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FILE: [Redacted]  
SRC 06 016 52615

Office: TEXAS SERVICE CENTER

Date: OCT 04 2006

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner is organized in the State of Florida as a limited liability company. It is engaged in the business of providing remodeling, repair, and renovation services and seeks to employ the beneficiary as its 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 on the determination that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. Although the director discussed her prior inquiries seeking an explanation or reconciliation of documentation that was found to be inconsistent with the petitioner's claim regarding its qualifying relationship with the foreign entity, the director made no determination as to whether the petitioner satisfied its burden of proof with regard to this additional issue of eligibility.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments. The petitioner's submissions also include all of the Form 1099s issued to the independent contractors that provided services for the petitioner in 2005, the year the petition was filed. Based on the information and documentation submitted regarding the beneficiary's proposed employment, the AAO concludes that the petitioner has successfully demonstrated that the beneficiary would primarily perform duties of a qualifying nature. Therefore, the AAO concludes that the petitioner had overcome the director's sole ground for denial.

Notwithstanding the AAO's favorable conclusion with regard to the beneficiary's proposed employment in the United States, the AAO concludes that the Form I-140 in the instant matter does not warrant approval based on the record as presently constituted. Accordingly, the remainder of the AAO's decision will address the basis for this remand, i.e., the petitioner's failure to establish that it has a qualifying relationship with the beneficiary's foreign employer.

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 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 support of the claim that the U.S. entity is majority owned by the beneficiary's foreign employer, the petitioner provided the following documentation:

1. The petitioner's Articles of Organization containing Articles I through IV and a Schedule of Membership. Article IV of the petitioner's Articles of Organization stated that the petitioner is a manager managed organization and identified its four individual managers: the beneficiary [REDACTED] and [REDACTED]. The petitioner's Schedule of Membership identified three owners: the foreign entity with 51% ownership, the beneficiary with 24.5% ownership, and [REDACTED] with 24.5% ownership.
2. The petitioner's 2003 and 2004 Form 1120 corporate tax returns with attached schedules. The Schedule Ks of both tax returns indicated that the petitioner had no foreign ownership.

On November 16, 2005, the director issued a notice of intent to deny (NOID) pointing out the discrepancy between the petitioner's claim regarding its ownership and Schedule Ks of the petitioner's tax returns. The petitioner was asked to resolve this inconsistency.

In response, the petitioner provided the following documentation:

1. Three membership certificates 5-7 breaking down the petitioner's ownership as provided in the Schedule of Membership.
2. The petitioner's stock transfer ledger reiterating the information provided in the membership certificates and showing that membership certificates 1-4 were voided due to error.
3. Documentation showing the petitioner's registration with the Florida Department of State, Division of Corporations. The document shows that the petitioner was organized as a limited liability company and that it is managed by the four individuals named in Article IV of the petitioner's Articles of Organization, a copy of which was resubmitted.
4. A banking information sheet showing the date the petitioner's checking account was opened and the balance of that account as of July 8, 2002.
5. A letter dated December 8, 2005 from the petitioner's accountant explaining that the Schedule Ks of the petitioner's tax returns for 2003 and 2004 were amended to reflect the petitioner's foreign ownership.

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). Despite the petitioner's apparent misconception, ownership and control are two separate elements and, therefore, must be individually addressed.

In the instant matter, while it appears that the petitioner has established common ownership with the foreign entity, the issue of control remains in question. More specifically, the record appears to show that majority ownership of the U.S. entity belongs to the beneficiary's foreign employer. However, control of the U.S. entity is held by the four managers identified in Article IV of the petitioner's Articles of Organization. Despite the petitioner's claim, the foreign parent company's control over the petitioner is not apparent based on the documentation provided. The petitioner submitted no documentation to establish that the foreign entity's ownership of 51% of the U.S. entity is sufficient to overcome any decision made by the company's four managers. This lack of documentation by the foreign entity coupled with the information provided in Article IV of the Articles of Organization suggest that the four individuals named as the petitioner's managers have control over the U.S. entity, not the majority owner.

Accordingly, the director is instructed to issue a request for additional evidence addressing this apparent inconsistency in an effort to establish who controls the U.S. petitioner.

**ORDER:** The decision of the director dated January 9, 2006 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which shall be certified to the AAO for review.