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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: **FEB 2 3 2012** OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: [redacted]

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:

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 Texas corporation that seeks to employ the beneficiary as its finance 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 submit sufficient credible documentation to establish that: (1) a qualifying relationship exists between the petitioner and the beneficiary's claimed foreign employer; (2) the beneficiary was employed by the claimed foreign entity during the requisite three-year time period; (3) the foreign entity was doing business abroad from 2004-2008; and (4) the U.S. entity continues to do business. The director also questioned the petitioner's submission of documents pertaining to MRA Enterprises, Inc., stating that the significance of these documents is unclear.

The AAO notes that an explanation has been provided clarifying [redacted] relationship to the petitioner. However, as [redacted] is not the petitioning entity in the present matter, any documents or information that do not pertain either to the beneficiary's U.S. employer or her alleged employer abroad are not pertinent to the matter at hand and need not be addressed in this proceeding. The AAO further notes that the petitioner has submitted sufficient evidence to address the director's concern regarding the petitioner's business activity beyond the year 2004. As such, the AAO concludes that the adverse finding in No. 4 above can now be withdrawn. The remainder of the director's adverse findings will be fully addressed in the discussion below.

On appeal, counsel submits an appellate brief in which she attempts to address and resolve some of the inconsistencies and deficiencies that were discussed in the director's decision.

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 to be address in this proceeding is whether the petitioner submitted sufficient credible documentation to establish that it has a qualifying relationship with the entity that employed the beneficiary abroad. 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;
>
> * * *
>
> *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 statement dated October 26, 2005, which the petitioner appended to the Form I-140, the petitioner stated that it is wholly owned by [redacted] where the beneficiary's alleged employment commenced in 1999. The petitioner included a copy of its [redacted] which was filed on June 24, 2002 and which authorized the issue of no more than 100,000 shares of stock, and two copies of stock certificate no. 1 accompanied by a stock transfer certificate showing that all 100,000 shares of the petitioner's stock were transferred to the above named foreign entity on June 24, 2002.

On March 24, 2009, the director issued a notice of intent to deny (NOID) instructing the petitioner to provide further evidence to establish that the U.S. entity and the beneficiary's foreign employer share common ownership and control. The director informed the petitioner that documentation that was submitted in support of a previously filed petition (with receipt no. [redacted], which was filed on behalf of the beneficiary's spouse, was contradictory and resulted in revocation of that petition based on a finding of fraud.

In response to the NOID, the petitioner resubmitted a copy of stock certificate no. 1 and the stock transfer certificate. In addition, the petitioner provided a detailed breakdown of the ownership of each of the

petitioner's alleged foreign affiliates. The list included the entity that was previously claimed as the beneficiary's foreign employer as well as the petitioning entity itself. Ownership of the foreign entity was shown to include three individuals— [redacted] owning 40% and [redacted] and the beneficiary each owning 30% of the foreign entity. Ownership of the U.S. entity was said to include only the beneficiary's foreign employer, UREB. The petitioner also provided the original [redacted] pertaining to the beneficiary's foreign employer. It is noted that both documents named only two owners for the foreign entity— [redacted] owning six shares and [redacted] owning four shares for a total of ten issued shares.

On June 20, 2009, the director issued a notice denying the petitioner's Form I-140 based, in part, on the conclusion that the record lacks sufficient credible documentation establishing that a qualifying relationship exists between the petitioning entity and [redacted] the beneficiary's alleged employer abroad. The director referred to Form L-101-ACK (which pertains to a retail permit or license) in which the beneficiary's spouse attested to being owner of 1,000 shares of the petitioner's stock. The director determined that the information attested to by the beneficiary's spouse with regard to the petitioner's ownership is inconsistent with the claim that the petitioner has maintained all along, claiming that [redacted] is the sole owner of the petitioning employer.

On appeal, counsel for the petitioner objects to the [redacted] communicating information to U.S. Citizenship and Immigration Services (USCIS) and asserts that [redacted] has no jurisdiction over immigration matters. Counsel also contends that USCIS had an obligation to disclose to the petitioner and its counsel any documents that were relied upon to reach an adverse conclusion regarding the petitioner's eligibility for the immigration benefit sought herein.

