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L-1A Restoration of Status nunc pro tunc after over one year

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Submitted by admin on Jun 6th 2011

We were retained to represent a client whose L-1A was denied because USCIS was not convinced that the job qualified as a "Managerial Level" position for the client's small restaurant business that had 8-10 employees. The Beneficiary was out of status and has already started accruing unlawful presence. We reviewed the paperwork submitted by the previous attorney and suggested that the client file a Motion to Reopen on the basis of certain defects. We also filed a new L-1A extension petition. We argued very that the size of the business is not the exclusive factor in determining managerial capacity and Beneficiary can qualify for L-1A as a "Functional Manager" even if he is not supervising any employee. Initially we received an RFE, which we responded to empathically, citing several decided cases and regulations and reasoning that the size of business and number of employees supervised are not exclusive factors in determining "managerial capacity." USCIS accepted our arguments and approved the L-1A petition, but without an I-94.

L-1A without an I-94 would not have put Beneficiary in lawful status. The major challenge we were facing was that this beneficiary could be potentially subject to a bar from reentering USA. We advised the client not to travel abroad and to fight in US for grant of an I-94. We recommended filing another L-1A petition specifically requesting USCIS to approve L-1A with an I-94. We filed the L-1A amended petition with nunc pro tunc request for amendment of stay. We cited business necessity and implications if Beneficiary is not allowed to reenter. This time USCIS accepted our nunc pro tunc request and issued L-1A with a backdated I-94, excusing the entire unlawful presence and out of status period.

Nonimmigrant Visas:

L-1A Visa ^[2]

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[1] <https://immigration.com/sample-cases/l-1a-visa/l-1a-restoration-status-nunc-pro-tunc-after-over-one-year>

[2] <https://immigration.com/visa/nonimmigrant-visas/l-visa/l-1-visa/l-1a-visa>