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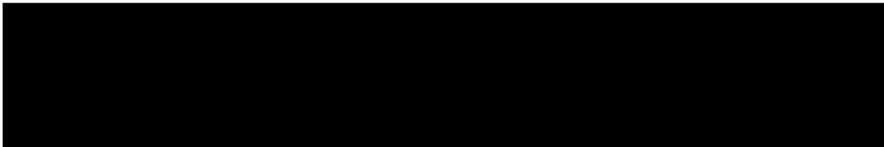
File: LIN 06 027 51027 Office: NEBRASKA SERVICE CENTER Date: **AUG 03 2007**

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 The decision of the director will be withdrawn and the matter remanded to the service center for additional action and a new decision.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 (1) to extend the beneficiary's status as an intracompany transferee having specialized knowledge (L-1B) through an extension of the current petition; and (2) to extend the beneficiary's period of stay, both pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The record indicates that an L-1B petition was initially approved for the beneficiary from December 27, 2000 until December 26, 2003 (LIN 01 075 52790). The beneficiary was issued a nonimmigrant visa (L-1) pursuant to this approved petition on March 27, 2001. This petition and the beneficiary's stay were both subsequently extended from December 26, 2003 until December 25, 2005 (LIN 04 032 54465). The petitioner asserts in a letter dated November 2, 2005 appended to the current petition that the beneficiary "worked about six months in 2001, part of 2004 and 2005 in Canada." However, the petitioner did not provide any specific information or evidence establishing when the beneficiary first entered the United States on his L-1 visa or whether the beneficiary actually traveled outside of the United States during the validity periods of the above described L-1B petitions.

Without requesting additional evidence, the director denied the petition concluding that, since the beneficiary had already been accorded five years of L-1B status, he is ineligible for an extension of stay, and the petition must be denied for that reason. 8 C.F.R. §§ 214.2(l)(12)(a) and 214.2(l)(15)(ii). The director specifically mentioned the petitioner's failure to specify any time periods during which the beneficiary was absent from the United States which could have been "recaptured" for purposes of extending both the petition and the beneficiary's stay.

On appeal, counsel to the petitioner asserts that the beneficiary was absent from the United States for 370 days during the five years of validity of the two above described L-1B petitions. In support, counsel provides evidence of employment in Canada during these time periods. Consequently, counsel reasons that the petitioner is entitled to extend the petition and the beneficiary's stay for 370 days. Counsel also states in her brief that the beneficiary was in Canada from June 20, 2005 until November 4, 2005. The instant petition seeking both a petition extension and an extension of stay was filed on November 3, 2005 when the beneficiary was apparently in Canada.

The regulation at 8 C.F.R. § 214.2(l)(15)(i) states the following, in pertinent part:

In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I-129. When the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. 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.

Therefore, although those seeking an extension of L-1B status or an extension of stay are currently permitted to file one form, these requests are still separate determinations. *See* 56 Fed. Reg. 61201, 61204 (Dec. 2, 1991). Only in situations where a beneficiary has or will have exhausted his or her permitted stay in the United States in H or L status by the requested start date or at the time of filing, whichever is later, may the director deny a petition based solely on a beneficiary's ineligibility for an extension of stay. *See* 8 C.F.R. § 214.2(D)(12)(i). Otherwise, as discussed *supra*, the director must make separate determinations on each request made in the Form I-129.

As a threshold matter, 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. However, while the AAO may not normally enter a decision on the appeal of the beneficiary's extension of stay, the AAO will review the matter as it pertains to the petition extension, which is a proper basis for the appeal. As noted above, the exhaustion of a permitted stay in the United States by a beneficiary may be a reason to deny a separately considered petition extension. *See* 8 C.F.R. § 214.2(D)(12)(i).

Upon review, the AAO concludes that the director erred in failing to request additional evidence regarding the beneficiary's purported absences from the United States in determining whether the petitioner is entitled to a petition extension. However, given that the beneficiary was apparently not in the United States on the day the instant petition was filed (November 3, 2005), the extension of stay was appropriately denied. 8 C.F.R. § 214.2(I)(15)(i). As indicated above, counsel to the petitioner admitted on appeal that the beneficiary was in Canada from June 20, 2005 until November 4, 2005.