Counsel's assertions, however, are unfounded and are not supported by any statute, regulation, or case law precedent. Contrary to counsel's assertion, USCIS is under no legal obligation to provide counsel or the petitioner with copies of documents that are used to reach an adverse conclusion. In fact, counsel was made fully aware of the documents in question and the contents thereof and counsel was therefore free to approach either USCIS or the [redacted] for photocopies of the same. Moreover, there was nothing preventing counsel from advising the petitioner as to the severity of the conflicting information and assisting the petitioner in resolving the inconsistency.

In the present matter, rather than resolving the inconsistency, counsel introduced new facts, which the AAO deems insufficient in overcoming the director's adverse finding. Specifically, counsel asserts that during a meeting that was purportedly held on October 27, 2005 the directors of "the United Group" resolved to issue 1,000 shares to the beneficiary's spouse, in addition to the 100,000 shares that were purportedly already issued to [redacted] thus indicating that the petitioner issued a total of 101,000 shares of stock. In support of this explanation, counsel refers to appeal exhibit no. 14, which consists of a photocopied extract from [redacted] alleged minutes of meeting showing that the foreign entity's three directors agreed to issue 1,000 shares to [redacted] "as incentive for his role as [redacted]" However, in light of the fact that [redacted] attestation, which was found on Form L-101-ACK pertaining to retailer permits and licenses, was made on October 3, 2003, the AAO finds both counsel's assertion and the corroborating minutes of meeting highly suspect and lacking in credibility.

Additionally, there was no indication, either in the directors' resolution or in the record, to suggest that any amendments were made to the petitioner's original Articles of Incorporation, which, along with the petitioner's issued stock certificate, expressly show that the petitioner was authorized to issue a maximum of

100,000 shares of stock. Therefore, in addition to the above discrepancies, the AAO further finds that counsel's assertion and the excerpt from the director's minutes of meeting are entirely inconsistent with the Articles of Incorporation.

As previously stated in the director's decision, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Therefore, while the submission of documents such as stock certificates, stock ledgers, or statements from company officers would, under ordinary circumstances, be sufficient to establish the elements of ownership and control, the circumstances in the present matter, where USCIS has pointed to documentation that contradicts the petitioner's original ownership claim, call for scrutiny of objective documentation, other than that which is internally generated by the petitioner or by the foreign entity that is claiming to be the petitioner's owner.

In this matter, counsel's assertion of inconsistent claims and the petitioner's introduction of evidence that contradicts the originally submitted documentation give rise to serious questions concerning the validity of the petitioner's claims and the evidence submitted in support thereof. As such, the AAO finds that the petitioner has failed to provide adequate documentary evidence that would establish that the petitioner and the beneficiary's alleged foreign employer are commonly owned and controlled. On the basis of this initial finding the instant petition cannot be approved.

The second issue to be addressed in this proceeding is the beneficiary's employment abroad. Specifically, the AAO will examine the record to determine whether the beneficiary was employed abroad in accordance with the provisions specified at 8 C.F.R. § 204.5(j)(3)(i)(B), which requires the petitioner to establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to his entry to the United States as a nonimmigrant to work for the same employer.

In the original October 26, 2005 support statement, the petitioner claimed that the beneficiary assumed the position of finance executive manager with [redacted] in 1999. The record shows that in support of the beneficiary's claimed employment with [redacted] the petitioner submitted: (1) the foreign entity's organizational chart in which the beneficiary was identified as the finance executive manager, alongside one executive and two managerial positions, with a finance and accounts manager as her direct subordinate; and (2) a letter dated February 12, 2002 on the foreign entity's letterhead stating that the beneficiary was employed by the foreign entity as a finance manager from September 1999 until November 2001. It is noted that, while the employment letter is signed, the name of the signing party appears only in signature form and the signature is illegible. While the words "authorized signatory" appear directly below the signature line, it is unclear who signed the employment letter or whether that individual was indeed authorized to sign as indicated.

