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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 01 295 53625 Office: CALIFORNIA SERVICE CENTER

Date: MAR 28 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:



PUBLIC COPY

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 The director's decision shall be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a Texas corporation with an office in the State of California that seeks to employ the beneficiary as its chief executive officer (CEO). 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) a qualifying relationship does not exist between the United States and overseas entities, and (2) the proffered position is not in a full-time capacity.

On appeal, counsel submits a brief. Counsel states, in part, that the director abused his discretion and incorrectly applied the law when denying the petition.

Section 203(b) of the Act, 8 U.S.C. § 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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

an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner describes itself as an affiliate of the overseas entity, [REDACTED] located in Israel. The petitioner states that it specializes in the chemical and mechanical treatment of parts and assemblies, and the maintenance and cleaning of equipment in the semiconductor electro-optics and the magnetic heads industries. The petitioner claims to employ 23 individuals, including the beneficiary, who currently occupies the CEO position in E-1 nonimmigrant status. The petitioner is offering the beneficiary a permanent position at a salary of \$100,000 per year.

The petitioner filed the I-140 petition with supporting documentation on September 24, 2001. On February 1, 2002, the director requested additional evidence from the petitioner because the evidence initially submitted did not establish eligibility for the benefit sought. According to the request for evidence (RFE) notice, the director asked the petitioner to submit evidence relating to the issues of whether the beneficiary's duties for the overseas entity and his proposed duties for the petitioner met the definition of executive or managerial capacity, and whether the petitioner was doing business and had the ability to pay the proffered wage. The director specifically requested the foreign company's organizational chart; a detailed description of the beneficiary's position with the claimed overseas entity; the petitioner's organizational chart; copies of Form DE-6, Quarterly Wage Report, for the 2001 calendar year; IRS computer tax records, and a copy of the petitioner's corporate tax return.

The petitioner and counsel responded to the director's request in April 2002. The director denied the petition in June 2002 because the petitioner had not sufficiently established that it and the overseas entity were affiliates, and because it appeared that the beneficiary would not be working for the petitioner on a full-time basis.

On appeal, counsel states that the director never requested any evidence in the RFE related to the qualifying relationship issue or the amount of time that the beneficiary would work for the petitioner. Counsel states that the director abused his discretion by not apprising the petitioner of the deficiencies in the record on these two issues at the time the director issued the RFE.

Counsel presents a persuasive claim on appeal. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). As the director requested evidence that related only to the issues of the beneficiary's employment and the

petitioner's business activities, the petitioner reasonably presumed that the evidence it had initially submitted regarding its relationship to the overseas entity was not deficient. The petitioner's presumption was reasonable, given the purpose of the RFE as described at 8 C.F.R. § 103.2(b)(8).

The Administrative Appeals Office concurs with counsel that the director's denial of the petition, in part, on the ground that the proffered position would not be in a full-time capacity is an abuse of discretion. Neither the statute states nor the pertinent regulations specify that a multinational executive or manager must be coming to the United States to be employed on a full-time basis. The director's reliance upon the definition of "employment" in the Department of Labor's regulations at 20 C.F.R. § 656.3 was inappropriate.

Accordingly, the director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether a qualifying relationship exists between the petitioner and the overseas entity. The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility.¹ 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.

ORDER: The director's decision of June 23, 2002 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

¹As previously stated, the statute does not limit this preference-visa classification to individuals who will be employed on a full-time basis. See Section 203(b) of the Act, 8 U.S.C. § 1153(b). Therefore, this issue should not be a part of any RFE related to this petition.