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**U.S. Citizenship
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FILE: WAC 03 050 54021 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 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, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The petitioner filed this immigrant petition seeking to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation that is engaged in restaurant and property development and management. It filed this immigrant petition requesting employment of the beneficiary as its president.

The director denied the petition concluding that the petitioner had not established the existence of a qualifying relationship as required in the Act at § 203(b)(1)(C).

On appeal, counsel claims "an obvious mistake" by the director in his denial of the petition, stating that the director incorrectly referenced the beneficiary's ownership interest in the foreign entity. Counsel also states that the inconsistencies noted by the director with regard to ownership of the United States corporation are "minor" and "do not contradict the facts regarding the qualifying relationship between the entities. . ." Counsel contends that because the beneficiary has owned at least 85% of the petitioning organization since its inception, "there is no question that [the beneficiary] has at all times had a majority of ownership and, therefore, control of both the foreign and domestic entities." Counsel submits a brief in support of the appeal.

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 or 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 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 issue in the instant proceeding is whether a qualifying relationship exists between the foreign entity and United States organization as required in the Act at § 203(b)(1)(C).

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.

The petitioner filed the immigrant petition on December 3, 2002. In an attached letter, dated November 13, 2002, the petitioner stated that the foreign and United States organizations are affiliates "because the ownership is shared by a common group of individuals with a high percentage of common ownership and common management." As evidence of the affiliate relationship, counsel submitted the petitioner's articles of incorporation, wherein the company is authorized to issue 1,000,000 shares of stock, by-laws, and stock transfer ledger. The petitioner's stock transfer ledger identifies the following three "original issue" transfers, each of which occurred on July 15, 1999:

 (beneficiary)	Certificate 1	850 shares
	Certificate 2	75 shares
	Certificate 3	75 shares

With regard to ownership of the foreign entity, counsel submitted a translated document listing the names and shareholders of the foreign entity as of April 5, 1999 as follows:

 (beneficiary)	470,000 shares
	10,000 shares
	10,000 shares
	5,000 shares

[REDACTED]

5,000 shares

The director issued a request for evidence on April 24, 2003 asking that the petitioner submit the following evidence regarding the qualifying relationship: (1) a copy of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f); (2) a copy of the minutes from the petitioner's meeting listing the company's stockholders and each individual's ownership interest; (3) copies of the stock certificates issued by the petitioner to the present date.

Counsel responded in a letter dated June 26, 2003. Counsel provided the following statement with regard to stock ownership:

[The beneficiary] is the President and owns approximately 90% of the shares of [the foreign entity]. As the Stock Ownership demonstrates, most of the stock in both entities is held by Arpaci family members. [The beneficiary] currently owns 85% of the shares of [the petitioning organization] the other 15% is held by members of the Arpaci family. At the time that the visa priority date was established, December, 2002, [the beneficiary] owned 85% of the stock of [the petitioning organization]. Therefore, [the beneficiary] meets the qualifying definition of a multinational executive in that he has at all times owned a majority and controlling interest in both the overseas company and U.S. entity.

Counsel submitted a copy of the minutes of the petitioner's first meeting of its board of directors, held on July 30, 1999, in which it outlined the issuance and sale of its 1,000,000 authorized shares of stock in the following manner:

[REDACTED] (beneficiary) 850,000 shares

[REDACTED] 75,000 shares

[REDACTED] 75,000 shares

Counsel also submitted copies of three stock certificates identifying the issuance of stock by the petitioner in the above-outlined manner.

In a decision dated February 17, 2004, the director determined that the petitioner had not established the existence of a qualifying relationship between the foreign and United States entities. The director, outlining the stock ownership interests in each organization and noting that the beneficiary owned "470 shares" in the foreign entity, states that "[t]he record does not show that the two entities are owned and controlled by the same parent or individual, or that the two entities are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity." The director also noted the absence of voting agreements indicating that a shareholder has relinquished control in favor of another. The director stated that although common ownership may exist between the two entities, there is no common control.

