identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

DATE: OCT 3 1 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 AAO will reject the appeal.

The petitioner filed this nonimmigrant visa petition to employ the beneficiary an L-1B intracompany transferee with specialized knowledge pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act ("the Act"), U.S.C. § 1101(a)(15)(L). The petitioner is a California semiconductor manufacturer seeking to employ the beneficiary in the position of auditor for a period of two years. The director determined that the petitioner failed to establish that the beneficiary will be employed in a capacity involving specialized knowledge.

As will be explained below, the appeal will be rejected because the underlying petition was not properly filed, and therefore, there is no legitimate basis to continue with this proceeding. The Form I-129 and initial Form G-28 accompanying the petition were not signed by the petitioning employer, as required by regulation, but instead by an attorney purportedly on behalf of the petitioner. Significantly, the attorney attempted to sign the visa petition under penalty of perjury on behalf of the petitioning employer. In addition, the supporting letters from the petitioner are also signed by an attorney purportedly on behalf of the petitioner. Thus, none of the required forms that relate to this individual beneficiary are signed by an official of the petitioning employer.

We acknowledge that the record contains a notarized document titled "Power of Attorney" dated May 6, 2009, signed by [redacted] the petitioner's U.S. Immigration Operations Manager. The document purports to authorize an attorney "[t]o sign on behalf of the Corporation all papers, documents, letters of support and forms, to be submitted in connection with all filings with the United States Bureau of Citizenship and Immigration Services, [US] Department of Labor, and [US] Department of State including, but not limited to, Form G-28, Form I-129 (with supplements), Form I-140, and all Letters of Support." However, as will be discussed, this document does not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations.

I. Signatures on the Form I-129 Petition

The Form I-129 petition identifies Intel Corporation as the petitioner. In this instance, no employee or officer of Intel Corporation signed the Form I-129.

Based on a review of the record, including the signature template in the "Power of Attorney," the only signatures on the visa petition are those of an individual who claims to represent the petitioner as counsel. The attorney signed Part 6 of the Form I-129, in the block provided for "Signature," thereby seeking to file the petition on behalf of the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign Form I-129.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

> *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian

> may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the USCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, Intel Corporation, did not sign the petition.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound or controlled by such action. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO maintains plenary power to review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

As will be discussed, the requirement for a signature *under penalty of perjury* cannot be met by a "Power of Attorney" authorized signature. Practically, the signature requirement reflects a genuine Form I-129 program concern regarding the validity of the temporary job offer contained in Form I-129 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition for the temporary worker, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-129 for the petitioner provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition and the job offer have no evidentiary value.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. While the AAO does not find any malfeasance in this matter, it notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

While it appears that the petitioner has signed the Form G-28 that accompanies the Form I-290B, authorizing the attorney to file the appeal on its behalf, the newly-submitted Form G-28 does not cure the improper filing of the underlying Form I-129 petition. As discussed above, the director was required by regulation to reject the petition as improperly filed pursuant to 8 C.F.R. § 103.2(a)(7)(i).

II. Conclusion

The petitioner did not properly file the underlying petition. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(7)(i), the service center director was bound to reject the petition. Thus, further action on the petition cannot be pursued and the appeal will be rejected.

The petitioner may file a new, properly executed Form I-129 accompanied by the required filing fee and supporting evidence, without prejudice.

ORDER: The appeal is rejected.