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FILE: WAC 01 211 55376 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 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:

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 case will be remanded for further action.

The petitioner is engaged in the import and wholesale of computer cases and seeks to employ the beneficiary as its product 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 and denied the petition.

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 the denial, which was issued on April 24, 2004, the director noted that the same person owns a controlling interest in the U.S. and foreign entities owning 80% and 60% of each entity, respectively. However, the director concluded that the petitioner and the foreign entity lack the requisite common ownership and, therefore, cannot be deemed affiliates. The director also noted that the petitioner's tax returns for 1999, 2000, and 2001 show ██████████ as owner of the remaining 20% of the petitioner's stock, which is in conflict with information provided in the petitioner's stock certificates and Minutes of the Meeting submitted in support of the petition.

On appeal the petitioner resubmits the stock certificates noted in the director's decision, as well as the Minutes of Meeting in which the board of directors determined the share distribution reflected in the 1993 stock certificates. The petitioner also submitted subsequent Minutes of Meeting reflecting a 1998 redistribution of the petitioner's shares, which was subsequently reflected in the petitioner's 1999, 2000, and 2001 tax returns. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the instant case, the petitioner has submitted documentary evidence, which resolves the inconsistency noted by the director.

Further, the basis for the director's denial was invalid. The petitioner does not need to establish that the exact same group of individuals owns the U.S. and foreign entities. The primary concern in establishing a qualifying relationship is determining that the two entities are similarly owned and controlled. In the instant case, the same individual owns 60% of the foreign entity and 80% of the U.S. petitioner. As such, both entities were owned and effectively controlled by the same individual, regardless of the owners of the remaining share of either entity. Accordingly, the director's decision is hereby withdrawn.

It is noted that despite the director's erroneous conclusion, the petition cannot currently be sustained, as there are various issues, which were not addressed by the director, that remain unresolved. Namely, the record lacks sufficient information regarding the beneficiary's job duties overseas and his proposed job duties in the United States. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Reciting the beneficiary's vague job responsibilities or broadly cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. A review of the job descriptions provided suggests that the petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

This case will be remanded so that the director can adequately review all of the pertinent evidence and address the issues cited above.

ORDER: The decision of the director, dated April 24, 2004, is withdrawn. The matter is remanded for the purpose of issuing a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.