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20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: JUL 29 2008

SRC 06 116 50809

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 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 a Florida corporation that seeks to hire the beneficiary as manager of its operations 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 determined that the petitioner failed to establish that it has a qualifying relationship with a foreign entity and denied the petition. Specifically, the director determined that the documentation provided by the petitioner showed that it had issued more shares than it was authorized to issue and concluded that the petitioner failed to resolve this inconsistency.

However, a review of the submitted documentation shows that director's conclusion and underlying analysis of the submitted documentation were erroneous.

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 the instant matter, the petitioner submitted the foreign entity's minutes of a meeting that took place on August 22, 2001. The foreign entity's shares were redistributed as follows: 1,500 shares to [REDACTED], 1,500 shares to [REDACTED], 3,000 shares to [REDACTED] and 4,000 shares to [REDACTED]. Additionally, in response to the director's request for additional evidence, issued on May 22, 2006, and the notice of intent to deny, issued on December 5, 2006, the petitioner supplemented the record with stock certificates 1-9 identifying the recipients of its issued shares and the number of shares issued.

As properly pointed out by counsel on appeal, several of the stock certificates also contained information on the back showing how various shares were redistributed after their initial date of issue. Specifically, stock certificate nos. 1, 2, 6, and 8 all contain information on the back explaining how the originally issued shares were subsequently redistributed. A review of this highly relevant information shows that the redistribution of the petitioner's shares resulted in the following ownership breakdown: 150 shares to [REDACTED], 150 shares to [REDACTED], 300 shares to [REDACTED] and 400 shares to [REDACTED] Sanchez. It does not appear that the director noted the changes in distribution and, therefore, erred in her conclusion. As such, the director's decision will be withdrawn.

Nevertheless, the petitioner has not demonstrated that it meets the regulatory requirements specified in 8 C.F.R. 204.5(j)(3)(i)(B) and (5), which deal with the beneficiary's foreign and U.S. job duties, respectively, or the requirement specified in 8 C.F.R. 204.5(j)(3)(i)(D), which addresses the length of time the petitioner had been doing business in the United States prior to filing the Form I-140.

First, with regard to the beneficiary's job duties, while the petitioner provided organizational charts illustrating the hierarchy of and the beneficiary's position within each organization, the job descriptions for both positions are overly broad and fail to convey an understanding of the specific job duties the beneficiary performed abroad and would perform in the United States on a daily basis. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient, as 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). With this in mind, in providing a description of the beneficiary's past and proposed job duties, the petitioner must do so in such a way that explains what actual tasks have been and would be performed and how the beneficiary has been and would be relieved from having to primarily perform each organization's non-qualifying tasks. Thus, the petitioner should also disclose the names, position titles, and job duties of the individuals that perform the non-qualifying tasks within each organization. That being said, the AAO notes that the petitioner has not provided sufficient documentation to substantiate the hierarchies illustrated by the foreign and U.S. entity's organizational charts. While the petitioner has provided a number of tax documents with regard to the U.S. entity, these documents do not establish whom the petitioner employed at the time the Form I-140 was filed. Rather, the latest quarterly wage report submitted by the petitioner applies to the last quarter of 2004, which is more than one year prior to the date the petition was filed.

Second, the petitioner has not provided sufficient documentation to establish that it was doing business for one full year prior to filing the petition as mandated by 8 C.F.R. 204.5(j)(3)(i)(D). While the petitioner has provided numerous sales and purchase invoices to establish that it had been doing business in March 2005, or one year prior to the filing date of this Form I-140, the petitioner has not provided any invoices from November 2005 through the date of filing to show business transactions for one full year prior to filing the present petition.

Lastly, by definition, a multinational organization is one that conducts business in two or more countries, one of which is the United States. *See* 8 C.F.R. 204.5(j)(2). In the present matter, the most recent documentation of the foreign entity's business transactions is dated September 2005, which is seven months prior to the date the Form I-140 was filed. As such, the petitioner has failed to submit sufficient documentation to establish

that it and its foreign counterpart were simultaneously conducting business in the United States and at least one other country at the time the petition was filed.

In accordance with the new findings discussed above, the director is instructed to issue another request for evidence in an effort to establish whether the petitioner meets the eligibility criteria specified above. The director may also request any other additional evidence that he may deem necessary in order to establish the petitioner's eligibility to classify the beneficiary as multinational manager or executive.

ORDER: The decision of the director dated April 18, 2007 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.