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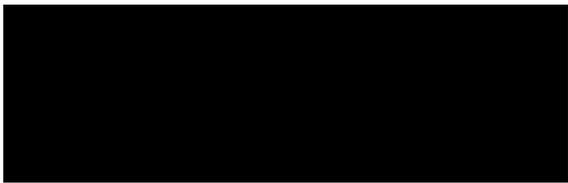
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B4



FILE: WAC 03 173 53485 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2015

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 appeal will be dismissed.

The petitioner is a company organized in the State of California in May 1996. The petitioner designs, markets, and wholesales household products and gift items. It seeks to employ the beneficiary as its managing director. 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 with the beneficiary's foreign employer.

On appeal, counsel for the petitioner submits a letter from the Bank of Taiwan to explain its banking practices and the date used on the wire transfer which the petitioner relied upon to establish its capitalization.

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 in this proceeding is whether the petitioner has established a qualifying relationship between the petitioner and the foreign entity. 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.

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 provided the following documents pertaining to the petitioner's qualifying relationship with the beneficiary's foreign employer:

A translated document of [REDACTED] license showing [REDACTED] as its legal representative, its establishment date as June 27, 1995, and that it was engaged in import and export, and as an agent for local and foreign manufacturers;

A translated document identified as the Articles of [REDACTED] and dated June 23, 1995;

The petitioner's Articles of Incorporation filed May 28, 1996 with the California Secretary of State;

The petitioner's stock certificate number 1 issuing 51,000 shares to [REDACTED] [REDACTED] dated November 1, 1996;

The petitioner's stock certificate number 2 issuing 49,000 shares to [REDACTED] [REDACTED] dated November 1, 1996;

The petitioner's stock transfer ledger identifying the stockholders and indicating that [REDACTED] [REDACTED] paid \$9,070.35 for its shares and [REDACTED] paid \$8,714.65 for his shares;

A copy of the petitioner's minutes for the first meeting of the incorporators and directors held November 1, 1996 that showed the petitioner was authorized to issue 100,000 shares and would issue 51,000 shares to [REDACTED] for \$9,070.35 and 49,000 shares to [REDACTED] for \$8,714.65; and

A document listing [REDACTED] shareholders.

On June 14, 2004, the director requested evidence that the foreign parent company had in fact paid for its interest in the U.S. entity. The director specifically requested copies of original wire transfers from the parent company to the U.S. company clearly identifying the originators of the monies deposited or wired and bank statements to corroborate the transfer of funds from the foreign parent company to the U.S. entity detailing the monetary amounts for the stock purchase.

In an August 30, 2004 response, the petitioner provided an affidavit explaining various documents submitted in support of the petitioner's qualifying relationship with the foreign entity. The documents included:

A Bank of Taiwan outward remittance exchange memo identifying the beneficiary's name as [REDACTED] Supreme Coil, dated May 2, 1985 in the amount of \$18,375.59. The petitioner also provided a translation of the document noting that the trading date was May 2, 1996 and identifying the applicant for the outward remittance as [REDACTED]

A computer printout of a statement for account number 60013180120 [REDACTED] dated May 8, 1996 showing a credit of \$18,360.59 via wire transfer;

The petitioner's Bank of America bank statement for June/July 1996 showing a deposit of \$2,000 on June 14, 1996;

A copy of two separate checks signed by [REDACTED] presented to the petitioner dated August 9, 1996 for \$10,000 and dated September 3, 1996 for \$2,000;

The petitioner's Bank of America bank statement for July/August 1996 showing a deposit of \$10,000 on August 9, 1996; and,

The petitioner's Bank of America bank statement for August/September 1996 showing a deposit of \$2,000 on September 3, 1996.

The president of the petitioner, in an affidavit signed August 30, 2004, stated: he had received a wire transfer on May 2, 1996, in the amount of \$18,360.59 from the president of [REDACTED] \$9,070 of the \$18,360.59 was intended as [REDACTED] purchase of 51 percent of the petitioner; the funds were wired to his personal account because the petitioner had not yet been incorporated; he had deposited \$2,000 to

open the petitioner's bank account on June 14, 1996 and had deposited an additional \$12,000 from his personal account on August 9, 1996 (\$10,000) and September 3, 1996 (\$2,000) to the petitioner's account to reflect [REDACTED] and his capital investment in the petitioner; that he had fronted the petitioner's expenses during the start-up phase in the amount of \$3,785 and that was considered part of his personal investment in the petitioner; and that all the cash and funds transferred from his personal bank account to the petitioner's business account and the \$3,785 used for the petitioner's initial expenses collectively represented [REDACTED] and his investment in the ratio of 51 to 49 percent interest in the petitioner.

