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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.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 02 078 51002 Office: CALIFORNIA SERVICE CENTER

Date: **MAR 12 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)

IN 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 Director of the California Service Center denied the employment-based preference visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a California corporation that seeks to employ the beneficiary as its general manager. The petitioner, 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 on the grounds that (1) the proffered position is neither executive nor managerial in nature, and (2) the petitioner and the overseas entity do not have a qualifying relationship.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the proffered position is in an executive capacity and that the overseas entity has the necessary ownership of the petitioner for a parent/subsidiary relationship.

Section 203(b) of the Act, *id.* § 1153(b), 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. 8 C.F.R. § 204.5(j)(5).

Section 101(a)(44)(A) of the Act, *id.* § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, *id.* § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner describes itself as a subsidiary of Pao Pao Industries Corporation of the Republic of China (Taiwan). The petitioner indicates that it imports and sells golf bags and luggage. At the time of filing the petition on January 2, 2002, the petitioner stated that it employed five persons and had a gross annual income in excess of \$4,820,000. On the I-140 petition, the petitioner stated that it was seeking to employ the beneficiary as its general manager, and described the responsibilities of the position as "[p]erform managerial duties." The petitioner did not state the names, titles or job descriptions of its five alleged employees or provide any other information regarding its staffing levels.

On February 28, 2002, the director requested additional evidence from the petitioner regarding a number of issues. In particular, the director requested evidence to show that the overseas entity paid for the petitioner's shares of stock, and specifically asked the petitioner to submit copies of the original wire transfers from the overseas entity. The director noted that the "originator(s) of the monies deposited must be clearly shown and verifiable by name with full address and phone/fax number." Additionally, the director requested the petitioner's organizational chart and a list of all employees under the beneficiary's supervision by name and job title as well as brief descriptions of these individuals' job duties.

The petitioner responded to the director's request for evidence on March 18, 2002. Regarding copies of the wire transfers, the petitioner submitted an untranslated copy of a document from the Bank of Overseas Chinese. Regarding its staffing levels, the petitioner submitted the requested organizational chart; however, it did not submit job descriptions for the employees under the beneficiary's supervision.

The director denied the petition because the petitioner, a company that buys and sells products, does not have a reasonable need for an executive, and because the submitted evidence of the overseas entity's purchase of the petitioner's shares of stock was insufficient, as it was not translated into English.

On appeal, counsel states that the beneficiary qualifies as an executive and, in the alternative, qualifies as a manager. Counsel contends that the director's decision assumes that no small business could ever offer any evidence to show that it has a need for an employee in an executive capacity. Regarding the issue of whether a qualifying relationship exists between the overseas and U.S. entities, counsel states that the overseas entity has the required ownership of the petitioner for a parent/subsidiary

relationship. In support of counsel's assertions, the petitioner submits the evidence that the director requested in his February 28, 2002 request for evidence. This evidence includes a list of the employees under the beneficiary's supervision and their job descriptions, and the translated copy of the document from the Bank of Overseas Chinese, which counsel claims is the requested copy of the wire transfer.

The first issue to discuss is whether the proffered position is either in an executive or managerial capacity.

Regarding the definition of executive capacity, counsel states on appeal that "[t]he beneficiary qualifies as an executive." The petitioner does not, however, offer any evidence in support of counsel's generalized conclusion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record contains no evidence that the beneficiary will primarily direct the management of the organization or a major component or function of the organization.

Additionally, the Bureau notes that on the I-140 petition, the petitioner indicated the title of the proffered position as "general manager." On the organizational chart and on appeal, however, the proffered position is called "CEO." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Neither counsel nor the petitioner explains the change in the title of the proffered position. Such a change does not warrant a finding that the beneficiary will be working in an executive capacity by virtue of the title of his position. For these reasons, the petitioner has not met its burden of showing that the proffered position is in an executive capacity.

Regarding the alleged managerial nature of the proffered position, there is insufficient evidence to show that the beneficiary would be employed in a managerial capacity. Counsel claims that the beneficiary would direct the petitioner's operations through other subordinate employees, who are managerial employees who, in turn, direct professional employees. In support of his assertions, the petitioner submits the names, job titles and job descriptions of the employees who would be supervised by the beneficiary. The director had previously requested such information in his February 28, 2002 request for evidence.

The record shows that the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The

petitioner, however, did not submit the required evidence and only now submits it for consideration. The required evidence that the petitioner submits on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the director. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

While the petitioner listed on the petition that it employed five individuals at the time of filing the petition, the petitioner did not identify these individuals by name, title or job description. This failure of documentation is important because the Bureau cannot determine whether the beneficiary would direct the petitioner's operations through managerial, supervisory or professional employees, or whether he would be involved in performing the services of the petitioner's operations. Similarly, there is insufficient evidence to conclude that the beneficiary would manage an essential function. Again, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, *supra*. Without more persuasive evidence, the Bureau cannot find that the proffered position is in a managerial capacity.

Based upon the above discussion, the proffered position is neither in an executive nor a managerial capacity and, therefore, the beneficiary does not merit classification as a multinational executive or manager.

The second and final issue to address is whether there is sufficient evidence to find that the overseas entity and the petitioner have a parent/subsidiary relationship.

The term *subsidiary* is defined at 8 C.F.R. § 204.5(j)(2) as a:

[F]irm, 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 record contains the following evidence in support of the petitioner's claim that it is a subsidiary of Pao Pao Industries of Taiwan:

- A translated copy of a document from the Bank of Overseas Chinese that states Pao Pao Industries remitted \$89,000 to the petitioner's bank account on September 22, 2000.
- A receipt from the United National Bank in San Gabriel,

California that the petitioner's account had been credited with \$88,975 from an incoming transfer from Pao Pao Industries, and the petitioner had been charged a \$5.00 processing fee.

- A copy of the petitioner's September 2000 bank statement showing wire transfer credits.
- The petitioner's Articles of Incorporation showing that it issued 100,000 class one shares of stock.
- The petitioner's 2000 U.S. Corporation Income Tax Return (Form 1120). Line 7 of Schedule K indicates that a Taiwanese company wholly owns the petitioner (100%). Line 22b indicates that the petitioner received \$100,000 for its shares of stock.

Ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this immigrant visa classification. *Matter of Church of Scientology International*, 19 I&N Dec. 593 (Comm. 1988); *See also, Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986) (in nonimmigrant visa proceedings); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (in nonimmigrant visa proceedings). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church of Scientology International*, at 595.

As general evidence in an immigrant petition for a multinational executive or manager, a petitioner must establish its ownership through documentary evidence, which includes, but is not limited to, stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings. The Bureau must determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, the petitioner must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986).

Here, the petitioner fails to submit sufficient evidence of ownership and control. According to its Form 1120, the petitioner received \$100,000 for its class one shares of stock. The petitioner only submitted one copy of a wire transfer for \$89,000; it does not submit any evidence that it received the remaining \$11,000. Furthermore, the petitioner did not submit any stock certificates, the corporate stock ledger stock certificate registry, corporate bylaws, or the minutes of relevant annual

shareholder meetings to show that the overseas entity is its parent company. Again, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.*

For the reasons stated above, the petitioner has not established that a qualifying relationship exists between it and the overseas entity.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, *id.* § 1361. Here, the petitioner has not met that burden. The beneficiary does not merit an employment-based preference visa as a multinational executive or manager.

ORDER: The appeal is dismissed. The petition is denied.