



U.S. Citizenship  
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File:   
WAC 03 113 54584

Office: CALIFORNIA SERVICE CENTER

Date: AUG 15 2005

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:



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 director, California Service Center, denied the employment-based immigrant petition. The matter was subsequently appealed to and dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The petitioner's motion is hereby granted. Upon reconsideration of the matter, both the director and the AAO's decisions will be withdrawn and the petition will be approved.

The petitioner is a corporation organized under the laws of the State of California in March 2000 that claims to be the affiliate of Star Group Services, Limited (Adelda Health Ltd. and Star Refining PLC), located in the United Kingdom. The petitioner is engaged in marketing and distribution for precious metal reclamations. It seeks to employ the beneficiary as its president and director. 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).

The director denied the petition concluding that the petitioner and the foreign entity are not qualifying organizations as defined in 8 C.F.R. § 214.2(D)(1)(ii)(G).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review.

On appeal, counsel for the petitioner asserted that the director incorrectly concluded that the petitioner and the beneficiary's foreign employer are not affiliates. The AAO dismissed the matter, concluding that there is insufficient evidence to demonstrate that both the United States and foreign entities are majority owned and controlled by the same person and, thus, could not find that the U.S. and foreign entities are qualifying organizations. The decision pointed to the petitioner's subchapter S corporation status and questioned whether the petitioner was qualified for this classification under federal tax laws if it were owned by the alien beneficiary, as claimed. More specifically, the AAO noted that the Internal Revenue Code (IRC) prohibited S-corporation status to any corporation that has nonresident alien shareholders, and observed that if the petitioner qualified for S corporation status despite the beneficiary's ownership, it would bring into question the actual ownership of the petitioner. Citing to this apparent inconsistency, the AAO did not find that a qualifying relationship existed between it and the foreign entity.

In the motion to reconsider, counsel for the petitioner points out that the definitions of resident and nonresident alien under federal tax laws and regulations are different than those under the Act. Therefore, the petitioner could have qualified for S corporation status even if it were owned by the beneficiary, who the petitioner claims qualified as a resident alien under 26 U.S.C. § 7701(b)(1)(A).

Counsel's assertion on motion is persuasive. While the record lacks corroborating evidence of the beneficiary's claimed resident alien status under the IRC, such as copies of his individual tax returns for 2001 and 2002 as well as a complete copy of his passport including blank pages, the AAO agrees that the beneficiary may qualify as a resident alien under the IRC.

As discussed in the AAO's prior decision, the director's original decision was incorrect. If one individual owns a majority interest in both the petitioner and the foreign entity and controls both companies, then the

companies will be deemed to be affiliates under the definition even if one entity or both entities have multiple owners. 8 C.F.R. § 204.5(j)(2). Therefore, the petitioner has established that it met the requirements of a qualifying organization as an affiliate of the foreign entity at the time the petition was filed on March 19, 2003.

Finally, although the record does not contain evidence specifically requested by the director on May 15, 2003 and although counsel and the petitioner did not reproduce their claimed response in its entirety in this motion, the petitioner submitted evidence to demonstrate that it did respond to the request. The AAO believes in this case that the beneficiary should be given the benefit of the doubt regarding its averred response. Moreover, as counsel did reproduce the evidence relating to the beneficiary's position description, the prior decision of the AAO will be withdrawn as it relates to his job duties.

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. Here, that burden has been met.

**ORDER:** The previous decisions of the AAO and the director are withdrawn. The petition is approved.