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U.S. Citizenship
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JUN 17 2005

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

WAC 03 148 53934

IN RE:

Petitioner:

[REDACTED]

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)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in February 1995. It imports knitwear. 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 determined that the petitioner had not established a qualifying relationship between the petitioner and the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that the documentation submitted clearly demonstrates a qualifying relationship exists between the petitioner and the foreign entity.

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.

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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

The issue to be considered in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. See section 203(b)(1)(C) of the Act.

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.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

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.

The petitioner initially submitted: (1) its undated stock certificate number 1 issued to Sinotex Enterprises Co., Ltd. for 510 shares; (2) its undated stock certificate number 2 issued to [REDACTED] beneficiary, for 490 shares; (3) its stock ledger showing the value of the shares as \$1,000 per share; (4) its Articles of Incorporation indicating it was authorized to issue 1,000 shares; (5) an October 1995 customer receipt from the Bank of China, Hong Kong Branch, showing that Sinotex Enterprises Co. Ltd. had remitted \$100,000 to the petitioner; and (6) its 2000 and 2001 Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, Schedule L, Line 22(b) showing the value of the issued stock as \$600,000.

In a June 16, 2004 request for further evidence, the director requested, among other things, minutes of the stock ownership meeting listing the stock shareholders and the number of shares owned; a copy of the Notice of Transactions Pursuant to California Corporations Code showing the total offering amounts; and, IRS Forms 1120, for the 2002 and 2003 years.

In an August 5, 2004 response, the petitioner provided its Notice of Transactions, dated November 2000, showing the value of the shares issued at \$100,000. The petitioner also provided its minutes of first organizational meeting dated February 27, 1995 authorizing 490 shares to be issued to [REDACTED] and 510

shares to be issued to Sinotex Enterprises Co., Ltd. The petitioner further provided a copy of its 2002 IRS Form 1120 which again showed on Schedule L, Line 22(b) the issued stock was valued at \$600,000.

The director observed the inconsistency between the information on the petitioner's minutes of organizational meeting, its stock ledger and stock issued, and the information on the petitioner's 2000, 2001, and 2002 IRS Forms 1120. The director determined that the petitioner had not adequately accounted for the additional \$500,000 in issued stock. The director concluded that the petitioner had not established a qualifying relationship with the foreign entity and denied the petition.

On appeal, counsel for the petitioner provides:

- (1) Customer's receipt from the Bank of China, Hong Kong Branch, showing that \$500,000 was remitted from Sinotex Enterprises, Co., Ltd to the petitioner on May 28, 1997;
- (2) A May 28, 1997 Money Transfer Notification from the Bank of America showing \$499,985 wired to the petitioner's account by order of Sinotex Enterprises, Co., Ltd.;
- (3) The petitioner's bank statements covering the period from May 16, 1997 through June 16, 1997 and showing that on May 28, 1997, \$499,985 had been deposited to the petitioner's account;

Counsel explains that the petitioner's parent company initially instructed the petitioner to use these funds as additional cash flow but that in 2000, upon the advice of an accountant, the funds were reported as capital stock and recorded as such in the petitioner's corporate returns. Counsel advises that the petitioner admits that it had maintained incomplete corporate records and has made the appropriate amendments to its corporate records. Counsel provides copies of the amendments reflecting that the petitioner made an additional sale of stock [REDACTED] Enterprises Co., Ltd and [REDACTED] so that [REDACTED] Enterprises Co., Ltd would continue to own 51 percent of the petitioner and [REDACTED] would continue to own 49 percent of the petitioner. Counsel asserts that belated compliance with the California corporate and business codes does not render the nonexistence of a qualifying relationship between the two entities.

Counsel's assertion and documentation are not persuasive. The regulations and applicable precedent decisions 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. 8 C.F.R. § 204.5(j)(2); *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988); *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 this matter, the petitioner initially presented confusing evidence regarding its ownership and control. In addition, to the inconsistencies observed by the director, the AAO notes that the petitioner claims to have issued 49 percent of the petitioner's stock to the beneficiary. However, the record shows that the claimed majority owner ██████████ Enterprises, Co., Ltd. purportedly paid for all the stock issued. The inconsistency between the shares issued and the purchaser of the stock as identified by the amount of monies paid casts doubt on the validity of the wire transfers made in October 1995 and May 1997. It appears the foreign entity may have wired funds to the petitioner for the payment of something other than an interest in the petitioner's stock. The AAO recognizes the ease with which stock certificates can be manipulated and the ease with which corporate amendments can be made to conform to specific data. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Simply asserting that the omission of a corporate record was mere oversight does not qualify as independent and objective evidence. Furthermore, evidence that the petitioner creates after Citizenship and Immigration Services (CIS) points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice.

Finally, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, evidence pertaining to the capitalization of the petitioner continues to contain inconsistencies and raises concerns regarding the legitimacy of the petitioner as a multinational entity.

Regarding the issue of the petitioner's claimed qualifying relationship, the petitioner has not overcome the director's denial. For this reason, the petition may not be approved and the director's decision must be affirmed.

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 not been met.

ORDER: The appeal is dismissed.