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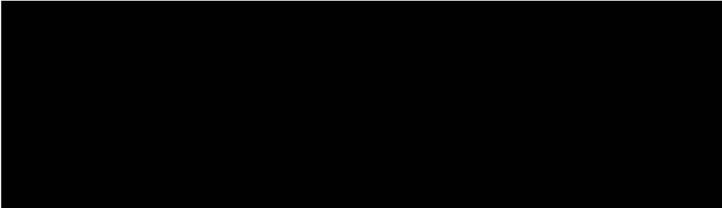
FILE: WAC 03 247 53400 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2006

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, California Service Center, denied the employment-based immigrant petition on December 6, 2004 and certified the matter to the Administrative Appeals Office (AAO) for review. Counsel for the petitioner also submitted a brief in support of an appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal and certification. The appeal will be sustained.

The petitioner avers: it is a branch office of Far East Trade Service, Inc., a foreign non-profit corporation qualified to do business in the State of California in September 1973. It provides two-way trade promotion and an information network in the United States. It seeks to employ the beneficiary as its executive 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 denied the petition on December 6, 2003, determining that the petitioner had not established: (1) that it was doing business in the United States; or (2) that it had the ability to pay the beneficiary the proffered annual wage of \$78,960.

On appeal, counsel for the petitioner asserts that the director's decision is in error and 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 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 first issue in this proceeding is whether the United States entity has the ability to pay the beneficiary's proffered annual salary of \$78,960.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Counsel claims that the beneficiary's wage is paid by its foreign office and that it is well established that a multinational executive may be paid from outside the United States. Counsel cites *Matter of Pozzoli*, 14 I&N Dec. 569 (BIA 1974), wherein the Regional Commissioner concluded that the use of the foreign qualifying entity's funds could also be used to support a beneficiary's wage in the context of the nonimmigrant petition. However, this matter concerns an immigrant petition and thus can be distinguished from the *Pozzoli* matter.

The AAO observes that the regulation cited above specifically requires that "an offer of employment must be accompanied by evidence that the prospective *United States employer* has the ability to pay the proffered wage." (Emphasis added.) In this matter the petitioner is a branch office of the foreign entity and does not generate any income of its own but rather depends on the foreign entity to pay its expenses including the beneficiary's salary. When analyzing a petitioner's ability to pay the proffered wage, the fundamental focus is whether the employer is making a "realistic" or credible job offer and has the financial ability to satisfy the proffered wage. *Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg. Comm. 1977). In this matter, the petitioner has established that the beneficiary was paid the proffered wage in the past and the AAO acknowledges that the foreign entity is sufficiently viable to continue to pay the beneficiary the proffered wage. The AAO concludes that the petitioner's ability to pay the beneficiary the proffered wage has been sufficiently established, the director's determination to the contrary is withdrawn.

The next issue in this proceeding is whether the petitioner has established that it is doing business and is not merely an agent for the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(3) states in pertinent part:

- (i) **Required evidence.** A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

* * *

- (D) The prospective United States employer has been doing business for at least one year.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part: "*Doing Business* means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

The record contains the petitioner's 2001, 2002, and 2003 Internal Revenue Service (IRS) Forms 1120-F, U.S. Income Tax Return of a Foreign Corporation. Appended to the 2001, 2002, and 2003 IRS Forms 1120-F is a statement indicating that:

Far East Trade Service, Inc. is a branch of a Taiwan Corporation whose activities in the United States are the promotion of trade to and from and the improvement of business conditions between Taiwan and the United States. The branches of the Far East Trade [S]ervice in the U.S. are supported in whole by funds received from the "parent" company in Taiwan and have no U.S. source income or receipts. Therefore, Far East Trade Service, Inc. is not subject to income taxes.

The IRS Forms 1120 also indicate that the petitioner's only source of revenue is from its "parent company."

The record also contains the petitioner's California Forms DE-6, Employer's Quarterly Wage Report, including the report for the quarter in which the petition was filed. The petitioner's 2003 California Form DE-6 for the third quarter shows the petitioner employed nine individuals including the beneficiary.

The record further contains the petitioner's Certificate of Qualification as a foreign corporation to transact intrastate business in the State of California in September 1973; the petitioner's lease to occupy premises in Santa Clara, California; the petitioner's business tax registration certificates for the city and county of San Francisco; and the petitioner's "parent company's" May 2002 brochure which sets forth its mission as a non-profit trade promotion organization in the Republic of China on Taiwan (R.O.C.) to help promote foreign trade, to assist Taiwan businesses and manufacturers to reinforce their international competitiveness and to cope with challenges faced in foreign markets, as well as help foreign businesses establish a wider presence in Taiwan. The "parent company's" brochure further details its foreign offices, including the petitioner's, and indicates that its major functions include market development, trade information services, exhibitions, design promotion, convention services, and trade education. In an August 3, 2003 letter in support of the petition, the petitioner indicates that it functions to process Taiwan-America trade opportunities; assists with contacts to key companies and investors; provides American business people with information on Taiwan trade and industry profiles and programs; organizes purchasing shows; and has established a two-way trade promotion and information network in the United States.

The director denied the petition on December 6, 2004, determining that the petitioner served primarily as an operational agent of the Taiwanese parent organization; that the petitioner was not directly involved in the sale

and distribution of products; and that the petitioner's source of funding was only through the foreign entity. The director concluded that the petitioner was not doing business.

On appeal, counsel for the petitioner asserts that the petitioner is doing business by providing services, thus fulfilling the criteria of an organization that is doing business within the meaning of 8 C.F.R. § 204.5(j)(2)

Counsel's claim is persuasive. The critical focus in the definition of "doing business" is not whether the petitioner is an agent or representative office, but whether the entity constitutes the "mere presence of an agent or office" without conducting any business activities. The proper focus on this issue thus, is the nature and conduct of the petitioner's business activities, if any. In the matter at hand, the petitioner has presented information that it facilitates foreign trade between Taiwan and the United States by bringing together Taiwanese and American businesses through market development, trade information services, exhibitions, convention services, and trade education. The petitioner has adequately established that it is engaged in facilitating the regular, systematic, and continuous provision of services. The director's decision will be withdrawn as it relates to the question of whether the petitioner was doing business in a regular, systematic, and continuous manner.

The petition will be approved. 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 sustained.