On February 15, 2005, the director denied the petition, observing that the wire transfer submitted as evidence of the foreign entity's interest in the petitioner was dated May 2, 1985, 10 years prior to the purchase of the stock, and that the money was transferred from [REDACTED] and not from the foreign company to the petitioner. The director determined that the petitioner had not provided unerring and concise evidence to substantiate the claim of qualifying foreign company ownership in the U.S. entity.

On appeal, counsel for the petitioner submits a letter from the Bank of Taiwan which states that the Bank of Taiwan's official seal uses the official calendar of the Republic of China and that the year 1985 of the Chinese calendar is the same year as 1996 in the western calendar. The Bank of Taiwan letter also notes that the legal representative of a legal entity must initiate and sign for any wire transfers from the legal entity and that it recognizes [REDACTED] authorized representative.

The letter submitted on appeal is not sufficient to establish a qualifying relationship between the petitioner and the beneficiary's foreign employer. Upon review, the record does not contain sufficient documentation to establish the foreign entity's intent to invest funds in the petitioner. The petitioner's president alludes to agreements wherein the beneficiary's foreign employer intended funds deposited to the petitioner's president's personal account were to be used for investment, however the record does not contain any such agreement(s). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. A petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

Moreover, the petitioner has not adequately explained how the deposits of \$14,000 and reimbursement of expenses of \$3,785 result in the foreign entity's 51 percent ownership in the petitioner. The record is not adequate to substantiate the foreign entity's narrow majority ownership. The petitioner has not established that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the beneficiary is or will be employed in a primarily managerial or executive capacity.

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. T

In this matter, the petitioner indicated that the beneficiary would oversee all department functions of the company and formulate business strategies and company policies. The petitioner identified the beneficiary's subordinates as the sales and marketing manager, logistic manager, new product designer, and the executive secretary/accounting specialist. The petitioner indicated that: in the human resource area, the beneficiary would be in charge of developing company policies, hiring and firing employees, determining promotions and salaries, training and supervising performance reviews, and coordinating with attorneys on employment related matters; in the marketing and sales area, the beneficiary would plan, budget, make policies, represent the company at trade shows, meet with key clients, coordinate product development, negotiate and close deals, and approve marketing materials published by the department; in the accounting area, the beneficiary would oversee the overall financial functions outsourced to an accounting firm as well as control expenditures of the departments to conform to corporate budgetary requirements, review department budget proposals, and prepare company budgets for the Board; in the new product development area, the beneficiary would be responsible for the success of the development of new product lines and production progress, and work with legal counsel in the copyright of product liability related matters; and in the logistic area, the beneficiary would supervise and negotiate company logistic contracts with suppliers and carriers, follow market trends for availability of commodities, supplies and services, and oversee company inventory control and warehousing activities.

The petitioner's description of the beneficiary's duties and responsibilities is general and paraphrases elements of the definitions of both managerial and executive capacity. See section 101(a)(44)(A)(ii), (iii) and section 101(a)(44)(B)(ii) of the Act. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In addition, the petitioner indicates the beneficiary attends trade shows, meets with clients, negotiate deals, follows market trends, and oversees inventory control and warehousing activities. These responsibilities do not fall within the traditional duties of a manager or executive. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In addition, although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The petitioner in this matter does not provide sufficient evidence that it employs individuals in the positions listed on the organizational chart. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not provided sufficient evidence that the majority of the beneficiary's duties comprise managerial or executive duties. For this additional reason, the petition will not be approved.

Further, the petitioner indicates that the foreign entity employed the beneficiary in May 1997 as an executive assistant and at some later time was promoted to work in a managerial capacity for the foreign entity. However, the record does not contain evidence demonstrating when the beneficiary began working for the foreign entity in a managerial or executive capacity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

22 I&N Dec. at 165. The record is insufficient to establish that the beneficiary worked in a managerial or executive capacity for one year prior to entering the United States as a nonimmigrant. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.