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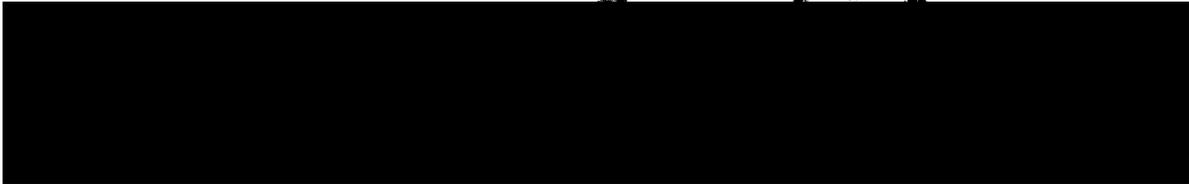
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



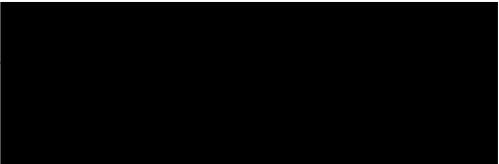
8 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 99 233 51975

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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 petitioner subsequently appealed the director's decision to the Administrative Appeals Office (AAO). The AAO remanded the case back to the director with various instructions. The director complied with the instructions and issued another denial, which has been certified to the AAO for review. The director's denial will be upheld. The appeal will be dismissed.

The petitioner claims to be a Las Vegas corporation engaged in the business of importing and exporting electric products. It seeks to employ the beneficiary as its 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 denied the petition based on the following grounds: 1) the petitioner failed to establish that it has been doing business; 2) the beneficiary would not be employed in a managerial or executive capacity; and 3) the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

On appeal, the petitioner disputes the director's conclusions claiming that the beneficiary serves as president for two different U.S. entities. The petitioner submits additional documentation in support of the appeal.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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 first issue in this proceeding is whether the petitioner has been doing business in the United States since the instant petition was filed.

The regulation at 8 C.F.R. 204.5(j)(3)(i)(D) requires the petitioner to submit evidence that the prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. 204.5(j)(2) defines doing business as "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

In the denial, the director states that according to the public record, the petitioner's business has been suspended since 1996 both under its original name and under its fictitious name. The director also discussed a CIS investigation, conducted on May 5, 1998, which indicated that various employees that were listed in the petitioner's 1996 third and fourth quarterly wage statements were not actually employed by the petitioner. Based on information obtained via subpoena, the director concluded that the petitioner submitted fraudulent documents, which mislead CIS about the business status of the petitioning entity.

Although the petitioner had submitted documents along with its initial appeal, it has submitted no response to the director's latest denial, which contains the allegations of fraud. It is further noted that the record suggests that the petitioner had previously filed another I-140 petition whose approval was revoked on August 24, 2000. The record, as presently constituted, does not overcome CIS's adverse findings. Therefore, the petitioner has failed to establish that it had been doing business at the time the instant petition was filed and that it continued to do business since that time. For this initial reason, this petition cannot be approved.

The second issue in this proceeding is whether the beneficiary would be performing in a capacity that is managerial or executive.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 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, 8 U.S.C. § 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.

In Part 6 of the petition, the petitioner indicated that the beneficiary's proposed job duties would include "manag[ing] and direct[ing] all company's [sic] operations including general office administration, personnel recruitment and management, budget planning and business activities coordination with [the] parent company."

On October 12, 2000, the director issued a request for additional information instructing the petitioner to submit its organizational chart describing its managerial hierarchy and staffing levels. The petitioner was also instructed to provide a detailed job description for the beneficiary, including job descriptions for the beneficiary's subordinates. Additionally, the petitioner was requested to provide CIS with authorization to subpoena several of the petitioner's wage reports.

The petitioner complied with the petitioner's response submitting an organizational chart that indicates that two people, including the beneficiary, were employed at the time of the request. The remaining employees were shown as employees of Compulink, the petitioner's purported U.S. subsidiary. The petitioner also provided a brief list of the beneficiary's general job responsibilities. As the director has incorporated that list in his most recent decision, the AAO need not repeat the description.

In the director's most recent denial dated June 9, 2004, the director concluded that the petitioner failed to specify the activities associated with the beneficiary's broad list of job responsibilities. Although given ample opportunity to respond to the director's conclusion, the petitioner has failed to address this issue by providing a more detailed and comprehensive list of specific job duties. As inferred by the director, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In the instant case the description of the beneficiary's job duties is entirely too general to convey an understanding of exactly what the beneficiary would be doing on a daily basis. This information is critical to determine whether the beneficiary's duties actually fall under the definition of "managerial" or "executive capacity." It is noted that an employee who

primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In the instant matter, the record lacks sufficient information to indicate what specific duties the beneficiary would primarily be performing. Additionally, the petitioner's organizational chart indicates that the petitioner employed two employees at the time of its response to the request for evidence. More importantly, however, given the results of the CIS investigation, which found that the petitioner listed employees it did not actually employ, it cannot be determined whether the provided organizational chart is credible. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Thus, there is no indication that the petitioner had reached a level of development where the beneficiary primarily would devote his time primarily to qualifying tasks. As such, the AAO cannot affirmatively conclude that the beneficiary would be employed in a managerial or executive capacity.

The remaining issue in this proceeding is whether 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;

* * *

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 the most recent denial, the director notes that the petitioner submitted stock certificate Nos. 1 and 2, each of which indicates that [REDACTED] Company Limited is the owner of 50,000 shares of the petitioner's stock for a total of 100,000 shares. The director also described information submitted by the petitioner in its stock transfer ledger and noted that the submitted wire transfer document indicated that Central China Merchants Company paid for the petitioner's stock. The petitioner has not replied to any of the director's comments and has provided absolutely no evidence to overcome the adverse findings.

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 the United States and foreign entities for

purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *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.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. In the instant matter, the director discussed the evidence submitted and noted that the petitioner failed to provide evidence to show that the claimed foreign parent entity actually paid for ownership of the petitioner's stock. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As the petitioner has failed to provide evidence to corroborate its claims of ownership, it cannot be deemed that the U.S. petitioner and the foreign entity are commonly owned and controlled. Accordingly, this serves as the third ground for denying the petition and dismissing this appeal.

Lastly, the petitioner has submitted tax documentation, which has been deemed fraudulent pursuant to CIS investigation. It is noted that doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As such, the petitioner has given rise to serious doubt regarding the credibility of its claims and the authenticity of the evidence used to corroborate those claims.

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 not sustained that burden.

ORDER: The appeal is dismissed.