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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[Redacted]

File:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

6 MAR 2002

IN RE: Petitioner:

[Redacted]

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:

[Redacted]

Public Copy

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

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the preference visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an Ohio corporation that is engaged in the manufacture and sale of plastic products. It seeks to employ the beneficiary as its vice president and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that the beneficiary was employed by a qualifying overseas entity in an executive or managerial capacity for at least 1 year in the 3 years immediately preceding the beneficiary's entry into the United States as a nonimmigrant.

On appeal, counsel submits a brief. The petitioner submits an October 11, 2000 "Certificate of Officers of Fukuvi Chemical Industry Co., Ltd. And Yagikuma Co., Ltd."

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The petitioner claims that it [redacted] and [redacted], Ltd. [redacted] are affiliates, as both are owned and controlled by [redacted] Ltd. [redacted], which is located in Japan. According to the record, the beneficiary worked as the director for [redacted] from 1993 until his entry into the United States on April 15, 1997 as an E-2 nonimmigrant.

The director found that the beneficiary was not employed in an executive or managerial capacity by a qualifying overseas entity

for the requisite period of time because a qualifying relationship did not exist between the petitioner and [REDACTED] until two weeks prior to the beneficiary's entry into the United States. According to the director, [REDACTED] did not have majority voting rights over [REDACTED] until April 1, 1997 and since the beneficiary entered the United States on April 15, 1997, the beneficiary was not employed by the entity abroad (Refojoule) for at least one year in a managerial or executive capacity.

On appeal, counsel states the following:

The issue posed . . . was whether the qualifying relationship must exist at the time the employee gained the qualifying employment. . . . Qualifying employment does not have to occur during the period of the qualifying relationship, but may occur prior to it. . . . Stated another way, as long as Mr. [REDACTED] [the beneficiary] had been employed by [REDACTED] for at least one year in the three years prior to April 1, 1997 when the Voting Trust Agreement was formalized (which there is no dispute that he was), all criteria are met for E13 status. . . .

In support of his claims, counsel submits a November 17, 1992 memorandum from [REDACTED] A. Bednarz, Chief, Nonimmigrant Branch, Adjudications, who states that an employee of a company (company A) that had been purchased by another company (company B) would be eligible for L-1 classification if the employee had been employed for one year with company A before it was purchased by company B. The petitioner also submits a "Certificate of Officers" of [REDACTED] Japan and [REDACTED] Co., Ltd. [REDACTED].¹ According to this document, [REDACTED] and [REDACTED] Japan officially formalized a Voting Trust Agreement in April of 1997, even though an information arrangement on the voting of shares had been in place since 1987.

8 C.F.R. 205.5(j)(3)(i)(B) states, in pertinent part:

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

[REDACTED] and [REDACTED] Japan entered into a Voting Trust Agreement, in which [REDACTED] has the exclusive right to vote [REDACTED] shares of [REDACTED]



a managerial or executive capacity. . . .

Furthermore, 8 C.F.R. 204.5(j)(2) states, in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity; * * *

Counsel presents a persuasive argument on appeal. The record reflects that [REDACTED] Japan owns 55% of the petitioner's outstanding shares of stock. The record also reflects that as of April 1, 1997, [REDACTED] Japan formally controlled 50% of the voting rights of [REDACTED] outstanding shares of stock, with the other 40% of shares controlled by [REDACTED] and the last 10% of shares controlled by [REDACTED]. Therefore, on April 1, 1997, [REDACTED] and the petitioner became affiliates because they were two subsidiaries that were both controlled by the same parent, Fukuvi Japan.

Although a qualifying relationship between the petitioner and [REDACTED] did not exist at the time the beneficiary worked for [REDACTED] because a qualifying relationship existed at the time the petitioner filed the instant I-140 petition on April 28, 2000, the beneficiary's prior employment with [REDACTED] should have been considered in a determination of whether the beneficiary was employed in an executive or managerial capacity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant.

In the instant case, the record shows that the beneficiary was employed in a managerial capacity for the required period of time, and that the beneficiary has been and will continue to be employed in a primarily executive or managerial capacity with the petitioner. Accordingly, the petitioner has overcome the director's objection to the approval of the petition.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.