

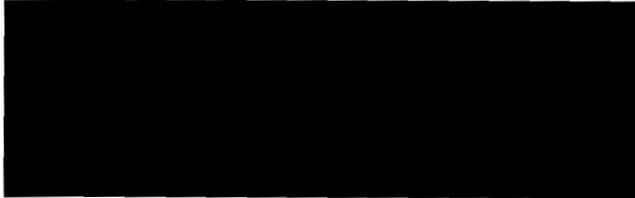
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 082 51454 Office: NEBRASKA SERVICE CENTER Date: **AUG 15 2006**

IN RE: Petitioner:
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:



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, Chief
Administrative Appeals Office

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

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive 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 organized under the laws of the State of Minnesota that is engaged in the management of hotels. The petitioner seeks to employ the beneficiary as its brand business director.

The director denied the petition concluding that the petitioner had not demonstrated the existence of a qualifying relationship between the petitioning entity and the Aruban hotel where the beneficiary was working prior to her transfer to the United States.

Counsel for the petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel contends Citizenship and Immigration Services' (CIS) denial of the immigrant visa petition was based on its misinterpretation of the language in a management and service contract between "Radisson International Management, Inc. (RIMI)," the United States company that counsel claims employed the beneficiary, and "Aruba Caribbean Hotel Limited Partnership," which owned the Aruban hotel where the beneficiary worked prior to the instant petition. Counsel claims that the beneficiary was employed by RIMI, and further contends that a qualifying relationship has been established between the petitioning entity and RIMI. Counsel submits a letter and documentary evidence 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 this proceeding is whether a qualifying relationship exists between the petitioning entity and the beneficiary's prior employer.

In his September 30, 2005 decision, the director focused on the issue of whether the beneficiary was an employee of the "Radisson Aruba Resort and Casino" where she had been working as the rooms division manager from November 16, 1998 through March 2, 2001, or whether she was an employee of RIMI, the United States company which contracted with the Radisson Aruba Resort and Casino to provide management services to the hotel. The director determined that the beneficiary was an employee of the hotel, whose only connection to RIMI, as conceded by counsel, is as the recipient of its management services. Counsel, on the other hand, contends that the beneficiary was an employee of RIMI, which counsel claims possesses a relationship with the petitioning entity as its indirect subsidiary. On appeal, counsel provides documentary evidence, including a letter from the petitioner's corporate attorney, confirming the beneficiary's classification as a prior employee of RIMI. As a result, the issue will not be further addressed. The AAO recognizes the beneficiary was an employee of RIMI. The AAO will instead focus on whether the petitioner has demonstrated the existence of a qualifying relationship between the United States entity and RIMI.

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 instant immigrant visa petition on January 25, 2005. In an appended letter, dated January 18, 2005, the petitioner explained its corporate operating "groups," and stated that the beneficiary had been employed by RIMI, which the petitioner claimed is a wholly-owned subsidiary of Radisson Hotel Corporation and its indirect subsidiary. As evidence of its business and corporate structure, the petitioner submitted a corporate brochure, addressing its ownership of the "Radisson" hotel brand name.

The director subsequently issued a request for evidence asking that the petitioner address the existence of a purported qualifying relationship. In response, the petitioner submitted a letter, dated May 31, 2005, in which

it addressed the companies within the "Carlson Hospitality Group," the parent company of the petitioning entity, and noted the following "chain" of ownership:

The "parent" company of the Hospitality Group is Carlson Hospitality Group, Inc. This company owns 100% of [the petitioning entity], which is [the beneficiary's] [current employer].

[The petitioner] owns 100% of Radisson Hotels International, Inc[.] (fka Carlson Hospitality Group, Inc.).

Radisson Hotels International, Inc. (fka Carlson Hospitality Group, Inc.) owns 100% of Carlson Hotels Management Corporation (fka Radisson Hotel Corporation).

Carlson Hotels Management Corporation (fka Radisson Hotel Corporation) owns 100% of Radisson International Management, Inc., the [former employer].

As evidence of the above-outlined "chain" of ownership, the petitioner provided a chart depicting the corporate structure, as well as articles of incorporation, certificates of incorporation, certificates of amendments and stock certificates, as appropriate, for each company. In addition, the petitioner noted in both its letter and on the organizational chart the amount of shares authorized and issued by each company, stressing the evidence established the purported chain of ownership.

