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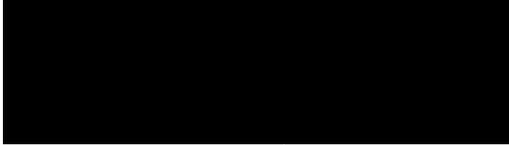
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File:



Office: NEBRASKA SERVICE CENTER

Date:

DEC 17 2003

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)

ON BEHALF OF PETITIONER:



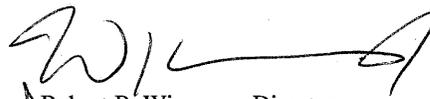
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a limited liability company organized in December 1998.¹ It appears to be engaged in the manufacture and sale of automotive components.² It seeks to employ the beneficiary as its general 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 determined that the petitioner had not established a qualifying relationship with the beneficiary's overseas employer.

On appeal, counsel for the petitioner asserts that the beneficiary's foreign employer had a 50 percent interest in a United States entity. Although the beneficiary's foreign employer sold its 50 percent interest in the United States entity, counsel asserts that through successor-in-interest principles the petitioner should be deemed the same employer as the entity in the United States prior to the sale of the beneficiary's foreign employer's 50 percent interest. Counsel asserts that the language of CIS' regulations allow for the maintenance of the qualifying relationship even after one entity is no longer related.

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

¹ The petitioner did not provide its operating agreement, its authority to do business in any state, or its articles of organization.

² The petitioner's I-140, Immigrant Petition for Alien Worker, indicates its type of business is "automotive components." From general references in the record it appears that the petitioner may engage in some manufacture of automotive components as well as in the wholesale of automotive components.

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 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.

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 prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The only issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer.

The regulation at 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.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

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.



The regulation at 8 C.F.R. § 204.5(j)(3) states in pertinent part:

(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:

* * *

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas

The facts of the case are not in dispute. A Canadian entity employed the beneficiary from July 1997 to March 24, 1999. During the beneficiary's employment with the Canadian entity, the Canadian entity held a 50 percent interest in a United States company identified as "Triam Schroth, Inc." The remaining 50 percent interest was held by a German company. On December 25, 1998 the Canadian entity (the beneficiary's foreign employer) sold its 50 percent interest in the United States company to the German entity. The German entity re-organized the United States entity into a limited liability company. The limited liability company is the petitioner in this case. The beneficiary was transferred to the petitioner on March 25, 1999 as an L-1A, intracompany transferee. Subsequent to the transfer of the beneficiary, the German entity sold a 50 percent interest in the limited liability company to a United States company.

The director determined that the petitioner did not and does not have a qualifying relationship with the beneficiary's Canadian employer.

Counsel asserts that the successor-in-interest principles of successor organizations applied in the context of nonimmigrant petitions pursuant to section 101(a)(15)(H), (L), (O), or (P)(i) of the Act are also applicable to this I-140 immigrant petition. Counsel's assertion is not persuasive. The employment-based immigrant visa was established to take the place of the Department of Labor Schedule A Group IV list of pre-certified occupations for which there was insufficient availability of qualified and willing United States workers. The Department of Labor regulations pre-certified those aliens "who have been admitted to the United States in order to work in, and who are currently working in managerial or executive positions with the same international corporations or organizations with which they were continuously employed as managers or executives outside the United States for one year before they were admitted." See 20 C.F.R. § 656.10(d)(1)(1990). The Department of Labor regulations specifically require that the alien be an individual "currently working" with the same international organizations that they had been working for outside the United States. CIS continues this

requirement in its regulation at 8 C.F.R. § 204.5(j)(3)(i)(C). This regulation requires the petitioner to submit evidence that the "prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas." (Emphasis added.) The AAO continues to adhere to this position. In the employment-based immigrant petition context, the petitioner is required to submit evidence that it has a qualifying relationship with the beneficiary's foreign employer at the time the petition is filed. If a previous connection to the beneficiary's foreign employer has been severed, the petitioner cannot submit evidence that it is the same employer or an affiliate or subsidiary of the beneficiary's foreign employer.

In this matter, the beneficiary never worked for the German company that eventually owned and controlled the petitioner. The beneficiary never worked for "Triam Schroth, Inc.," the United States company dissolved in December 1998. The petitioner is not the same employer as the beneficiary's foreign employer. The petitioner is not an affiliate of the beneficiary's foreign employer because it is not one of two companies owned and controlled by the beneficiary's foreign employer. The petitioner is not a subsidiary of the beneficiary's foreign employer because the beneficiary's foreign employer did not own or control any part of the petitioner when or subsequent to the time the petition was filed. Counsel's contention that the petitioner is the same company as "Triam Schroth, Inc.," albeit with a different name has no basis. The petitioner has been re-organized and has different ownership than the company that once was a subsidiary of the beneficiary's foreign employer.

Counsel's citation to an unpublished decision is not relevant to the case at hand. First, unpublished decisions are not binding on CIS in its administration of the Act. See 8 C.F.R. § 103.3(c). Second, the unpublished decision is not analogous to the case at hand. The unpublished decision is pertinent to a nonimmigrant L-1A intracompany transferee petition. Although the AAO recognizes that counsel is contending the L-1A regulations and decisions interpreting those regulations should apply to I-140 immigrant petitions, there is no need to look elsewhere when the I-140 regulations are clear. Moreover, in the unpublished decision the focus of the AAO decision was on the beneficiary's employment with a qualifying entity for one year in the three years prior to the filing of the L-1A petition. In the unpublished decision the beneficiary's employment was with a subsidiary of the petitioner for one year in the three years prior to filing the petition for the nonimmigrant status. Counsel's contention that the point of the unpublished decision was that the beneficiary "gained invaluable experience and knowledge from a qualifying entity within three years of transfer" and that this should be the point of our decision is not persuasive. Here, the beneficiary was never employed by the German company, the new partial owner of the petitioner. Neither was the beneficiary ever employed by "Triam

Schroth, Inc.," the United States company in which the beneficiary's Canadian employer and the German company held interests. There is no information in the record that the beneficiary gained invaluable experience with either the German company's method of operation or invaluable experience with "Triam Schroth, Inc." The beneficiary's claim of "invaluable experience" with a now unrelated company is irrelevant to this petition. Thus, even if unpublished decisions were binding on the AAO, this particular decision is not analogous to the case at hand.

In sum, the petitioner has not established a qualifying relationship with the beneficiary's foreign employer. The beneficiary's foreign employer did not hold an interest in the petitioner when the petition was filed. The I-140 regulations require evidence of the existence of a qualifying relationship when the petition is filed. The history of the I-140 employment-based managerial and executive classification supports this regulatory requirement. Unpublished decisions are not binding on the AAO in its administration of the Act. Moreover, arguments obtained from unpublished decisions and presented for consideration must at least contain analogous facts.

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 not been met.

ORDER: The appeal is dismissed.