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U.S. Citizenship
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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: DEC 01 2005

IDENTIFICATION NUMBER: 194 53917

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 approved by the Director, Nebraska Service Center. After a subsequent review of the record, the director issued a notice of his intent to revoke the approval. On August 26, 2004, the director issued the final notice revoking the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is organized as a limited liability company in the state of Washington. The petitioner is engaged in the business of managing fast food restaurants and seeks to employ the beneficiary as its president. The petitioner indicates that it is an affiliate of [REDACTED] located in Pakistan. 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 a brief addressing the director's specific concerns.

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 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 support of the initial petition, which was filed on May 7, 2001, the petitioner submitted documentation indicating that the Pakistani affiliate company is owned by the beneficiary's wife and that the petitioner's ownership is evenly split between the beneficiary and his wife. In regard to the petitioner's ownership, the petitioner submitted its 1999 and 2000 tax returns with their respective schedules attached.

On June 22, 2004, the director issued a notice discussing a discrepancy between the petitioner's claim regarding its ownership and Schedule K-1 of the petitioner's 1999 federal partnership tax return, which indicates that the beneficiary is the petitioner's sole owner. The director also noted that the petitioner's 2001 tax return identifies the beneficiary as the active partner and his wife as the passive partner. The petitioner was asked to explain this distinction.

In response, the petitioner submitted an explanation dated July 16, 2004 addressing the director's concerns. In regard to the 1999 tax return, the petitioner indicated that the statement suggesting that the beneficiary is the 100% owner of the U.S. entity was an error and stated that an amended tax return has been filed to reflect the company's true ownership. The petitioner also noted that the operating agreement, which was signed in March 1999, also identified the beneficiary and his wife as two equal partners of the petitioning entity. Additionally, the AAO notes that the petitioner's 2001 tax return maintains the claim that the beneficiary and his wife share ownership of the petitioning entity. As the instant petition was filed in 2001, not in 1999, the 2001 tax return is the more accurate indicator of whether the petitioner had an affiliate relationship with the claimed foreign entity at the time the petition was filed. In fact, even if the petitioner did not have the requisite qualifying relationship in 1999 as suggested by the petitioner's 1999 tax return, the petitioner would not be rendered ineligible to classify the beneficiary as a multinational manager or executive, as a petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner's lack of a qualifying relationship with the foreign entity two years prior to filing the Form I-140 petition is immaterial in terms of the petitioner's eligibility at the time the petition was filed.

Furthermore, the petitioner has repeatedly claimed and has submitted sufficient documentation to establish that the beneficiary and his wife each own and control the petitioner in equal portions. There is no evidence that indicates that the beneficiary either owns or has more control over the petitioning entity, despite the petitioner's 2001 Schedule K-1 indication that the beneficiary is the "active" partner, while the beneficiary's wife is the "passive" partner. The petitioner's operating agreement also suggests that both partners share

control over the petitioning entity. On appeal, counsel explains that the accountant's designation of the beneficiary as the active individual and his wife as the passive individual was incorrect and had no significance in terms of who controls the company. The evidence of record supports counsel's explanation.

Accordingly, the AAO finds that the petitioner has overcome the sole ground of the director's denial. Based upon a thorough review of the record, this office sees no other grounds of ineligibility. Therefore, the director's decision revoking approval of the petition will be withdrawn.

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.