In response to a second request for evidence issued by the director on June 20, 2005, the petitioner further addressed the issue of "qualifying relationship" between the petitioning entity and RIMI, stating that each "[has] conducted and [is] continuing to conduct business in the United States and at least one other country either directly or indirectly through a parent, branch, affiliate or subsidiary."

The AAO notes that the remaining evidence in the record pertains to the service agreement between RIMI and Radisson Aruba Resort and Casino. On appeal, counsel focuses on the beneficiary's classification as an employee of RIMI. On the Form I-290B, counsel again suggests that RIMI is a subsidiary of the petitioning entity.

Upon review, the petitioner has not demonstrated the existence of a qualifying relationship between the petitioning organization and the beneficiary's former employer, RIMI.

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.

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. Additionally, 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 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In order to establish that RIMI is an indirect subsidiary of the petitioning entity, the petitioner must demonstrate the ownership of the two intermediate companies, Radisson Hotels International, Inc. and Carlson Hotels Management Corporation. The petitioner attempts to demonstrate the "chain" of ownership through a partial submission of stock certificates and articles and certificates of incorporation. The AAO notes, however, a lack of evidence in establishing the purported parent-subsidary relationship between the petitioner and Radisson Hotels International, Inc. and between Radisson Hotels International, Inc. and Carlson Hotels Management Corporation.

Specifically, with respect to the ownership of Radisson Hotels International, Inc., the petitioner provided its certificate of incorporation (which incidentally, reflects that it was established prior to the petitioning entity) a December 27, 1988 certificate of amendment of the company's name, and a number five stock certificate, dated December 31, 1999, identifying the petitioner as the owner of 100 shares of stock. The petitioner did not submit any evidence regarding the share certificates numbered one through four.

The petitioner claims the existence of a qualifying relationship, stating in its May 31, 2005 letter that Radisson Hotels International, Inc. issued only 100 of its 1,000 shares of authorized stock, all of which are owned by the petitioning entity. The petitioner, however, has failed to substantiate its claim of a parent-subsidary relationship with additional relevant evidence, such as Radisson Hotels International Inc.'s stock transfer ledger or canceled stock certificates. Such evidence would confirm that only 100 shares of Radisson Hotels International, Inc. stock are outstanding, and that the petitioner is the sole owner of the corporation. This is particularly relevant considering the submitted stock certificate is numbered "five," thereby implying additional or previous stockholders. The fact that the petitioning entity was established more than fifteen years after Radisson Hotels International, Inc. also suggests the existence of additional stockholders, whose interests the petitioner has not shown to be terminated. 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)). Absent additional relevant documentation, the AAO cannot conclude the existence of a parent-subsidary relationship between the petitioning entity and Radisson Hotels International, Inc.

Additionally, with regard to the purported parent-subsidary relationship between Radisson Hotels International, Inc. and Carlson Hotels Management Corporation, the petitioner submitted a certificate of incorporation, dated December 11, 1979, a certificate of merger, and a number four stock certificate identifying Carlson Hospitality Group, Inc., which is presently known as Radisson Hotels International, Inc., as the owner of 100 shares of Radisson Hotel Corporation, now known as Carlson Hotels Management Corporation. As in the prior discussion, the petitioner has not provided sufficient evidence of a parent-subsidary relationship between Radisson Hotels International, Inc. and Carlson Hotels Management Corporation. Again, despite the petitioner's claim in its May 31, 2005 letter that Carlson Hotels Management Corporation issued only 100 of its 1,000 authorized shares of stock, the petitioner has not confirmed that

Radisson Hotel Corporation is the sole shareholder. The stock certificate provided for the record is numbered "four," yet the petitioner did not provide numbers "one" through "three" stock certificates or its stock transfer ledger demonstrating that interests held by previous stockholders have been canceled. Again, the organization of Radisson Hotels International, Inc. approximately four years after Carlson Hotels Management Corporation suggests additional stockholders. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Absent additional evidence, the AAO cannot conclude that Carlson Hotels Management Corporation is the subsidiary of Radisson Hotels International, Inc.

