

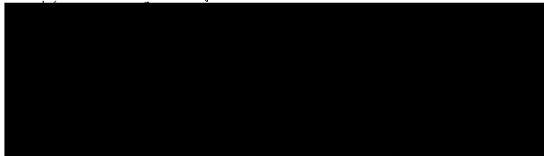


U.S. Department of Justice

Immigration and Naturalization Service

34

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

JAN 18 2001

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director, California Service Center. Upon further review of the record and a subsequent investigation by the Los Angeles district office, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intent to revoke the approval of the preference visa petition, and her reasons therefore, and ultimately revoked the approval of the petition on February 26, 1998. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now reopened on Service motion. The previous decision of the Associate Commissioner will be withdrawn. The petition will be approved.

The petitioner is a California corporation engaged in international trade and local business investment. It seeks to employ the beneficiary as its general manager and, therefore, endeavors to classify him as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The issues in this proceeding are whether there is sufficient evidence to establish that a qualifying relationship exists between the U.S. and foreign entities, and whether the beneficiary was employed in a managerial or executive position for at least one year in the three years immediately preceding the beneficiary's entry into the U.S. as a nonimmigrant. These issues constituted the bases of the director's denial of the petition and the Associate Commissioner's dismissal of the appeal.

8 C.F.R 204.5(j)(3)(i)(B) states, in pertinent part:

(3) Initial evidence--

(i) Required evidence. A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

* * *

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

* * *

I. QUALIFYING RELATIONSHIP

The first issue that must be examined is whether a qualifying relationship exists between the petitioner and the foreign entity. The petitioner claims that it is a wholly-owned subsidiary of [REDACTED], located in Taiwan.

8 C.F.R. states, in pertinent part:

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

Evidence in the record is persuasive in establishing that a qualifying relationship exists. The petitioner submitted copies of a stock certificate, the stock ledger, and a bank statement. The bank statement showed that a deposit was made to the petitioner's account on the same day that the foreign entity purchased the petitioner's stock. This evidence sufficiently establishes that the petitioner's stock was purchased by the foreign entity and, therefore, the petitioner is a wholly-owned subsidiary of J. San.

II. EMPLOYMENT OF THE BENEFICIARY BY THE FOREIGN ENTITY

The second and final issue that must be examined is whether the beneficiary was employed by the foreign entity in a managerial or executive position for at least one year in the three years immediately preceding the beneficiary's entry into the U.S. as a nonimmigrant.

The record reflects that the beneficiary had been employed as the business manager for [REDACTED] since 1979 at the time he entered the U.S. in B-1 status in October 1991. The beneficiary subsequently changed his status to an F-1 student, so that he could attend English language classes. Upon completion of his classes, the beneficiary began working for the petitioner, [REDACTED] in June 1994, shortly after the foreign entity, [REDACTED] purchased the petitioner's stock. He was the beneficiary of an approved L-1A petition, but because his application for a change of status from F-1 to L-1A was denied, the beneficiary left the U.S. and reentered with an L-1A nonimmigrant visa in January 1995.

The record reflects that the beneficiary made two entries into the U.S. as a nonimmigrant. The first entry occurred in October 1991

in B-1 status, and the second entry occurred in January 1995 in L-1A status. The Service does not dispute that the beneficiary was employed by [REDACTED] in a managerial position prior to his entry into the U.S. The critical issue is whether the qualifying three-year period runs from October 1988 until October 1991, which is the three-year period prior to the beneficiary's first entry as a nonimmigrant in B-1 status; or runs from January 1992 until January 1995, which is the three-year period prior to the beneficiary's second entry as a nonimmigrant in L-1A status.

Evidence in the record reflects that the beneficiary was continuously employed by the foreign entity, [REDACTED] after his entry into the U.S. in October 1991 until he began working for the petitioner in June 1994. This evidence consists of copies of the beneficiary's income tax returns from Taiwan, which show that he received a salary during the years he was in the U.S.; copies of the beneficiary's bank statements, which show that monies were transferred into his bank account from the owner of the foreign entity; and a letter from the foreign entity to the U.S. Consulate in [REDACTED] Mexico, which states that:

Our company will, therefore, totally support [REDACTED] for the next two (2) years while he attends language school. [REDACTED] will continue to receive his fully monthly salary of NT\$60,000.00 during this time. He will maintain his job position as Business Manager of our company for the next two (2) years, and he will return to his position in Taiwan upon completion of his studies.

In the instant case, the beneficiary was employed by the foreign entity after his initial entry into the U.S. in 1991. Therefore, the three-year period in which the beneficiary was required to have held an executive or managerial position for at least one year was the period from October 1988 until October 1991. Evidence in the record establishes that the beneficiary was a manager during this period.

According to the above facts, the beneficiary meets the requirements of 8 C.F.R. 204.5(j)(3)(i)(B), and is, therefore, qualified for an immigrant visa as a multinational executive or manager.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The decision of the Associate Commissioner dated September 23, 1998 is withdrawn: The petition is approved.