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

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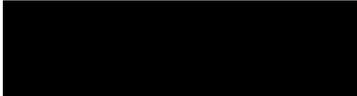
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: WAC 01 245 51606 Office: CALIFORNIA SERVICE CENTER

Date: DEC 18 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:



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, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a corporation engaged in importing and exporting its parent company's products. It seeks to employ the beneficiary as its vice-president. Accordingly, it seeks 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 a foreign entity.

On appeal, counsel for the petitioner asserts that the evidence submitted clearly demonstrates that the parent company paid for the ownership of the petitioning company and that a qualifying relationship has been established.

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 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.

The issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioner and the claimed parent company.

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.

In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The director determined that the petitioner had not established that the funds used to capitalize the petitioner originated from the petitioner's claimed parent company. The director noted that the funds used to capitalize the petitioner appeared to originate from a company established in Texas that had the same name as the petitioner's claimed parent company with the addition of a parenthetical annotation "America." The director noted a lack of sufficient documentation to establish that the Texas company was a recognized business entity or that the Texas company was a subsidiary of the petitioner's claimed parent company.

On appeal, counsel provides the necessary documents establishing that the Texas company was a subsidiary of the petitioner's parent company. Counsel also provides documentation that the Texas company was authorized to transfer capital to the petitioner on behalf of the parent company and that a short time later, the Texas company was dissolved. Counsel asserts that the record demonstrates that the petitioner's parent company made its investment in the petitioner via another subsidiary company.

Counsel's assertions and documentation are persuasive. The record contains sufficient information to establish that the petitioner's parent company provided the necessary funds to capitalize the petitioner and is the petitioner's sole shareholder. Based on the evidence submitted in this case the director's decision will be withdrawn and the petition will be approved.

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, the petitioner has met that burden.

ORDER: The appeal is sustained.