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

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 1 4 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 director denied the employment-based preference visa petition and the matter is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn. The matter will be remanded to the director for entry of a new decision.

The petitioner is a California company that seeks to employ the beneficiary as its vice president. The petitioner, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C).

The director denied the petition because the beneficiary did not work for the foreign entity immediately preceding the filing of the petition and, therefore, the beneficiary could not satisfy the regulation at 8 C.F.R. § 204.5(j)(3)(i)(A).

On appeal, counsel submits a brief.

Section 203(b) of the Act, 8 U.S.C. § 1153(b), 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.

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, 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. 8 C.F.R. § 204.5(j)(1). 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 an executive or managerial capacity. Such a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The petitioner avers that it: (1) is a subsidiary of [redacted] of the People's Republic of China (China); (2) sells plush toys that are manufactured by the foreign entity; and (3) employs nine persons. When filing the I-140 petition, the petitioner claimed that the beneficiary was in the United States in B-1 status, which was valid until December 4, 2002. The petitioner is offering to employ the beneficiary permanently at a salary of $30,000 per year.

The issue to be discussed in this proceeding is whether the beneficiary has satisfied the regulation at 8 C.F.R § 204.5(j)(3)(i)(A), which states that the beneficiary must have been employed by a qualifying foreign entity

in a managerial or executive capacity for at least one year in the three years immediately preceding the filing of the petition.

In an October 30, 2002 letter that accompanied the petition filing on November 13, 2002, the petitioner stated that the beneficiary worked for the foreign entity as the manager of the trading department from January 1997 until January 2001. The petitioner indicated further that the beneficiary had left employment in January 2001 to work for and that the beneficiary was currently employed with

In a May 22, 2003 Notice of Intent to Deny, the director asked the petitioner to "submit evidence of the business relationship between [the petitioner] and ." In response, the petitioner stated, "There is NO business relationship between [the petitioner] and ." According to the petitioner, in order to satisfy the regulation at 8 C.F.R. § 204.5(j)(3)(i)(A), the beneficiary must have been employed by for at least one year during the period of November 13, 1999 through November 13, 2002, which is the three-year period immediately preceding the filing of the petition. The petitioner stated that employed the beneficiary from January 1997 until January 2001, although the beneficiary was working for an unrelated company when the petition was filed.

The director denied the petition for the petitioner's failure to meet the provisions of 8 C.F.R. § 204.5(j)(3)(i)(A). The director noted that the beneficiary's employer immediately preceding the filing of the petition was not the foreign entity but a company unrelated to the petitioner

On appeal, counsel states that the director's decision was "a clear mistake of law." Counsel contends that the beneficiary satisfies the regulation because for a 14-month period in the three years immediately preceding the filing of the petition, employed the beneficiary in a managerial capacity. Counsel states specifically:

> [O]ffice refused to consider as the related company overseas and/or the beneficiary's employment with in the past 3 years immediately preceding the filing of the petition but solely focused on the business relationship between the beneficiary'[s] employer overseas at the time [of] filing and the U.S. petitioner. . . . Officer clearly mistook the pertinent law . . . to request the beneficiary to be currently working for either the U.S. petitioner or its foreign related company. Since the law only requires the alien to be employed by the related company overseas for at least 1 year in the immediate 3 years preceding the filing of the petition, it allows any interruptions between the alien's employment with the related company overseas and the alien's proposed employment with the U.S. petitioner.

Counsel's assertions regarding the regulation at 8 C.F.R. § 204.5(j)(3)(i)(A) are correct. Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C), states clearly that multinational managers and executives are those individuals who in the three years preceding the filing of petitions for this classification have been employed for at least one year by a firm or corporation, or other legal entity, or an affiliate or subsidiary thereof, and who seek to enter the United States to continue to render services to the same employer or to a subsidiary or affiliate thereof, in a capacity that is managerial or executive. This immigrant visa category does allow for an interruption between the beneficiary's overseas employment with a related foreign entity and his or her

proposed U.S. employment. As long as the beneficiary had been working in a managerial or executive capacity for a foreign entity related to the petitioner for at least one year, and this one-year period of employment occurred in the three-year period that immediately preceded the filing of the petition or the beneficiary's entry into the United States as a nonimmigrant, then the regulations at 8 C.F.R. § 204.5(j)(3)(i)(A) or (B) have been satisfied.

The director's decision must be withdrawn and the matter remanded for him to consider several issues. First, the director must establish whether there is sufficient evidence to establish that Ninja and the petitioner share a common relationship as described at 8 C.F.R § 204.5(j)(3)(i)(C). Second, if a common relationship between the two entities does exist, the director must determine whether the beneficiary's employment was in a managerial or executive capacity. Finally, the director must also address whether the proffered position in the United States fits the definition of managerial or executive capacity.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issues described above, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of July 16, 2003 is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.