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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536



APR 10 2003

File: [Redacted] Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

**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 that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The petitioner submitted a motion to reopen and reconsider to the Nebraska Service Center. The director reopened the proceeding and entered a decision denying the petition. The decision denying the petition is now before the AAO on appeal. The appeal will be sustained.

The petitioner is a limited liability company organized in the State of Michigan in January 1996. It is engaged in the purchase of carbon based and other raw materials produced in the "Orient" and sale of same throughout the "Western world." It seeks to employ the beneficiary as its export/import manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially determined that the petitioner had not established a qualifying relationship with the beneficiary's overseas employer. The AAO affirmed this decision on appeal. The AAO noted in its decision that the petitioner could establish a subsidiary relationship with the overseas entity, if the petitioner could demonstrate through documentary evidence that the foreign entity owned, directly or indirectly, half of the petitioner and controlled the petitioner. See 8 C.F.R. 204.5(j)(2). The petitioner subsequently submitted documentary evidence to the director and requested that the proceeding be reopened and the documentary evidence considered on this issue.¹ The director granted the motion to reopen but determined that the documentary evidence was not sufficient to overcome his decision on this issue.

On appeal, the petitioner submits the documentary evidence demonstrating ownership and control of the petitioner. The petitioner references several specific paragraphs in the controlling operating agreement that establish not only ownership but control of the petitioner by the beneficiary's overseas employer. The petitioner also provides letters from two attorneys attesting to the procedures used in Michigan to establish a limited liability company.

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):

¹ It must be noted for the record that the director erred when he adjudicated the petitioner's motion. The AAO, as the official that made the latest decision in the proceeding, had jurisdiction over the motion. 8 C.F.R. § 105.5(a)(1)(ii).



* * *

(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.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

The only issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's overseas employer. The information submitted to the director on motion to reopen and reconsider establishes that the beneficiary's overseas employer owns 50 percent of the petitioner and controls the petitioner through binding contractual agreements. This is the only issue before the AAO and a careful reading of the contractual agreements, the petitioner's brief, and other documentary evidence submitted establishes the foreign company as the parent company of the petitioning entity. The director's grounds for denying the petition have been overcome.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

FILED
MAY 2 1978