U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 03 2009

SRC 95 257 50913

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the nonimmigrant petition on September 28, 1995, but subsequently revoked the petition's approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A 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 Texas corporation engaged in real estate investment and import and export activities, claims to be an affiliate of PAL Fashions, a sole proprietorship located in Leicester, United Kingdom. The petitioner seeks to employ the beneficiary as its president for a period of three years.

The director initially approved the petition in September 1995, but revoked the approval on November 8, 2002, based on the two separate grounds, determining: (1) that the petitioner failed to maintain a qualifying relationship with a foreign entity as of 1996, and that the beneficiary had no intent to maintain such relationship with the foreign entity upon his transfer to the United States; and (2) the beneficiary "willfully misrepresented facts regarding himself, his sister and the companies involved" in the petition. In the Notice of Intent to Revoke issued on September 24, 2002, the director advised that the petitioner that "this proposed revocation is based upon evidence provided by [redacted], sister of the alien beneficiary, in an in-depth interview with an immigration inspector when she attempted to enter the country in July of 1999."

The petitioner subsequently filed a timely appeal on November 25, 2002, which is now before the AAO.[1] A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that the beneficiary in this matter is also the beneficiary of an approved employment-based immigrant visa petition filed by the petitioning company. The beneficiary adjusted status to that of a U.S. permanent resident as of December 12, 1996. While the petitioner has not withdrawn the appeal in this proceeding, it would appear that the beneficiary is presently a lawful permanent resident and the issues in this proceeding are moot. Therefore, the appeal will be dismissed.

Although the appeal will be dismissed, the AAO will briefly address the issues raised by counsel. Counsel for the petitioner argues that the beneficiary entered the United States with the intent of continuing the operations of his sole proprietorship in the United Kingdom. Counsel further emphasizes that the petitioner submitted evidence to establish that the foreign entity was actively doing business at the time the beneficiary was granted L-1A status. Citing to *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977) and *Matter of Thompson*, 18 I&N Dec. 169, (Comm. 1981), counsel contends that "just because [the beneficiary's] affiliate company closed does not mean his status as a nonimmigrant alien worker should be terminated."

Counsel's reliance on *Matter of Chartier*, 16 I &N Dec. 284 (BIA 1977) and *Matter of Thompson*, 18 I&N Dec. 169, (Comm. 1981), is misplaced. The beneficiary in *Chartier* had been employed directly by the United States petitioner in Canada and had a position abroad to which he could be transferred after his temporary assignment in the United States. The petitioner also had a qualifying affiliate company in Belgium and therefore was doing business in the United States and in at least one other country. The petitioner in that

[1] The director forwarded the appeal to the AAO more than six years after it was filed. There is no explanation in the record for the indefensible delay. The regulations at 8 C.F.R. §§ 103.3(a)(2)(iii) and (iv) allow the director 45 days from receipt to review the appeal and then the appeal must be "promptly" forwarded to the AAO. If there are problematic issues related to the appeal that prevent its prompt processing, the director is urged to contact the AAO to discuss the available options.

matter would meet the current regulatory definition of a qualifying organization, although the case itself pre-dates the current regulations defining that term.

Counsel's reliance on *Matter of Thompson* is also not persuasive. The Immigration and Naturalization Service (INS, now USCIS) found the decision in *Thompson* to be an inappropriate application of the holding in *Matter of Chartier*, and overturned that decision by regulation. 52 Fed. Reg. 5741 (Feb. 26, 1987). The final rule defining qualifying organizations is set forth at 8 C.F.R. § 214.2(l)(1)(ii)(G).

The petitioner in this matter, based on the evidence of record, no longer has a qualifying relationship with any foreign entity, nor is it doing business directly or through a branch, parent, affiliate or subsidiary outside of the United States. Thus, as of 1996, the petitioner no longer meets the definition of a qualifying organization. The regulation at 8 C.F.R. § 214.2(l)(9)(iii)(A)(1) provides for the revocation of a petition if one or more entities are no longer qualifying organizations, as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(G). The fact that the beneficiary may have intended that the foreign entity remain operational is irrelevant. The AAO finds that the petition was properly revoked on these grounds.

Counsel further asserts on appeal that the director erred by basing its decision, in part, on statements made by the beneficiary's sister, [redacted] when "there is no correlation between [redacted] interview in 1999 and [the beneficiary's] entry into the United States as an intracompany transferee in 1995." Counsel objects to the director's conclusion that the beneficiary misrepresented facts regarding himself, his sister, or the companies involved.

Upon review, the AAO concurs with counsel that the director did not adequately support his finding that the beneficiary had willfully misrepresented facts in connection with the instant L-1A visa petition filed in 1995. The beneficiary's sister was not questioned regarding the petitioning company or the circumstances under which the beneficiary was admitted to the United States in L-1A status, nor did she volunteer any information in this regard. Rather, she was interviewed regarding her own eligibility for L-1A classification with respect to a separate petition filed by a different U.S. petitioner. While the beneficiary's sister's responses suggest that the beneficiary may have encouraged his sister to seek an L-1A visa when she was not in fact entitled to such status, that matter is unrelated to the instant petition, and does not provide either a proper basis for revocation, or a legitimate basis for entry of a finding of willful misrepresentation on the part of the beneficiary in connection with the instant L-1A petition. The director did not point to any specific or material misrepresentation of fact in connection with the beneficiary's L-1A petition that would warrant revocation of the approval.

Revocation of the petition approval cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petition approval may not be revoked on inferences or conclusions that are not supported by the record. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988).

Accordingly, the AAO will withdraw the director's decision, in part, as it relates to a finding of willful misrepresentation on the part of the beneficiary.

ORDER: The appeal is dismissed as moot.