



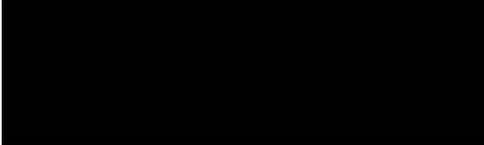
BH

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



File: [Redacted]

Office: TEXAS SERVICE CENTER

Date:

12 MAR 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



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

*Myra L. Rosenz*  
for Robert P. Wiemann, Director  
Administrative Appeals Office



**DISCUSSION:** The Director of the Texas Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Michigan corporation that imports furniture. It seeks to employ the beneficiary as its chief executive officer and 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 the existence of a qualifying relationship between the petitioner and the foreign entity.

On appeal, counsel submits a brief. The petitioner submits a statement from the beneficiary and a copy of its corporate by-laws.

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 director denied the petition because the petitioner failed to submit evidence that [REDACTED] a majority shareholder of the foreign entity and the spouse of the beneficiary, controls both the petitioner and the foreign entity, Far Eastern Furnishings (Canada) Ltd.

On appeal, counsel explains that [REDACTED] owns 50% of the petitioner's outstanding shares of stock and the beneficiary owns the other 50% of the outstanding shares. Counsel also notes that [REDACTED] owns 75% of the outstanding shares of the foreign entity's stock, while the beneficiary owns the remaining 25% of the



outstanding shares. Counsel claims that the director ignored an affidavit from the beneficiary in which she stated that "[s]ince the incorporation of the company, I have always voted my stock in agreement with my husband's vote pursuant to our agreement." Counsel also asserts that Matter of Siemens, 19 I&N Dec. 362, 364 (Comm. 1986), is controlling in this case, as affiliation may be found through 50-50 ownership "where there was control because each owner could veto the other."

Counsel does not present a persuasive argument on appeal. As shall be discussed, the evidence in the record does not establish that the petitioner and the foreign entity are affiliates.

It must be noted prior to discussing the merits of this case that counsel is in error when stating that Matter of Siemens, id. is controlling in this case. The petitioner in the Siemens case was a 50-50 joint venture. Matter of Hughes states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." Matter of Hughes, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from Endle J. Kolde, International Business Enterprise (Prentice Hall, 1973)). In the instant case, the petitioner is not a joint venture; its shares of stock are owned by two individuals, not by two economic entities from different countries. Accordingly, the applicability of Matter of Siemens, supra to the facts of this case will not be examined further.

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; \* \* \*

The petitioner makes the following claim regarding the ownership of the petitioner and the foreign entity:

Petitioner:



50% ownership  
50% ownership

Foreign Entity:



75% ownership  
25% ownership

The first definition of affiliate noted above is "one of two subsidiaries both of which are owned and controlled by the same parent or individual." Control may be *de jure* by reasons of ownership of 51% of outstanding stocks of the other entity, or it may be *de facto* by reason of control of voting shares through partial ownership and by possession of proxy votes. Matter of Hughes, supra.

Counsel contends that even though [REDACTED] does not own a majority of the outstanding shares of the petitioner's stock, he, nevertheless, controls the petitioner. Counsel bases his claim on an affidavit that the beneficiary executed in which she states the following:

[REDACTED] Inc. . . . is owned by me and my husband [REDACTED]. I own 50% of the stock and my husband owns 50% of the stock. . . . [REDACTED] has veto power over the affairs of the corporation because pursuant to the by-laws, all shareholder matters and director matters must be approved by a majority vote. Furthermore, for the consideration of my husband helping me to establish the Michigan corporation, I agreed to vote my stock in full agreement with his vote. Since the incorporation of the company, I have always voted my stock in agreement with my husband's vote pursuant to our agreement. Since the beginning, my husband has set the corporate policies for the corporation, which I carried out as the president.

The beneficiary's affidavit is insufficient evidence of Chun Hu's control of the petitioner. The court's holding in Matter of Hughes, id. requires a petitioner to show that an individual or parent has control over the entity "by reason of control of voting shares through partial ownership and by possession of proxy votes." This type of control, which is *de facto* control, can only be established through the submission of documentary evidence, such as agreements over the voting of shares, contracts entered into over the voting of shares, or agreements regarding proxy votes. Mere statements by shareholders, such as the beneficiary's affidavit, will not suffice. Accordingly, the Service concludes that the petitioner has failed to establish that one individual [REDACTED] or parent both owns and controls the petitioner and the foreign entity.

The second definition of affiliate noted above is "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." Upon review of each entity's ownership, it is clear that [REDACTED] and [REDACTED] do not own and control approximately the same share or proportion of the petitioner and the foreign entity, even though counsel states on appeal that each individual's proportion of ownership of shares is

"approximately the same. [REDACTED] owns 75% of the foreign entity and 50% of the petitioner; [REDACTED] owns only 25% of the foreign entity and 50% of the petitioner.

The evidence in the record clearly reflects that the petitioner and the foreign entity are not affiliates. Therefore, the decision of the director will not be disturbed.

Beyond the decision of the director, even if the petitioner had established the existence of a qualifying relationship between the petitioner and the foreign entity, the petition could not be approved at the present time. There is insufficient evidence in the record to establish that the beneficiary was employed in an executive or managerial capacity with the foreign entity for at least one year in the three years immediately preceding the beneficiary's entry into the United States as a nonimmigrant, or that the proffered position with the petitioner involves the execution of primarily executive or managerial duties. Inasmuch as the petition will be dismissed on another ground, these issues will not be addressed further.

As always, 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 not sustained that burden.

**ORDER:** The appeal is dismissed.