U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 286 52820 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 business engaged in software development. It indicates that it is the parent of Project Technology International, Ltd., located in the United Kingdom. It seeks to employ the beneficiary as its research and development 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.

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 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 the petitioner has established that it has 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;

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 a letter, dated September 20, 2002, submitted in support of the petition, the petitioner stated that it is the parent company of a foreign subsidiary. The petitioner specified that the foreign entity was established on November 1, 1996, 12 years after the founding of the U.S. petitioner which was incorporated in 1985. The petitioner also provided a description of the U.S. and foreign entities' respective organizational structures as well as the beneficiary's prior and proposed job duties with the foreign entity and the U.S. petitioner.

On March 24, 2003 the director issued a request for additional evidence. The petitioner was instructed to submit evidence of a qualifying relationship, as well as additional information regarding the beneficiary's job duties. On June 12, 2003 the petitioner responded to the director's request by resubmitting information regarding the beneficiary's foreign and U.S. job duties, the U.S. entity's organizational chart, and information regarding the employees under the beneficiary's direct control. The petitioner also submitted evidence regarding the ownership of the U.S. entity, as requested in the director's prior notice. It is noted that the director's request did not include any documentation regarding the ownership of the foreign entity.

Nevertheless, the director denied the petition based on the determination that the documentation submitted did not establish that the petitioner is owned and controlled by the foreign entity. The director disregarded the petitioner's initial and subsequent claims indicating that the foreign entity, rather than the petitioner, is the subsidiary company in the claimed parent/subsidiary relationship. Furthermore, on appeal, the petitioner submitted a copy of the foreign entity's annual report for 2002, its tax return, and copies of the U.K. public records that indicate that the petitioner is the owner and parent of the foreign entity, which employed the beneficiary. Thus, the documentation submitted by the petitioner on appeal further supports the claim that the petitioner has maintained since filing the petition—that the foreign entity is the U.S. petitioner's subsidiary, not the other way around. The petitioner has entirely overcome the director's erroneous conclusion.

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.