



U.S. Citizenship  
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Services

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FILE: LIN 05 062 51111 Office: NEBRASKA SERVICE CENTER Date: SEP 30 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:

SELF-REPRESENTED

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

The petitioner is an organization established in the State of North Dakota in November 1992. It operates a Greek and Italian restaurant. It seeks to employ the beneficiary as its "hands on" restaurant 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 denied the petition on March 19, 2005, determining that the petitioner had not submitted sufficient evidence to establish: (1) a qualifying relationship with the beneficiary's foreign employer; (2) that the beneficiary was employed in a managerial or executive capacity for the foreign entity; or, (3) that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on March 28, 2005, the petitioner indicates that a separate brief and/or evidence had been submitted with the Form I-290B. The petitioner's statement on the Form I-290B, Notice of Appeal reads:

I believe we should be granted perm. status. We have lived here 15 years and have build [sic] our business here in the U.S. We have 30 plus employees, we have financial backing and will never burden the System. We have a lot to contribute to the U.S. and do not want to remain only investor status! We want to eventually become American citizens. I followed all instructions, I paid all the fees and sent all of our documents. Why can't we be allowed some permanent status. I am sending another fee once again to appeal this decision.

The petitioner attached a copy of the director's decision noting on the decision that: "We owned the locations in Canada! It is my father's business which makes it mine!" The petitioner asserts that the immigration officer did not read "its" letters and also reiterated that: "we live here 15 years already." The petitioner also attached a letter signed by [REDACTED] again noting that she and her family had lived in the United States for 15 years, had opened three businesses<sup>1</sup> in the United States, employed 30 individuals, and operated the only ethnic restaurant in the area. [REDACTED] also expressed her disappointment in the director's denial decision and claimed that she had submitted all the necessary documents and questioned whether she would need to sell the businesses in the United States. Finally, the record includes a letter from the Honorable [REDACTED] U.S. Senator of the State of

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<sup>1</sup> The record includes information that suggests that [REDACTED] and her husband, the beneficiary, are involved in a partnership that operates a concessions business in North Dakota, a concessions business in Texas operated as an S corporation, as well as the petitioner, incorporated as an S corporation in North Dakota.

North Dakota, indicating the beneficiary's wife supervises and corrects her employees in regard to maintaining the Greek heritage at the restaurant.

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.

The petitioner in this matter is attempting to classify the beneficiary as an employment-based immigrant pursuant to the above-cited section of the Act. Citizenship and Immigration Services (CIS) is restricted to considering only the required elements of this visa classification when determining the beneficiary's eligibility. The petitioner has not applied for a visa classification that requires consideration of the length of time a petitioner has operated in the United States or that a beneficiary has lived in the United States as an element of the classification. The beneficiary's desire for his family to become American citizens rather than to be recognized only as "investors" in the United States is noted, but again, this desire is not an element of the employment-based multinational manager or executive visa classification. Finally, the petition in this matter is for ██████████ not ██████████ thus CIS must consider the position that ██████████ occupies and whether his position is primarily a managerial or executive position.

As the director determined, the record in this matter does not include sufficient evidence on three essential elements of this visa classification.

First, the petitioner has not established that a qualifying relationship exists between the petitioner and 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.

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 beneficiary's wife's claim that her father's ownership of a business in Canada makes the foreign business her business is not sufficient. 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 record contains no legal documentation establishing that the same parent or individual own and control both the petitioner and the foreign entity or that the same group of individuals own and control both the petitioner and the foreign entity in approximately the same share or proportion, or that the foreign entity and the petitioner enjoy a subsidiary relationship as defined above.

The petitioner has not provided any documentary evidence in the form of stock certificate(s), corporate stock certificate ledger, stock certificate registry, corporate bylaws, minutes of relevant annual shareholder meetings, or agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary. See *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Second, the petitioner has not provided evidence that the beneficiary was employed in a managerial or executive capacity for the foreign entity.

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 director recites the only information provided by the Canadian entity regarding the beneficiary's foreign employment. However, as the director determined, the record does not contain information demonstrating the organizational structure of the foreign restaurant(s). Moreover, the description of the beneficiary's duties for the foreign entity indicates that the beneficiary provided operational and administrative services for the foreign entity. 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). This visa classification requires that the beneficiary fulfill the criteria of either a manager or an executive as defined in sections 101(a)(44)(A) or 101(a)(44)(B) of the Act as well as demonstrating that the beneficiary primarily perform managerial or executive tasks and not operational, administrative, or first-line supervisory tasks.

Third, the petitioner has not provided evidence that the beneficiary will perform in a primarily managerial or executive capacity for the U.S. entity. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The petitioner specifically described the beneficiary as a "hands on" restaurant manager. This information coupled with the petitioner's indication that the beneficiary cooks, trains new employees, makes menus, hires and fires employees, and greets guests indicates that the beneficiary is involved primarily in providing the petitioner's operational services. Further, as the director observed, the petitioner does not provide an organizational chart or any information regarding the titles and duties of the beneficiary's subordinate employees. The record is deficient in demonstrating that the beneficiary performs primarily managerial or executive tasks.

The AAO observes that the petitioner appears to operate a small but thriving ethnic restaurant that is highly appreciated by its local community. However, the director properly determined that the petition does not meet the basic eligibility requirements for this visa classification. The AAO further notes that this decision does not bar the petitioner from filing a new petition, accompanied by evidence of its eligibility, seeking a more appropriate immigrant visa classification. As observed above, the petitioner's letters and statement on the Form I-290B are not relevant to establishing eligibility for this visa classification. Inasmuch as the petitioner does not identify an erroneous conclusion of law or a statement of fact as a basis for the appeal; the regulations mandate the summary dismissal of the appeal.

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 not been met.

ORDER: The appeal is summarily dismissed.