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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 24 2006**
WAC 03 247 52796

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation engaged in the wholesale and distribution of computer software and materials used in the production of vinyl and reflective vinyl signs. It seeks to employ the beneficiary as its president and general 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 based upon the determination that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments.

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 primary issue in this proceeding is whether the petitioner 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;

* * *

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.

In a letter dated August 22, 2003, which was submitted in support of the petition, the petitioner stated that the U.S. entity is a wholly owned subsidiary of [REDACTED], located in Jakarta, Indonesia. Thus, by virtue of its own claim, the petitioner implied that no one other than the foreign entity had a direct ownership interest in the U.S. entity. In support of this claim, the petitioner provided the following documentation:

1. The petitioner's minutes of meeting dated March 19, 1999.
2. The petitioner's stock certificate identifying the foreign entity as the owner of the 200,000 shares of the petitioner's stock.
3. Notice of Transactions Pursuant to Corporations Code 52102(f) filed by the petitioner on March 19, 1999 showing that the petitioner received \$200,000 in exchanged for its issued stock. The form clarified that \$30,000 was received in cash while the remaining \$170,000 was paid in consideration other than money.
4. The petitioner's stock transfer ledger corroborating the information conveyed in Nos. 1 and 2, discussed above.
5. The petitioner's bank statement dated May 31, 1999 showing two fund transfers totaling \$28,465 into the petitioner's account. The accompanying wire confirmations showed the foreign entity as the originator of both transfers.
6. A commercial invoice, packing slip, and shipping documents showing the foreign entity's shipment of merchandise totaling \$162,123.08. The addressee on each of the documents is the beneficiary and all documents are dated sometime in August of 1998. The AAO notes that the petitioner was established in March of 1999, seven months after the goods were shipped. It is further noted that the amount of the goods shipped was nearly \$8,000 less than the amount of "consideration other than money " that was indicated in the petitioner's Notice of Transactions.

7. The petitioner's tax returns from 1999 through 2002. Schedule E of the petitioner's tax return for 2000 identifies the beneficiary as owner of 30% of the petitioner's stock. Schedule L, Item 22(b) of the same tax return indicates that the petitioner started the year with \$30,000 of issued stock and ended the year with \$300,000 of issued stock. In regard to the petitioner's tax returns for 2001 and 2002, both Schedule E's identify the beneficiary as the owner of 30% of the petitioner's stock and both tax returns at Schedule L, Item 22(b) show that the petitioner issued capital stock in the amount of \$300,000. Finally, both tax returns' Forms 5472, Part II, Item 1a identify four separate individuals as the direct owners of 25% of the petitioner's stock.
8. Foreign entity's Articles of Association including Article 4, which lists a total of 11 shareholders. The shareholder list indicates that one of the shareholders owns 50 shares of the foreign entity's stock while the remaining ten shareholders each own 25 shares.

On March 9, 2005, the director issued a request for additional evidence (RFE) addressing, in part, the issue of a qualifying relationship between the petitioner and the claimed foreign parent entity. Specifically, the petitioner was instructed to provide the foreign entity's list of shareholders and each shareholder's respective percentage of shares owned. The petitioner was instructed to provide the same information with regard to the foreign entity as well as corroborating documentation.

The petitioner responded with a detailed letter dated May 31, 2005, listing the seven shareholders of the foreign entity's stock. As corroborating evidence, the petitioner provided the foreign entity's 2004 tax return identifying the same seven shareholders, which include another entity with approximately a 37% ownership interest. It is noted that the foreign entity's tax return suggests that the company experienced a change in ownership since the signing of its Articles of Association (discussed above). However, the petitioner did not submit documentation to indicate when the change occurred. With regard to the petitioner's ownership, the petitioner resubmitted the documents described in Nos. 1, 4, 5, and 6, above. The petitioner also provided its 2004 tax return. As with the previously submitted tax returns, Schedule E of the 2004 tax return indicates that the beneficiary owns 30% of the petitioner. Schedule K, Item 7 of the tax return indicates that a foreign person owns 35% of the petitioner either directly or indirectly. As with the tax returns for 2001 and 2002, the attached Form 5472, Part II, Item 1a identifies four separate individuals as the direct owners of 25% of the petitioner's stock.

