying on the petitioner and its foreign affiliates for development. On motion, the petitioner has failed to provide additional evidence to overcome the weight of this evidence indicating a labor for hire arrangement for the beneficiary. Therefore, we will affirm our previous decision with respect to this issue.

Furthermore, it should be noted that the petitioner has not submitted any additional evidence, nor does it refute the finding of this office that the beneficiary is not employed in a specialized knowledge capacity. This office, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, although the motion to reopen is granted, the previous decisions of the director and this office will not be disturbed.

ORDER: The motion to reopen is granted, but the previous decision of this office is affirmed.