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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B4

DATE: JUL 0 6 2011 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 appeal will be dismissed.

The petitioner is a Florida corporation that 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 denied the petition finding the petitioner ineligible for the immigration benefit sought. First, the director concluded that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's claimed foreign employer. Second, the director found that the petitioner failed to show that the beneficiary was employed abroad in a managerial or executive capacity for at least one out of the three years prior to entering the United States as a nonimmigrant.

On appeal, the petitioner disputes the adverse decision, asserting that the petitioner has the requisite qualifying relationship with the beneficiary's foreign employer and that the U.S. and foreign entities are both actively doing business. The petitioner also provided translations of the foreign entity's corporate documents.

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 first issue in this proceeding is whether the petitioner has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner

must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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 present matter, the director found that the petitioner failed to provide certified English translations of the foreign entity's corporate documents and, on the basis of this finding, concluded that the petitioner failed to establish the existence of a qualifying relationship with the foreign entity. However, in light of the evidence of record indicating that the petitioner is a subsidiary of the foreign entity, the AAO finds that the director placed undue emphasis on the foreign entity's ownership and overlooked the essence of the petitioner's claim, which focuses on the foreign entity's ownership of the U.S. entity.

Here, the record includes a stock certificate showing that the petitioner issued 400 out of an authorized 500 shares of its stock to the foreign entity, thus indicating that the foreign entity is the majority owner, or the parent entity, in a parent-subsidiary relationship with the petitioner. The AAO further notes that with the additional evidence the petitioner submitted on appeal, the documentary deficiency the director cited in the denial has been adequately addressed and rectified. Therefore, the AAO withdraws the first ground as a basis for finding the petitioner ineligible.

The second issue in this proceeding calls for an analysis of the beneficiary's employment abroad in an effort to determine whether the petitioner meets the provisions of 8 C.F.R. § 204.5(j)(3)(i)(B), which requires the petitioner to establish that the beneficiary who is already employed in the United States by the same employer, or by a subsidiary or affiliate of the beneficiary's foreign employer, was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his or her entry to the United States as a nonimmigrant. Thus, prior to determining whether the petitioner meets the provisions of 8 C.F.R. § 204.5(j)(3)(i)(B), two key elements must be considered. First, U.S. Citizenship and

Immigration Services (USCIS) must consider whether the beneficiary was employed abroad in a qualifying managerial or executive capacity. Second, USCIS must consider whether the beneficiary's qualifying employment took place during the prescribed period for the required duration.

In the present matter, the director focused on the second element and thus issued a request for additional evidence (RFE) dated November 4, 2008, informing the petitioner that the record lacked clarity as to whether or not the beneficiary was employed abroad for one year during the required three-year time period. The director instructed the petitioner to specify the following: the name of the foreign entity where the beneficiary was employed abroad, the beneficiary's period of employment, and the date when the beneficiary entered the United States as a nonimmigrant.

The AAO notes that, while the petitioner's June 27, 2007 support letter indicates that the beneficiary was employed by [redacted] Ltda. as the company president, the specific dates of the beneficiary's employment with the foreign entity were not provided. The AAO further notes that the foreign entity's payroll documents were not accompanied by certified English language translations.

Accordingly, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad for the required duration within the relevant three-year time period. This finding was based on the director's determination that the foreign and U.S. entities' payroll records provided conflicting information with regard to the beneficiary's employment abroad in that the beneficiary was shown as being simultaneously employed by both entities during overlapping time periods.

On appeal, although the petitioner restates the grounds for denial, the appellate brief focuses primarily on establishing that the U.S. and foreign entities have a qualifying relationship and are both doing business. *See* 8 C.F.R. § 204.5(j)(2) for a definition of the term *doing business*. The petitioner did not provide any evidence establishing the specific time period of the beneficiary's employment abroad with the qualifying entity. Therefore, the petitioner failed to establish that the beneficiary meets the specific provisions of 8 C.F.R. § 204.5(j)(3)(i)(B) and on the basis of this conclusion, the instant petition cannot be approved.

Additionally, while not addressed in the director's decision, the AAO finds that the petitioner failed to adequately address the first element of 8 C.F.R. § 204.5(j)(3)(i)(B), which requires the petitioner to establish that the beneficiary's foreign employment was within a qualifying managerial or executive capacity, or the primary element of 8 C.F.R. § 204.5(j)(5), which requires that the petitioner provide a detailed description of the beneficiary's proposed job duties to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. In order to meet either element, a detailed description of the beneficiary's job duties is crucial. Published case law establishes that the actual duties themselves 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).

In the present matter, the AAO acknowledges that the petitioner provided percentage breakdowns in an attempt to specify how the beneficiary allocated her time during her employment abroad and how she would allocate her time during the proposed employment with the U.S. entity. However, both job descriptions are overly broad and fail to establish that the beneficiary was employed abroad and that she would be employed in the United States in a primarily managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd,* 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional grounds of ineligibility discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 not sustained that burden.

ORDER: The appeal is dismissed.