

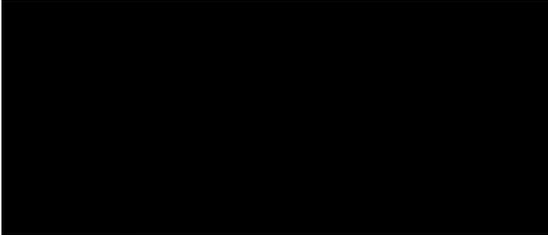
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U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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Services

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BY

DEC 29 2004

FILE: WAC 02 287 52769 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



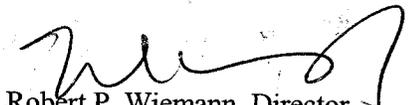
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 was established in Guam in 1972 and claims to be an affiliate of Luen Fung Enterprises (Saipan), Inc., located in the Commonwealth of Northern Mariana Islands. The petitioner seeks to employ the beneficiary as general operations 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 failed to establish that it has a qualifying relationship with a foreign entity.

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 issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with a foreign entity.

The regulations at 8 C.F.R. § 204.5(j)(2) state 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 September 9, 2002, submitted in support of the petition, the petitioner stated that it is an affiliate of its foreign counterpart by virtue of their common ownership by the same group of individuals.

On March 31, 2003 the director issued a request for additional evidence. The petitioner was instructed to submit evidence of a qualifying relationship, including stock certificates, stock ledgers, and the minutes from various meetings. On June 18, 2003 the petitioner complied with the director's request by submitting documents, which confirmed the ownership breakdown of the petitioner and its foreign counterpart. The documents indicated that the same individual controls both entities by virtue of his ownership of a majority of both entities' issued shares. The most distinguishing factor in the ownership breakdown is that the beneficiary has a 30% ownership interest in the foreign entity, but has no ownership interest in the U.S. petitioner. However, regardless of this fact Chung Tao Wong owns 60% of the foreign entity's issued shares and 85% of the U.S. entity's issued shares. Thus, he effectively controls both entities.

Nevertheless, the director denied the petition concluding that the U.S. and foreign entities are not similarly owned and controlled.

Counsel disputes the director's conclusion on appeal and cites *Sun Moon Star Advanced Power, Inc. v. Chappel*, 773 F. Supp. 1373 (N.D. Cal 1990), to support his point that two companies may be affiliated even though they are not owned by the exact same individuals. Counsel also repeats the ownership breakdown of both entities and accurately points out an error made by the director in the third page of the decision where the director incorrectly recited the ownership breakdown previously provided by the petitioner.

The AAO notes that the regulation and case law confirm that 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 visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In 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 Scientology International*, 19 I&N Dec. at 595. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. See *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Therefore, the ownership breakdown that exists in the present case clearly suggests that the petitioner and the foreign entity have an affiliate relationship. As such, the petitioner has overcome the director's erroneous conclusion.

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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 has sustained that burden.

**ORDER:** The appeal is sustained.