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U.S. Citizenship  
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DEC 29 2004

FILE: WAC 03 022 51361 OFFICE: CALIFORNIA SERVICE CENTER Date:

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 of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a California corporation operating as a manufacturer of computers and motherboards. The petitioner indicates that the beneficiary's foreign employer and the petitioner itself are affiliates by virtue of being indirectly owned by First International Computer, Inc., located in Taiwan. The petitioner seeks to employ the beneficiary as its vice president. 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 failed to establish that it has a qualifying relationship with a foreign entity.

On appeal, counsel disputes the director's conclusions and submits additional evidence regarding the company that is claimed to be the indirect owner of the beneficiary's U.S. and foreign employers.

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 which 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 sole issue in this proceeding was whether the petitioner established that the petitioner has a qualifying relationship with a foreign entity.

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;

*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 a letter dated October 1, 2002 and appended to the petition, the petitioner provided a detailed description of its relation to First International Computer, Inc., its claimed foreign parent organization. Specifically, the petitioner claimed that the Taiwanese company owns controlling interest in Livonia Investments, which owns a controlling interest in [REDACTED], which owns 100% of the issued stock of the beneficiary's foreign employer. The petitioner claims that, like the beneficiary's foreign employer, it is also ultimately owned by [REDACTED] which owns controlling interest in [REDACTED] which owns 75.6% of the U.S. company's issued shares. In support of these claims the petitioner submitted a number of stock certificates establishing First International Computer's ownership of Livonia Investment's ownership of GEMS', and GEMS' ownership of Danriver, the beneficiary's foreign employer. The petitioner also submitted stock certificates showing Brilliant World's controlling interest in the U.S. entity, as well as First International Computer's controlling interest in Brilliant World.

On April 7, 2003 the director issued a request for additional evidence instructing the petitioner to submit further documentation to establish that it has a qualifying relationship with a foreign entity. The requested documents included a notice of transaction pursuant to corporations, minutes of the meeting regarding the U.S. entity's stock ownership, and a stock ledger showing all stock certificates issued, the shareholders' names, and the price for all the purchased shares.

The petitioner submitted all of the requested documents, which provide the chronological order of all of the petitioner's stock issuances, the parties to whom the stock was issued, and the value of the issued shares. Nevertheless, the director denied the petition on September 21, 2003 concluding that the petitioner failed to establish that the beneficiary's foreign and U.S. employers are commonly owned and controlled.

On appeal, counsel challenges the director's finding stating that the beneficiary's U.S. and foreign employers are affiliates by virtue of being indirectly owned by First [REDACTED]. The petitioner submitted a number of documents corroborating its claims regarding the two chains of ownership, one stemming from First International [REDACTED] and leading to the beneficiary's foreign employer, and the other stemming from First International [REDACTED] and leading to the beneficiary's U.S. employer. While neither company is directly owned by First International Computer, Inc., counsel is correct in pointing out that direct ownership is not required in order to establish that a qualifying relationship exists. See *Sun Moon Star Advanced Power, Inc. v. Chappel*, 773 F. Supp. 1373 (N.D. Cal 1990). In the instant case, the record is replete with evidence documenting each company's board resolutions, stock issuances, and stock certificates, all of which corroborate the petitioner's claim regarding its ownership and the ownership of the

beneficiary's foreign employer. The evidence of record indicates that both entities are indirectly owned by First-International [REDACTED]

On review, based on the evidence of record and the additional evidence submitted on appeal, the AAO finds that the petitioner has overcome the sole ground of the director's denial. This office sees no other grounds for denying the petition.

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. The petitioner in the instant case has sustained that burden.

**ORDER:** The appeal is sustained.