With regard to the ownership of the United States entity, the director noted inconsistencies in the percentage of stock ownership identified on the corporation's three stock certificates and the ownership information provided in the petitioner's corporate tax returns. The director noted that the supplemental schedule of the

petitioner's 1999 and 2000 tax returns identified the beneficiary as the owner of 93% of the United States corporation and [REDACTED] as the owner of the remaining 7% interest, thereby implying two stockholders rather than three. The director stated that the petitioner had failed to clarify this discrepancy. Consequently, the director denied the petition.

Counsel filed an appeal on March 17, 2004, stating that the director mistakenly reviewed the evidence related to the ownership of the foreign entity, and claiming that the beneficiary possesses ownership and control over both the foreign and United States organizations. In a brief filed on April 16, 2004, counsel states that the director erroneously identified the beneficiary's stock interest in the foreign entity as 470 shares, when in fact he owns 470,000 shares. Counsel states "[t]his demonstrates that [the beneficiary] owns approximately 94 per cent of the foreign entity and therefore has effective management and control of this entity."

Counsel also claims that the inconsistencies in the beneficiary's ownership interest in the United States entity cited by the director are "minor" and may be "overcome by objective evidence." Counsel states:

The 1999 and 2000 Form 1120 Tax Record Supplemental Schedules at page two for both years indicate that [the beneficiary] owned 93% of petitioner's stocks and Mustafa Ogel owned 7%. [The beneficiary] included his 85% and his wife's 7.5% share ownership since they had filed a joint personal tax return. The Supplemental Schedule attached to Form 1120 only requests that owners of over 50% of the corporation's stock be listed. The stock has no par value and is not part of a publicly held corporation. This mistake on the tax supplement does not have any financial tax consequence nor does it demonstrate any significant change in ownership and control of the foreign and domestic entities. A letter of explanation for this mistake is attached from the petitioner's [certified public accountant].

In an attached letter from the petitioner's certified public accountant, dated April 14, 2004, the accountant explains that the information reported by him on the petitioner's corporate tax return and specifically the supplemental schedule was based on stock ownership information given to him by the beneficiary. The accountant states:

[The beneficiary] and his wife, Hulya Arpaci owned 850 and 75 shares respectively. Mr. [REDACTED] who is [the beneficiary's] brother-in-law, was issued the remaining 75 shares. Therefore, [REDACTED] owned 92.5 percent and [REDACTED] owned 7.5 percent of the shares.

I prepared the tax returns based upon the information given to me at meetings with [the beneficiary] and his interpreter. At these meetings it was told to me that [the beneficiary] owned 93 percent of the shares and [REDACTED] owned 7 percent of the shares. I believe that this was a simple mistake made by [the beneficiary] because he combined [REDACTED] stock ownership with his own, as they had prepared a joint return. I believe from my recollection that he simply rounded off the percentages of ownership one half percent more for he and his wife and half percent down for [REDACTED] so that it would add up to 100 percent. This had absolutely no effect on the majority of ownership and control of the corporation, as clearly [the beneficiary] owned at least 85 percent of the stock, well over the 51 percent majority required for control of the corporation.

Upon review, the petitioner has demonstrated the existence of a qualifying relationship between the foreign and United States entities. The director's decision will be withdrawn.

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.

Here, the petitioner has clarified on appeal the affiliate relationship between the United States and foreign entities. The record establishes that at the time of filing the petition the beneficiary owned and controlled 85% of the United States organization and 94% of the foreign entity. The AAO notes that the record still contains an inconsistency with regard to the actual number of shares owned by the beneficiary in the United States corporation. The petitioner's stock certificate identifies the beneficiary as the owner of 850 shares, while the minutes from the board of directors meeting on July 30, 1999 indicates the issuance of 850,000 shares to the beneficiary. Notwithstanding this discrepancy, the beneficiary's percentage of ownership remains the same. If one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners. As a result, the director's decision will be withdrawn. The appeal will be sustained.

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 been met. Accordingly, the director's decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.