Title 8 C.F.R. § 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. For example, if an L-1A petition includes evidence that the beneficiary had been employed abroad for only two months prior to filing the petition even though 8 C.F.R. § 214.2(I)(3)(iii) requires one year of prior employment, the director may deny the petition without requesting further evidence. However, in this matter, the director did not specifically identify any evidence of ineligibility in the record. The director only determined that the petitioner failed to properly establish with specificity those dates that the beneficiary had been absent from the United States during the five-years of the L-1B petitions' validity. Therefore, as "initial evidence or eligibility information" was missing, the director was required by 8 C.F.R. § 103.2(b)(8) to request additional evidence regarding the petitioner's assertion that the beneficiary had spent time outside the United States before denying the petition extension.¹

¹As noted above, 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. Therefore, this decision does not apply to the director's denial of the application for an extension of stay. That being said, and as also noted above, the AAO notes that the denial of the beneficiary's extension of stay appears to have been appropriate in this case because the beneficiary was not in the United States when it was filed. If the beneficiary had been in the United States when the petition was filed, the AAO opines that the director should have requested additional evidence regarding the beneficiary's

It should be noted that a service center is not expected to request additional evidence regarding a beneficiary's absences from the United States in every instance where a petitioner is seeking a petition extension, and an extension of stay, beyond the relevant validity period. However, in this particular case, the petitioner specifically alleged in the letter dated November 2, 2005 that the beneficiary had worked for part of the combined five-year validity period in Canada, even though the petitioner did not provide specific dates. Moreover, the petitioner provided a copy of the beneficiary's nonimmigrant visa issued March 27, 2001. As this was issued three months after the approval of the original L-1B visa petition, it is likely, but not certain, that the beneficiary was not actually admitted into the United States in L status until after that date. However, as the record is unclear on these points, the director was obligated to seek additional evidence before denying the petition extension.

For this reason, the decision must be withdrawn and the matter remanded to the service center for additional action and a new decision.

It is noted that, on appeal, counsel to the petitioner alleged that the beneficiary was absent from the United States for 370 days during the five-year combined validity period of the L-1B petitions. It is also noted that the petitioner supported this assertion by providing evidence that the beneficiary was employed in Canada during specific time periods. However, the petitioner did not provide any evidence of the beneficiary's entries into Canada or departures from the United States. While the employment documentation may be probative of an employment relationship with a Canadian company, it does necessarily establish physical presence in Canada or one or more absences from the United States. Therefore, the matter must be remanded to the director for further consideration and the entry of a new decision.

Furthermore, although the director did not address whether the petitioner has established that the position offered requires an employee with specialized knowledge or whether the beneficiary has such knowledge, the AAO notes that the evidence presently contained in the record appears insufficient to establish that the beneficiary will be employed in a specialized knowledge capacity. In examining the specialized knowledge capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. Although the petitioner asserts that the beneficiary's proposed position in the United States requires "specialized

purported absences from the United States before denying the extension of stay portion of the petition for the same reasons articulated above.

The AAO further notes that there are serious inconsistencies in the record concerning the beneficiary's presence in the United States. For example, the petitioner states in the Form I-129, signed on November 2, 2005, that the beneficiary was present in the United States and that he last arrived in the United States on June 15, 2005. However, on appeal, counsel asserts in her letter dated February 1, 2006 that the beneficiary "was again in Canada working" from June 20, 2005 until November 4, 2005. As the Form I-129 is certified to be true and correct under penalty of perjury under the laws of the United States, such a fundamental inconsistency as whether the beneficiary was present in the United States at the time the petition was filed must be resolved by the petitioner.

knowledge," it does not appear that the petitioner has adequately articulated any basis to support this claim. It appears that the petitioner has failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other experienced truss system technicians employed by the petitioner or in the industry at large. Going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. See *Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905, F.2d 41 (2d. Cir. 1990). However, as the director failed to address the critical issue of whether the beneficiary has been employed in a specialized knowledge capacity, this matter must be remanded for a new decision.

The decision of the director will be withdrawn and the matter remanded so that the director may examine the record and request additional evidence to determine (1) whether the petition may be extended, and for how long, due to the beneficiary's purported absences from the United States during the combined five-year validity period of the previously approved L-1B petitions; and (2) whether the beneficiary will be employed in a specialized knowledge capacity.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for additional action and a new decision.