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FILE: [REDACTED]  
WAC 99 234 52381

Office: CALIFORNIA SERVICE CENTER

Date: JUN 07 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 Director, California Service Center, initially approved the preference visa petition. On further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, after issuing two requests for additional evidence, the director properly served the petitioner with a notice of his intention to revoke the approval of the preference visa petition and his reasons therefore. The director ultimately revoked 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 a California corporation engaged in the wholesale of toy 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 based his decision to revoke approval of the petition on two grounds: 1) the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity; and 2) the petitioner failed to submit sufficient evidence to corroborate its claimed qualifying relationship with a foreign entity.

On appeal, counsel submits a brief and additional documentation addressing the director's grounds for revocation.

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 beneficiary would be employed in the United States in a capacity that is either 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.

The petitioner initially failed to provide a full description of the beneficiary's proposed job duties in support of the petition. Instead, the petitioner restated the above statutory definition of executive capacity and focused on the beneficiary's discretionary authority in an effort to demonstrate the beneficiary's eligibility for classification as a multinational executive.

In an effort to elicit further information about the petitioner and its beneficiary, the director issued a request for additional evidence on August 2, 2002.<sup>1</sup> The petitioner was asked to provide a detailed description of the beneficiary's job duties, including job titles and position descriptions of the beneficiary's subordinates. The petitioner was also instructed to submit its organizational chart.

The petitioner's response included a statement dated October 2, 2002 and a variety of supporting documentation. The petitioner provided a percentage breakdown broadly listing eight of the beneficiary's key responsibilities. While this list adequately demonstrated the beneficiary's heightened degree of discretionary authority, as well as his high level position within the petitioner's hierarchy, the petitioner did not provide specific information regarding the beneficiary's day-to-day activities. The petitioner also submitted its organizational chart, which illustrated the petitioner's managerial hierarchy, and provided the names, position titles, and brief job descriptions of all of the petitioner's employees.

On November 8, 2003, the director issued another request for additional evidence instructing the petitioner to submit its DE-6 quarterly wage reports for the second two quarters of 1999 and for the first quarter of 2003. The petitioner complied with the director's request by submitting all three of the requested documents.

After reviewing all of the submitted evidence, the director issued a notice dated January 31, 2004, informing the petitioner of his intent to revoke approval of the petitioner's I-140 petition. The petitioner was informed of the grounds for intending to revoke the approval and given 60 days in which to respond.

The petitioner's response included a number of documents and a thorough description of the beneficiary's proposed duties. The description was divided into four parts, one part for each of the four prongs of the definition of executive capacity. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under each of the four prongs the petitioner provided a chronological breakdown of the duties that apply to the specific prong. When taken as a whole, the four parts of the job description serve as a detailed agenda of the beneficiary's typical daily tasks. In light of the petitioner's organizational chart, the list of duties suggests that the beneficiary is able to direct the petitioner's organization through the operations manager, who is the beneficiary's immediate subordinate, and through the operations manager's subordinates, who carry out all tasks related to the petitioner's sales, marketing, and financial obligations, which cumulatively comprise the daily operational tasks.

Nevertheless, the director revoked approval of the petition in a decision dated April 6, 2004. The director stated that the contents of various emails between the beneficiary and a representative of another company contradict the position description of the operations manager. However, a review of the thorough job description provided in response to the notice of intent to revoke is specific in stating that the beneficiary, not the operations manager, contacts the heads of the customer companies "to conclude final sales negotiations." The beneficiary's job description also clarifies that the petitioner's sales personnel make the initial contact

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<sup>1</sup> The first of the three requests was dated April 25, 2002 and was issued to the beneficiary in regard to his filing of a Form I-485 application to adjust his status to that of permanent resident. As the I-485 application is related to a different proceeding, the request for additional evidence that is related to that separate proceeding need not be discussed in the instant matter.

with the potential customer and set the “groundwork” for the potential sale. The content of the emails on which the director focused his attention suggest that the initial “groundwork,” which includes contacting the potential client, had been set. Furthermore, the petitioner has been clearly explained that the toys sold by the petitioner are actually manufactured overseas by the foreign parent company. The petitioner has also explained on appeal that the beneficiary is the liaison between the U.S. and foreign companies. Therefore, the fact that a customer would contact the beneficiary regarding the specifications of an order as part of the final phase of the negotiation of a sale is entirely plausible and does not imply that the beneficiary is primarily involved in the petitioner’s daily operations.