Based on the above discussion, the petitioner has failed to demonstrate the purported parent-subsidary relationships between the petitioning entity and Radisson Hotels International, Inc., and between Radisson Hotels International, Inc. and Carlson Hotels Management Corporation, both of which are relevant to the claimed qualifying relationship between the petitioning entity and RIMI. As a result, the AAO cannot conclude that RIMI is an indirect subsidiary of the petitioning entity. Accordingly, the appeal is dismissed.

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).

Beyond the decision of the director, an additional issue is whether the beneficiary would be employed by the United States entity 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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 petitioner indicated on the Form I-140 and in its accompanying January 18, 2005 letter that the beneficiary would be employed as the company's brand business director. In its letter, the petitioner stated:

[The beneficiary's] essential task is to work with the management teams at Radisson and Park Plaza brand hotels to achieve maximum revenues, occupancy and market penetration. One of the key measurements of her success is set as a goal of raising hotel revenues by a certain percentage every year. This past year she achieved this goal – the hotels under her managerial oversight achieved over \$100 Million in 2004.

[The beneficiary] works closely with hotel personnel at the highest executive and managerial levels: Hotel General Managers and their immediate staff of Directors or Managers of the various operational departments, such as Rooms, Reservations, Sales, Housekeeping, Front Office, etc. In essence, she provides managerial leadership and direction to the hotel managers. She evaluates their performance under several different measures (for example revenues and market share, guest satisfaction, hotel quality, owner/operator satisfaction, employee engagement, etc.). She prepares an action plan for each area of the hotel's operation that is designed to improve its performance and efficiency. She then evaluates how well each department has implemented its action plan, which includes performance evaluations of the General Manager and departmental managers themselves. Although she has no authority to hire and fire these managerial personnel, she does have authority to make those recommendations to the owners. The performance evaluations she provides to the hotel ownership are just as important, and taken just as seriously, as her recommendations on other matters relating to the operations of the hotel.

This is considered to be a managerial position within our organization, only one step below that of Vice President. [The beneficiary] is responsible for a very important aspect of our business, which is to ensure that we maximize not only revenue but also quality and customer satisfaction at all of our franchise hotels in Canada and the U.S. mountain states. She accomplishes this by evaluating and coaching the executive management teams at each of the hotels for which she is responsible, and by preparing action plans for the managers to help them improve the performance of their departments or their hotels and monitoring their results. These franchise hotels are not owned by [the petitioner], but clearly we have a

tremendous stake in their performance because they represent us by their use of the Radisson and Park Plaza brands. We in turn have to make sure that we assist them in every way possible to ensure their success. Therefore the managerial oversight and leadership that [the beneficiary] provides to these hotels is a very essential function to our organization.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Based on the above job description, the petitioner appears to be claiming to employ the beneficiary as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, *i.e.* identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function.

Based on the job description offered by the petitioner, the beneficiary prepares action plans for the hotels using the petitioner's Radisson and Park Plaza brand names, evaluates the implementation of the action plan, and coaches the hotels' executive management teams. The job description offered by the petitioner does not include a detailed outline of the day-to-day job duties to be performed by the beneficiary, such as the managerial or executive tasks involved in developing the action plan. Additionally, other than "work[ing] with management teams" at brand hotels, the petitioner has not defined the job duties associated with achieving the beneficiary's goal of "raising hotel revenues." As the beneficiary would spend 85 percent of her time at hotels in the United States and Canada, the petitioner has not explained how the beneficiary would be employed in a primarily managerial or executive capacity. Nor did the petitioner identify the job duties to be performed by the beneficiary during the remaining 15 percent of her time in the company office. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, the petitioner has not explained why the beneficiary's responsibility of implementing and evaluating action plans for hotels should be considered managerial or executive in nature. Rather, it appears that the beneficiary's responsibilities of analyzing such "measures" as "revenues and market share, guest satisfaction, hotel quality, owner/operator satisfaction, [and] employee engagement" according to a hotel's departments and devising an individual strategy for each department based on her evaluation of the particular area are synonymous with the non-qualifying operational tasks of maintaining the petitioner's hotel standards. As the petitioner has not identified any lower-level employees to be directed by the beneficiary, it would appear that the beneficiary would be responsible for gathering or computing any data necessary for the evaluations, which could range from surveying guests and employees to calculating a hotel's revenue. Based on the limited record, the AAO cannot determine what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Based on the above discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. For this reason, the petition will be denied.

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 AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petition that was filed by a different, but purportedly related employer. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary.

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 dismissed.