In the director's March 24, 2009 NOID, the petitioner was informed that the record lacks evidence of the beneficiary's employment abroad. The director further noted that the organizational chart that was submitted in connection with an immigrant petition (with receipt number [redacted] did not include the beneficiary either in the claimed position of finance executive manager or in any other capacity.

In response to the director's request, the petitioner provided a statement from counsel dated April 22, 2009 in which counsel explained that the beneficiary was employed abroad by two different affiliate entities—[redacted] and [redacted]—as finance manager of [redacted] and as finance director of [redacted] Counsel stated that nine separate companies comprise what he referred to as the [redacted] companies. Counsel also strayed from the original claim—that the beneficiary was employed abroad by [redacted]—and instead asserted that the beneficiary "primarily worked" for [redacted] which is one of the companies included in the [redacted] With regard to the organizational chart submitted by [redacted] in association with the immigrant petition filed on his behalf, counsel attempted to resolve the inconsistency that was pointed out by the director in the NOID by stating that [redacted] record contained an organizational chart that described the hierarchy of [redacted] and since the beneficiary in the present matter was primarily employed by [redacted] according to counsel's revised claim, it was reasonable for the [redacted] chart, which was found in [redacted] record, to exclude the beneficiary. Counsel then referred to [redacted] organizational chart, which was submitted with the NOID response in an effort to establish that the beneficiary was employed abroad during the statutorily requisite time period.

In the June 20, 2009 denial of the petition, the director indirectly rejected counsel's assertions, repeating the inconsistency between the petitioner's original claim regarding the beneficiary's overseas employment and the organizational chart submitted in regard to the immigrant petition that was filed on behalf of the beneficiary's husband. The director pointed out that the organizational chart that was originally submitted in support of the Form I-140 regarding the beneficiary showed her as an employee of [redacted]. The director also pointed out that in the beneficiary's Biographic Information Sheet, Form G-325A, which was previously submitted with the beneficiary's Application to Register or Adjust Status to Permanent Residence, Form I-485, and was signed by the beneficiary on November 30, 2004, the beneficiary answered "N/A" when requested to provide employment information going back five years from the date the Form G-325A was signed.

On appeal, counsel again reasserts the prior claim made in response to the NOID, claiming that the beneficiary worked for both [redacted] Counsel further claims that because the beneficiary held a directorial position with [redacted] she was not included in [redacted] organizational chart even though she worked and continues to receive remuneration from the latter entity. With regard to the Form G-325A anomaly, counsel contends that, having allegedly held a directorial position, the beneficiary did not consider herself an employee and therefore assumed that the question regarding employment was not applicable to her particular set of circumstances. Counsel asks the AAO to review appellate exhibit no. 16, which consists of a sworn affidavit signed by the beneficiary where she restated counsel's explanation.

After conducting a comprehensive review of the record, the AAO finds that counsel's explanations are not credible and lack probative value.

First, as a preliminary concern, the AAO notes that precedent case law prohibits a petitioner from making material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO finds that the new information offered by counsel for the first time in the response to the director's NOID is highly suspect, as it is entirely inconsistent with the petitioner's original claims and supporting documents. While counsel seemingly provides an explanation to establish the purpose for leaving the beneficiary's name out of the [redacted] organizational chart that was submitted in support of the Form I-140 where the beneficiary's spouse was the beneficiary, he offers no explanation as to why the beneficiary's name was included in the [redacted]

organizational chart that was submitted in support of the instant Form I-140 that has been filed on the beneficiary's behalf. If, as counsel now claims, the beneficiary was primarily employed by [redacted] it is unclear why none of the original supporting documents made any mention of such employment and why the petitioner instead submitted an employment letter and an organizational chart both of which indicated that the beneficiary was claiming employment abroad under the auspices of [redacted].

