



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: SEP 05 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER IN THE FORM I-129 PROCEEDING:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp or seal.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR) the approval of the petition, and ultimately did revoke the approval of the petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected as improperly filed.

The petitioner filed a Petition for Nonimmigrant Worker (Form I-129) with the Vermont Service Center on May 7, 2010. In the Form I-129 visa petition, the petitioner described itself as an electronics assembly and manufacturing company established in 2006. The employer sought to employ the beneficiary in a position it designated as a human resources manager position. The petition was initially granted.

Thereafter, a site visit was conducted. The director reviewed the site visit report and issued a NOIR.<sup>1</sup> The NOIR contained a detailed statement regarding the new information that U.S. Citizenship and Immigration Services (USCIS) had obtained and notified the petitioner that it was afforded an opportunity to submit evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval of the petition. The petitioner responded to the NOIR. Thereafter, the director reviewed the evidence submitted but determined that it did not overcome the grounds for revocation. On March 12, 2012, the director revoked the approval of the petition. Thereafter, a motion was submitted and the director affirmed the prior decision. Subsequently, an appeal was submitted by [REDACTED]. Upon review of the record of proceeding, the appeal will be rejected.

Section 214(c)(10) of the Act, 8 U.S.C. § 1184(c)(10) addresses situations in which the petitioning employer is involved in a corporate restructuring, including a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of the employment remain the same but for the identity of the petitioner.

In response to the NOIR, counsel claimed that Electromatic International is the successor-in-interest to the petitioner. Counsel continued by stating, "Nevertheless, [the petitioner] continues to function and continues to lawfully employ the beneficiary." Counsel claimed that the companies "have essentially merged operations and now share the same building, employees, etc." The AAO reviewed counsel's statement, however, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

---

<sup>1</sup> A site visit is an administrative inquiry relating to the petitioner's burden of proof. As in all visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. A site visit may lead to the discovery of adverse information, as in the present case, but it is just as likely to confirm the petitioner's eligibility for the benefit sought. Here, the director properly notified the petitioner of the information, and the petitioner was provided with an opportunity to respond.

In the instant case, an opportunity has been provided to fully describe and document the transfer and assumption of the ownership of the predecessor by the successor; however, the record of proceeding provides insufficient documentation regarding the nature of the transfer of rights, obligations, and ownership between the petitioner and [REDACTED]. The petitioner has failed to establish that [REDACTED] and the petitioner have any relationship, including as a successor-in-interest.<sup>2</sup>

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states that the affected party must submit an appeal on Form I-290B. The term "affected party" is defined as "the person or entity with legal standing in a proceeding. . . . An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter." 8 C.F.R. § 103.3(a)(1)(iii)(B). In the instant case, the appeal was submitted by [REDACTED]. The record of proceeding contains insufficient documentation to establish that [REDACTED] is an affected party in this matter.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states the following:

- (A) *Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it

---

<sup>2</sup> The record of proceeding includes a letter from [REDACTED] on [REDACTED] letterhead claiming that the beneficiary had been employed by the petitioner since November 2006. She further states the following:

The physical address of [the petitioner] is [REDACTED] which shares the address with [REDACTED] owns the property. There is not an official lease signed between both companies as to both owners are cousins and work closely together. [REDACTED] is the physical address of [REDACTED] and [the petitioner]. This is where all the assets and operations are located. Both companies have their own separate payroll, payroll taxes, unemployment, worker's comp, income tax returns, sales tax returns, tractor-trailer registrations, employee records.

In support of this statement, the response provided various documents for the petitioner and various (separate) documents for [REDACTED] including two separate payroll registers as well as pay statement issued to the beneficiary by the petitioner.