On July 11, 2005, the director denied the petition, discussing the discrepancies between various documents submitted in an effort to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. The director addressed the petitioner's tax returns, noting that they contradict the petitioner's original claim of being entirely owned by the beneficiary's foreign employer. The director specifically discussed the Form 5472 attached to each of the petitioner's tax returns. He pointed out that there is no evidence to suggest how the four named individuals came to own any of the petitioner's stock, since they were not included in the foreign entity's list of stockholders and since the record has no documentation of monetary transactions between any of the individuals and the petitioner.

On appeal, counsel attempts to explain the various discrepancies, first addressing the confusion in Schedule L, Item 22(b) of the submitted tax returns. Counsel asserts that the petitioner's accountant erred in the 1999 tax return by failing to include the \$170,000 "consideration other than money" as part of the capital that was

offered in exchange for the issued shares. Counsel claims that the subsequent tax returns show the correct amount.

Next, counsel addresses the director's comment regarding the fact that the petitioner's tax returns from the year 2000 indicate that capital stock was issued in the amount of \$300,000 rather than \$200,000, the amount reflected in the petitioner's stock transfer ledger, stock certificate, and minutes of meeting dated March 19, 1999. Counsel explains that on December 31, 2000, the petitioner issued an additional 100,000 shares of stock, 10,000 of which were purchased by the petitioner for \$10,000 and the remaining 90,000 shares were purchased by the foreign entity in exchange for \$90,000 for a total of \$100,000, which has been reflected in the petitioner's tax returns since the year 2000. In support of this claim, the petitioner submits stock certificate Nos. 2 and 3, showing the issuance of the additional shares, an updated stock transfer ledger, an additional Notice of Transactions filed by the petitioner on December 31, 2000, and a bank statement accompanied by two wire transfer receipts indicating that \$100,000 was transferred into the petitioner's checking account.

While the additional issue of stock may explain the figures shown in Schedules E and L of the petitioner's tax returns, the fact that the beneficiary had any ownership interest at all in the U.S. petitioner contradicts the petitioner's original claim, which is that it is a wholly owned subsidiary of [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). While counsel stays focused on explaining the many discrepancies discussed in the director's decision, he fails to acknowledge the inconsistency between the petitioner's initial claim and the one that has developed over the course of this proceeding, which is that the petitioner is a subsidiary but not wholly owned by the foreign entity as originally claimed.

Another deficiency on record is the lack of evidence to support the claim that the petitioner received \$170,000 in goods in exchange for purportedly giving the foreign entity 170,000 shares of its stock. As previously noted, the commercial invoice, packing slip, and shipping documents show that the foreign entity's shipment of merchandise totaled \$162,123.08. This figure is nearly \$8,000 short of the claimed \$170,000 worth of goods the petitioner's purportedly received. Furthermore, the petitioner failed to explain how the foreign entity could have shipped goods in exchange for stock in a company that had not been established when the shipment was made.

Finally, counsel discusses the Internal Revenue Code (I.R.C.) § 318, which addresses the concept of constructive stock ownership, and I.R.C. § 6038A, which addresses certain tax reporting requirements for foreign-owned corporations. Counsel asserts that the four individuals named in the Form 5472's (attached to the petitioner's tax returns) are owners of the petitioner's stock by virtue of owning stock in [REDACTED], the foreign entity that directly owns 37.39% of the alleged foreign parent corporation. However, the type of ownership described by counsel is indirect ownership, not direct ownership, as indicated in all of the Form 5472's. Furthermore, the petitioner provided Form 5472's for only four of [REDACTED] shareholders, even though the entity is comprised of a total of six shareholders. **If the petitioner truly intended to identify the indirect owners of its stock, there is no explanation for its failure to provide additional Form 5472's, identifying the two remaining shareholders of [REDACTED]**

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

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 the 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. In the instant matter, the many discrepancies discussed above preclude the AAO from making a well-informed determination as to the petitioner's ownership. Since such a crucial determination cannot be made, the AAO cannot conclude that the U.S. petitioner and foreign entity are similarly owned and controlled. Accordingly, a denial of the I-140 petition is warranted as a matter of law.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.