Next, the AAO notes that neither counsel's explanation nor the affidavit that the beneficiary provided in support of the appeal is sufficient to overcome the considerable anomaly that the beneficiary created by indicating that she was not employed during the five-year period that preceded the date she signed her Form G-325A. It is clear, based on the originally submitted organizational chart and employment letter, that the beneficiary was claiming to be an employee of [redacted] Whether this claim is credible is a separate issue altogether and must be explored, as in the present proceeding, by reviewing all of the documentation that has been submitted thus far. However, regardless of the credibility of the beneficiary's employment claim, the fact remains that the evidence submitted initially in support of the petition strongly indicates that the petitioner's claimed eligibility hinged, at least in part, on its ability to establish that the beneficiary was an employee of a foreign entity that shares ownership and control with the U.S. employer.

The beneficiary's claim that she did not provide any information regarding her foreign employment simply because she did not consider herself to be an employee due to her alleged directorial position within the foreign entity's hierarchy is neither reasonable nor credible, as all of the petitioner's original claims were based on the beneficiary having been employed by [redacted] with a managerial position title. Counsel's reliance on an unreasonable and unsupported claim that was newly raised on appeal seems both disingenuous and misleading and will not be accepted as fact. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, the record in the present matter indicates that USCIS has reason to believe that certain facts asserted in the petition are not true. As such, USCIS may reject those facts. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In light of the inconsistent and misleading documentation that has been submitted with regard to the beneficiary's employment abroad, the AAO finds that the petitioner has failed to meet the criteria specified at 8 C.F.R. § 204.5(j)(3)(i)(B). On the basis of this second adverse finding the instant petition cannot be approved.

Lastly, the AAO will address the third ground that served as a basis for denial— the petitioner's failure to establish that the foreign entity was doing business abroad from 2004-2008.

The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office."

In the present matter, the NOID pointed out that the record lacks evidence of business conducted by UREB, including invoices, bills of sale, or product brochures of goods sold or produced by the company. The record further shows that in counsel's April 22, 2009 response statement in which he listed individually each item that was being submitted with the response, counsel provided Exhibit E, which contains documentation

pertaining to the [redacted] It is noted that Exhibit E consists of a single undated statement, which was signed by an authorized signatory whose signature is illegible and thus does not identify the signing party. The letter refers to the "present status of all the [redacted] and their stake holders" without specifying which documents pertain specifically to [redacted] i.e., the entity that the petitioner originally claimed as the beneficiary's foreign employer. The letter also indicates that "details are given in Annexure – I." However, none of the supporting exhibits that were submitted in response to the NOID were labeled "Annexure – I," thus precluding the AAO from being able to determine which documentation was specifically referenced. The AAO takes note of the purchase invoices, bills of property sales, project brochures, and property lease agreements that were submitted as part of Exhibits G, H, I, and J. All such documents named [redacted] as active parties. None of the documents listed [redacted] as an active party to any of the invoices or contracts provided.

On appeal, counsel asserts that USCIS overlooked relevant documentation because it was "being too preoccupied with the [redacted] involvement in this case." However, counsel's assertion is unfounded, as none of the previously submitted documents contained the information that the director requested in the NOID. Counsel's resubmission of evidence that was previously deemed insufficient does not overcome the director's adverse findings. Despite any common ownership [redacted] may share with other companies that are considered to be part of the [redacted]," the fact remains that each company under the group umbrella was separately established as an individual entity. As the petitioner originally claimed that the beneficiary's employment abroad was with [redacted] the only business activity that is relevant to the matter at hand is that which was conducted by [redacted] As previously noted, the altered claim that the beneficiary was "primarily" employed by [redacted] will not be considered in determining eligibility in the present matter. The only evidence and claims that will be considered concern the original claim. That being said, the petitioner has failed to provide evidence to show that [redacted] continues to engage in the provision of goods and/or services. As such, the AAO cannot conclude that the foreign entity continues to do business abroad. On the basis of this third finding the instant petition cannot be approved.

In light of the unfounded claims and documents created to support those claims, the AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO hereby enters a finding of fraud.

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.