The record of proceeding also contains an unsigned letter from [REDACTED] Chief Financial Officer of [REDACTED] was provided. Without [REDACTED] signature as declarant, the declaration lacks 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). Thus, the letter has no probative value. In addition, the record contains a 2010 tax return for [REDACTED] bank statements for the petitioning company, printouts from the website of [REDACTED] as well as invoices for [REDACTED]. The documents are devoid of information regarding the relationship (if any) between the petitioning company and [REDACTED]. In addition, the AAO reviewed the printouts from the Florida Department of State, Division of Corporations in the record of proceeding, as well as on the website and notes that both the petitioning company and [REDACTED] appear as separate, active companies.

must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

In the instant case, the record of proceeding does not establish that the appeal was filed by a person or entity entitled to file it. Thus, it must be rejected as improperly filed. Accordingly the appeal is rejected.

Even if the appeal was properly filed and the petitioner had overcome the ground for revocation of the approval of the petition, the petition would still be remanded to the director for issuance of a new NOIR and initiation of a new revocation-on-notice process with regard to this petition's approval because of a more critical issue pertaining to the petitioner's eligibility to extend its employment of the beneficiary in H-1B status. Specifically, the petition would be remanded as it was filed after the expiration of the petition it sought to extend. *See* 8 C.F.R. § 214.2(h)(14) (stating that a "request for a petition extension may be filed only if the validity of the original petition has not expired"). In this matter, the petition that the petitioner sought to extend (EAC 09 168 51988) expired on Tuesday, May 4, 2010. The instant petition was filed on Friday, May 7, 2010, three days after the expiration of the original petition.

The AAO notes that an "extension of stay" must be distinguished from an extension of H-1B status, which occurs through a "petition extension." Although those seeking H-1B status are currently permitted to file one form to request a petition extension, extension of stay, and change of status, they are still separate determinations. *See* 56 Fed. Reg. 61201, 61204 (Dec. 2, 1991). In addition, 8 C.F.R. § 214.2(h)(15)(i) specifically states that, "[e]ven though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each." Thus, 8 C.F.R. § 214.1(c) relates solely to extension of stay requests, 8 C.F.R. § 214.2(h)(14) deals only with H-1B petition extensions, and 8 C.F.R. § 248.3(a) addresses change of status requests to H-1B classification.<sup>3</sup>

---

<sup>3</sup> It must be noted that the H-1B regulations equate the word "status" to the word "classification" and not to the period of authorized stay in the United States. *See* 8 C.F.R. § 248.3(b) (2000); *see also* 8 C.F.R. §§ 214.1(c)(2), 245.2(a)(4)(ii)(C), and 103.6(c)(2) (2000). Furthermore, as the phrase "previously accorded status" is not defined in the regulations and as its use in 8 C.F.R. § 214.1(c)(4) is not distinguished from its use in 8 C.F.R. § 248.1(b), it must be interpreted as having the same meaning – the status previously held by the alien, not the same prior status held by the alien.

In addition, if the same meaning of "previously accorded status" as it is used in 8 C.F.R. § 248.1(b) were not applied to 8 C.F.R. § 214.1(c)(4), it would create the situation where an alien could change status and be approved for a specific classification but be unable to extend his or her stay. As an example, an employer files an initial I-129 requesting H-1B classification, change of status, and extension of stay on behalf of an alien in B-2 visitor status whose authorized stay is about to expire but who has not previously spent time in the United States in H or L status. If otherwise qualified and if "previously accorded status" in 8 C.F.R. § 214.1(c)(4) meant the same prior status, U.S. Citizenship and Immigration Services would be permitted to grant the H-1B petition approval and change of status but be prohibited from granting the extension of stay request, solely because the alien was not in H-1B status at the time the petition was filed, even though the alien had never held H-1B status at any time in the past. Not only is this result contrary to current and past

In conclusion, the appeal was improperly filed and, therefore, it is rejected.

In addition, even if the appeal was properly filed and the petitioner had overcome the ground for revocation of the approval of the petition, the petition would still be remanded to the director for review for issuance of an RFE or NOIR regarding the additional issue discussed above.

**ORDER:** The appeal is rejected.