The director also noted that the petitioner changed the job titles of several of its employees by removing the word “manager.” However, the petitioner explains this alteration on appeal, stating that the job titles initially provided and containing the word “manager” represented the petitioner’s attempt to directly translate Chinese position titles into English. While some degree of confusion may have resulted from the apparent language barrier between the Chinese language of modern China and that of the petitioner’s own locale in an English speaking country, the petitioner provided sufficient descriptions of duties for all of its employees, which adequately explain what each employee does on a daily basis and relieve the Citizenship and Immigration Services (CIS) from having to rely on the employees’ position titles to gauge their daily job responsibilities.

Lastly on the issue of the beneficiary’s job duties, the director determined that the petitioner cannot be deemed a functional manager and proceeded to explain that is so. However, throughout this proceeding the petitioner has consistently claimed that the beneficiary has been and would continue to be employed in an executive capacity. Nowhere in the record is there a claim by the petitioner that the beneficiary would be employed either as a personnel or function manager. Therefore, the petitioner’s inability to establish the beneficiary’s eligibility under the definition of managerial capacity is irrelevant and need not be addressed.

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). In the instant matter, the petitioner’s response to the director’s notice of intent to revoke contained a thorough and detailed breakdown of the beneficiary’s duties and responsibilities. The petitioner also provided an organizational chart and descriptions of duties for the rest of its staff, thereby defining their respective roles in the company and illustrating the ways in which their combined efforts help to relieve the beneficiary from having to perform non-qualifying duties, regardless of the petitioner’s size and organizational structure. Accordingly, the AAO concludes that the petitioner has submitted sufficient evidence to overcome this portion of the director’s revocation notice.

The other issue in this proceeding is whether the petitioner has established that it 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 the petitioner's request for additional evidence, which was dated August 2, 2002, the director instructed the petitioner to submit copies of the original wire transfers from the parent company to establish the parent company's monetary contribution to the purchase of the petitioner's stock.

In response to that request, the petitioner explained that the parent company did not purchase the petitioner's stock via a direct fund transfer from abroad because of the purported difficulties related to China's fund transfer policies. However, the petitioner submitted a number of other documents, which adequately address the issue of the parent entity's monetary contribution and qualifying relationship with the foreign entity. One of the documents submitted was a supplement to the foreign company's audited financial report for 2001, which named the petitioner as one of the foreign entity's wholly owned subsidiaries located overseas. The petitioner also submitted a newspaper article, dated January 12, 2001, from a publication titled *Zhejiang Daily*. Like the audited financial report, *Zhejiang Daily* also named the petitioner as a wholly owned subsidiary of the foreign entity. Additionally, the petitioner submitted photocopies of two checks written from the foreign company's account in the Far East National Bank to the petitioner in amounts totaling approximately \$100,000, the cost of the petitioner's issued stock. The petitioner submitted bank statements and an original deposit slip to show that each sum of money had been deposited to the petitioner's bank account. To further establish the legitimacy of the foreign entity's U.S. bank account, the petitioner submitted copy of a wire transfer, dated October 17, 1997, in which [REDACTED] wired \$147,966.28 to the foreign entity's bank account with the Far East National Bank.

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). 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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control.

In the instant case, the petitioner went far beyond paper stock certificates and by-laws to establish its qualifying relationship with a foreign entity. While the petitioner admittedly did not submit the requested evidence of wire transfers to establish the existence of a qualified relationship, the petitioner submitted sufficient bank documents, which strongly imply that the petitioner and the claimed foreign company have an affiliation that can be classified as a parent-subsidiary relationship. Accordingly, the AAO concludes that the petitioner has submitted sufficient evidence to overcome the director's remaining ground for revoking approval of the petition.

On review, the record demonstrates that the petitioner adequately established that the beneficiary would be employed in an executive capacity and that the petitioner has a qualifying relationship with a foreign entity.

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 sustained that burden.

**ORDER:** The appeal is sustained.