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U.S. Citizenship
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FILE: [Redacted]
SRC 02 040 51052

Office: TEXAS SERVICE CENTER Date: DEC 01 2005

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:
[Redacted]

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.

A handwritten signature in cursive script, appearing to read "Eric Falter".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

This appeal is filed by new counsel who indicates on the Form I-290B that he represents the beneficiary. The record does not contain a new Form G-28, Notice of Entry of Appearance as Attorney or Representative for the petitioner. The Form G-28 signed May 27, 2005 and submitted on appeal is filed only on behalf of the beneficiary. However, the regulation at 8 C.F.R. § 103.3(a)(iii)(B) states in pertinent part: "An affected party (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition." Although the appeal must be rejected as improperly filed, the AAO will examine the primary issue in this matter.

The petitioner avers it is a corporation organized in the State of Florida in July 2000. It overhauls turbine aircraft engines. It seeks to employ the beneficiary as its president of administration. 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 initially approved the petition in this matter on March 29, 2002. On May 2, 2005, the director issued a notice of intent to revoke approval on the ground that the beneficiary had attempted to circumvent the United States immigration laws by entering into a sham marriage in December 1988 and applying to adjust his status to that of a lawful permanent resident based upon a Form I-130, Petition for Alien Relative.¹ The director determined that Citizenship and Immigration Services (CIS) is precluded from approving a Form I-140, Petition for Alien Worker, filed on behalf of an individual who attempted to evade United States immigration laws. The director afforded the petitioner 30 days to respond to the notice of intent to revoke.

On June 30, 2005, the director revoked approval of the petition determining that the petitioner had failed to respond to the notice of intent to revoke approval.

On July 17, 2005, the beneficiary through new counsel submitted a Form I-290B, Notice of Appeal. The notice of appeal indicated that a response to the director's notice of intent to revoke approval had been submitted and received by the Texas Service Center on June 2, 2005. The petitioner provides a copy of the mail receipt. Counsel also attached a copy of the rebuttal to the director's notice of intent to revoke approval.

The rebuttal provided the beneficiary's version of events that had occurred in 1985 through 1988 that resulted in the beneficiary's and his first and current wife's voluntary exit from the United States and ten-year bar from re-entering the United States. Counsel noted that after the ten-year bar had expired, the beneficiary and his wife were given nonimmigrant visas to enter in the United States. Counsel requested additional time to

¹ The record contains information that the beneficiary divorced his wife on December 2, 1988, in South Africa, married a United States citizen on December 13, 1988, and the second wife filed the Form I-130, Petition for Alien Relative on February 8, 1989 which was subsequently withdrawn on October 3, 1989.

provide corroborating evidence of the fraud that was perpetrated against CIS (formerly the Immigration and Naturalization Service) and the beneficiary and his wife by unrelated parties.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Generally, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988).

In this matter, the petitioner failed to offer a timely explanation or rebuttal to the director's notice of intent to revoke. The AAO acknowledges that new counsel timely provided a response. However, the rebuttal did not offer evidence or pertinent law that would overcome the director's decision in the matter.

Of note and in addition to the ground cited by the director in revoking approval of the petition, the record of proceeding does not contain evidence that the petitioner had established a qualifying relationship with the beneficiary's foreign employer. The record indicates that the beneficiary and his wife are the petitioner's two shareholders. The record does not indicate who owns the foreign entity. The petitioner alleged that both the petitioner and the foreign entity had the same directors. However, 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). Commonality of directors does not establish the ownership and control of the foreign entity. Thus, the petitioner had failed to establish this required element of the employment-based visa classification.

In addition, the petitioner failed to establish that it had been doing business for one year prior to filing the petition on November 19, 2001. Although the petitioner was incorporated in July 2000, the record contains no evidence that it had been engaged in continuous, systematic, and regular business for one year prior to filing the petition, as required by 8 C.F.R. § 204.5(j)(3)(i)(D). *See also* 8 C.F.R. § 204.5(j)(2).

Further, the record did not sufficiently detail the duties of the beneficiary for either the petitioner or the foreign entity. As such, the petitioner did not establish that the beneficiary had been employed in a managerial or executive capacity for the foreign entity or would be employed in a managerial or executive capacity for the petitioner.

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.

The AAO notes for the record that in this matter, the director improperly approved the petition, not only on the ground cited in the notice of intent to revoke, but also on the grounds noted above.

As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.