



U.S. Citizenship  
and Immigration  
Services

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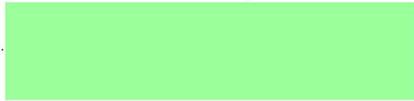
DATE: **MAR 21 2013** Office: VERMONT SERVICE CENTER FILE:

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)

ON BEHALF OF PETITIONER:



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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, approved the petition for a nonimmigrant visa, but subsequently revoked the approval. The revocation is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable at this time, it is remanded for further action and consideration.

### I. The Issue on Appeal

The petitioner seeks to extend the beneficiary's status as a manager or executive (L-1A) nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The petitioner is a newspaper that issues a bi-monthly publication focused on the current affairs of the Central America and the Caribbean.<sup>1</sup> The service center initially approved the petition on December 17, 2010. Following an interview with the beneficiary at the U.S. Embassy in Venezuela, however, the director issued the petitioner a letter dated September 30, 2011 stating the center's intention to revoke approval of the petition because: "USCIS was notified by the Consulate General of the United States of America, Caracas that the beneficiary does not appear to qualify in the capacity for which he was petitioned." The letter informs the petitioner that a final decision would not be made for 33 days and that the petitioner could submit additional evidence to overcome the noted reasons for the revocation.

In response to the letter, counsel for the petitioner submitted a brief and additional evidence. The documents submitted include, *inter alia*: a receipt from Miami-Dade County for paying local business tax dated October 26, 2011; a receipt from Internet Corporation Listing Service for annual website search engine listing from October 15, 2011 through October 14, 2012; invoices from Carpio Graphic Design dated February 2010, April 2010, June 2010, August 2010, October 2010, December 2010, February 2011, April 2011, June 2011, and August 2011, 2010; 2010 W2 forms for 4 employees of the petitioner; a copy of the petitioner's publication for July and August 2011; a print-out of the petitioner's website stamped October 24, 2011; a bank statement for the petitioner for the period ending September 30, 2011 showing a beginning balance of \$1,442.98 and an ending balance of \$84,762.69; and the petitioner's 2009 and 2010 U.S. income tax returns.

The director ultimately revoked the petition. The revocation states that the U.S. Embassy in Caracas, Venezuela conducted an interview with the beneficiary on February 2, 2011, during which it discovered that the petitioner had ceased to exist. According to the Embassy, the petitioner had not published a newspaper since November 2010. The director noted the evidence submitted by the petitioner, including a copy of the newspaper dated July-August 2011, copies of bank statements dated September 30, 2011, and a copy of the petitioner's 2009 U.S. tax returns. The director

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<sup>1</sup> The Form I-129, Petitioner for a Non-immigrant Worker, lists two separate companies as the petitioner. Neither the Act nor the regulations provide for dual petitioners. The petitioner provided the Employer Identification Number for the first company listed, and the AAO therefore considers that entity to be the sole petitioner.

reasoned that these documents were not current and they therefore failed to show that the petitioner was still conducting business.

On appeal, the counsel for the petitioner submits a legal brief as well as numerous documents pertaining to the issue of whether the petitioner is and has been doing business. The evidence submitted includes: copies of the petitioner's bi-monthly publication from January-February 2010 through January-February 2012; an affidavit from the petitioner's webmaster stating the website was down for a period of 7 days beginning on January 28, 2010 for maintenance and upgrades; the petitioner's 2010 and 2011 income tax returns; a lease with Westside Commercial Center for approximately 1,000 square feet of space from April 1, 2012 to March 31, 2013; a lease from Sharkey's for book storage starting October 1, 2010, valid for 90 days and renewable monthly thereafter; checks showing payment of rent to Sharkey's for the months June 2011 through October 2011, January 2012, February 2012, April 2012, and June 2012; and the payment of permit postage imprint fees from March 2012 through May 2012.

In his brief, counsel for the petitioner claims that the director erred because the petitioner has continued to operate as an online publication and is still in existence. He explained:

. . . [the beneficiary] went to an interview in Caracas, Venezuela at the U.S. Embassy, to be interviewed, obtain his visa and have his passport stamped. During the interview at the U.S. Embassy, [the beneficiary], explained the fact that the newspaper web site was down or "caida" in Spanish for maintenance and also that the newspaper was changing web servers and changing from paper form to online form. The embassy officer in charge of the interview went back to check the internet address given. At that particular moment the website was down because they were changing web servers and it was under maintenance and construction. In addition, the newspaper would now be published online and the page was being uploaded to function from a newspaper of paper print newspaper [sic] to an online newspaper published electronically/digitally.

During the interview [the beneficiary] tried to explain that the online newspaper page was being serviced and it was down *in that specific moment*, but that the company [the petitioner] and the newspaper were still functioning. The officer apparently misunderstood that that [sic] the newspaper was not published since November 2010 and that since the [petitioner] was *not functioning* there was no longer a qualifying relationship between the Venezuelan company, [redacted] and [the petitioner] to allow an extension L-1A visa petition approval.

