U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

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APR 19 2004

FILE: WAC 02 025 55222 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, 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 sustained.

The petitioner is a California corporation that claims to be an affiliate of Neeraj Bhatia & Co., located in India. The petitioner is in the business of providing accounting and consulting services. It seeks to employ the beneficiary as its president. 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 had not established that it has a qualifying relationship with a foreign entity.

On appeal, counsel refutes the director's findings and submits a statement and additional evidence in support of his assertions.

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.

The issue in this proceeding is whether the petitioner has established a qualifying relationship with a foreign entity.

The regulations at 8 C.F.R. § 204.5(j)(2) state 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; or

(C) In the case of a partnership that is organized in the United States to provide accounting services, along with managerial and/or consulting services and markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United states partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

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 petition, the petitioner provided its stock certificates and its stock transfer ledger, as well as a separate breakdown of shares regarding the foreign entity. In response to one of the director's three requests for additional evidence, the petitioner submitted a copy of the foreign entity's partnership deed, which restates the ownership breakdown that the petitioner previously submitted.

The director denied the petition based on the conclusion that the petitioner failed to establish that it has a qualifying relationship with a foreign entity. The director focused, in part, on a discrepancy he discovered between the petitioner's stock certificates and the ownership of shares as indicated in the petitioner's stock transfer ledger. He also determined that based on the ownership breakdown of the petitioning and foreign entities, it cannot be determined that they are similarly owned and controlled.

On appeal, counsel claims that the petitioner is an accounting firm that fits under the regulatory definition of *affiliate* given at 8 C.F.R. § 204.5(j)(2)(C) and as such does not have to establish that it has a qualifying relationship with a foreign entity. However, aside from establishing that both entities are accounting firms, which have the beneficiary's last name as a part of their name, counsel has provided no substantial evidence to show that the petitioner fits the requirements cited by 8 C.F.R. § 204.5(j)(2)(C). Counsel has not provided evidence that the petitioner's name is internationally recognized or that the petitioner has an agreement with a worldwide coordinating organization. Therefore, counsel has failed to establish that the petitioner fits under this definition of affiliate.

Counsel also explains that the numerical discrepancies recited by the director are merely a matter of clerical error and provides an updated stock transfer ledger that reflects that same share ownership as was indicated in the stock certificates submitted earlier. Although the director is correct in pointing out the initial discrepancy, it must be noted that the beneficiary was consistently shown as the majority stockholder, even in the first

stock transfer ledger. Therefore, the inconsistency cannot be deemed material such as to negate the petitioner's claim of a qualifying relationship.

On review, all documents submitted by the petitioner indicate that the beneficiary is the majority owner of the stock in both the U.S. and foreign entities. Therefore, the director's decision is hereby overturned.

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 sustained that burden.

ORDER: The appeal is sustained.