(emphasis in original). Counsel for the petitioner further indicates that the statement that the petitioner had not published since November 2010 was not incorrect. As the newspaper publishes bi-monthly, the November-December, 2010 edition would have come out at that point. Counsel states that, at the time of the interview on February 2, 2011, they were still working on the January-February, 2011 issue.

## II. The Law

8 C.F.R. § 214.2(l)(14)(i). The regulations provide the following instructions regarding revocation of petition approvals:

The director shall send to the petitioner a notice of intent to revoke the petition at any time if he or she finds that:

- (1) One or more entities are no longer qualifying organizations;
- (2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
- (3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;
- (4) The statement of facts contained in the petition was not true and correct; or
- (5) Approval of the petition involved gross error; or
- (6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

8 C.F.R. § 214.2(l)(9)(iii)(A).

The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part.

8 C.F.R. § 214.2(l)(9)(iii)(B).

In this case, the director revoked the petition based on the finding that the petitioner was no longer a qualifying organization. See 8 C.F.R. § 214.2(l)(9)(iii)(A)(1). The regulations define a qualifying organization as:

*Qualifying organization* means a United States or foreign firm, corporation or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly

or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of this Act.

8 C.F.R. § 214.2(l)(1)(ii)(G). The director found the petitioner was not a qualifying organization specifically because it failed to show that it is doing business. The regulations define doing business as:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

8 C.F.R. § 214.2(l)(1)(ii)(H).

### III. Analysis

On review, the petitioner's assertions are persuasive. The petitioner has provided sufficient evidence to demonstrate that it has been doing business. The revocation based on the finding that the petitioner is not doing business is withdrawn.

As an initial matter, the Notice of Intent to Revoke (NOIR) issued to the petitioner is extremely vague and failed to adequately state the basis for the intended revocation. See 8 C.F.R. § 214.2(l)(9)(iii)(B). The NOIR described the ground for denial as follows: "USCIS was notified by the Consulate General of the United States of America, Caracas that the beneficiary does not appear to qualify in the capacity for which he was petitioned." This statement does not notify the petitioner of the evidence sought or the issues it should seek to address. The petitioner's response to the NOIR understandably contained general information repeating the petitioner's contention that the beneficiary is qualified for the visa sought. Due to lack of notice, the petitioner was not provided an opportunity to direct its response to the relevant issue.

The AAO's file for this petitioner contains a letter from the consular officer who interviewed the beneficiary, the contents of which appear to have prompted the revocation. There is no indication that the contents of the letter were ever disclosed to the beneficiary. The consular officer states:

The beneficiary was interviewed on February 2, 2011 at which time he admitted that the principal function of the Petitioner's business, [its newspaper], had ceased to exist and that the Petitioner had not published a newspaper since November 2010. He stated that the company was no longer interested in continuing publishing the newspaper as it was not profitable and was managing to "stay afloat" through its management of another company, [redacted] (in which it has invested 60%), which in turn owns a gas station.

Based on a review of the file, it appears the petitioner was not informed about this letter or its contents. As stated previously, the petitioner did not receive sufficient notice of the issues to be able to properly respond and present its case. As a result, the AAO will consider all evidence submitted on appeal as though it was submitted in response to the NOIR.

Contrary to the director's finding, the AAO agrees with the petitioner's contention that the documents submitted in response to the NOIR were sufficiently current at the time submitted. The petitioner issued the NOIR on September 30, 2011 and the documents provided by the petitioner are primarily dated September 2011 or one of the months immediately preceding.

On appeal, the petitioner submits further documentation corroborating the claim that it is currently and has been doing business as a newspaper publication. This documentation includes copies of each of the bimonthly publications for the two years from January-February 2010 to January-February 2012, an affidavit from the petitioner's webmaster regarding the site's down time, leases for office space and storage, and income tax returns for the years 2010 and 2011.

Considering the totality of the evidence submitted, the petitioner has sufficient shown that it is and has been doing business. The director's revocation based on this issue is withdrawn.

The AAO's findings in this decision deal solely with the issue of whether the petitioner has established that it is doing business. The director may issue a new NOIR pertaining to concerns regarding this or other issues as he deems appropriate.

#### IV. Conclusion

The director's revocation based on the finding that the petitioner is not doing business is withdrawn. The director is instructed to review the record of proceeding and, if he finds other grounds for revocation, issue a new NOIR explaining the grounds so that the petitioner may have an adequate opportunity to respond. Therefore, this matter will be remanded. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's revocation is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing discussion. If the director issues a decision that is adverse to the petitioner, the director shall certify the decision to the AAO for review.