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U.S. Citizenship  
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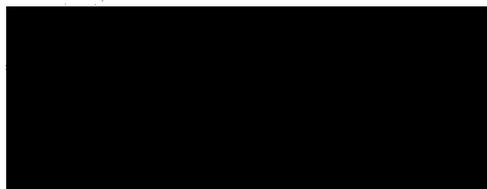


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2005  
WAC 04 016 51242

IN RE: Petitioner: [Redacted]  
Beneficiary: [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:



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 Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in August 2001. It constructs cabinets and furniture. It seeks to employ the beneficiary as its president and general manager. 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: (1) that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States entity or (2) a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner contends that the petitioner has proven that the beneficiary is fulfilling the position of an executive or manager and that the petitioner 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 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. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily

- i. manages the organization, or a department, subdivision, function, or component of the organization;
- ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- iv. exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision making; and

- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In an October 10, 2003 letter appended to the petition, the petitioner stated that the beneficiary would: (1) assume the position of president and general manager; (2) function as the U.S. liaison for purchasing and shipping; (3) oversee nine employees, including five assistant managers for purchasing, selling, market development, and shipping and product development, as well as, support staff who would report directly to him; (4) be responsible for hiring, firing, training, remuneration, promotions, discipline, and delegation of assignments; (5) manage and direct development activities pertaining to international marketing operations; (6) meet with corporate officials and department directors to ensure corporate philosophy is understood and delivered accurately; (7) represent concerns and requirements to headquarters; (8) provide contributions in the formulation of strategic product plans to ensure that the business and strategic policies are incorporated into international business activities; (9) establish and promote standardization of support and service; (10) meet with development units to review current policies and procedures and develop plans to ensure consistency of development practice; (11) formulate strategies and plans to improve communication between the U.S. based business development department and its Korean counterparts; and (12) establish and promote standardization in the delivery of information and products to the petitioner's clients.

The petitioner concluded the beneficiary's job description by stating that the beneficiary "would have autonomous control over, and exercise wide latitude and discretionary decision-making in, establishing the most advantageous courses of action for the successful management and direction of our international development activities."

On October 12, 2004, the director requested: (1) a more detailed description of the beneficiary's duties in the United States, including whom the beneficiary directs, their job title and position description; (2) a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition, which should include the names of all executives, managers, supervisors, and number of employees within each department or subdivision, and a brief description of job duties, educational levels, salaries/wages for all employees under the beneficiary's supervision; and, (3) the petitioner's California Forms DE-6, Employer's Quarterly Wage and Withholding Report for the last four quarters.

In an October 22, 2004 response to the director's request for further evidence in support of the petition, counsel for the petitioner stated: "As President of the company, [the beneficiary] is charge [sic] with determining all corporate decisions affecting the direction, growth, production and sales of his company." The petitioner also provided its organizational chart depicting the beneficiary as president, two employees in the production department, one employee in the sales department, and an unnamed accountant and secretary. The petitioner's California Form DE-6 for the quarter in which the petition was filed listed seven employees. Only two of the employees on the California Form DE-6, the beneficiary and a production employee, are also identified on the organizational chart.

On December 16, 2004, the director determined that: (1) the description of the beneficiary's job duties was general and did not provide sufficient detail regarding the beneficiary's actual duties and the percentage of time devoted to those duties; (2) duties such as managing and directing all development activities pertaining

to international marketing operations had not been shown to be managerial or executive responsibilities; (3) the beneficiary's responsibilities comprised duties or responsibilities for which the beneficiary primarily performed a task; (4) the petitioner did not possess the organizational complexity to warrant an executive position; and (5) the record indicated that a preponderance of the beneficiary's duties would be directly providing the services of the business. The director denied the petition concluding that the record did not establish that the beneficiary had been or would be employed in a qualifying managerial or executive capacity. The director also noted that the petitioner's California Form DE-6 for the quarter ending September 30, 2004 showed that the petitioner employed only the beneficiary, a production employee, and a salesperson.

On appeal, counsel re-states the description of the beneficiary's duties initially provided and asserts that the beneficiary's duties for the U.S. entity have been delineated with specifics and detail. Counsel also states that the description provided is a summary of the beneficiary's duties. Counsel contends that the beneficiary does not make the petitioner's custom cabinets but devised the company's plans to create custom cabinets for the claimed parent company's manufactured speakers. Counsel notes that the petitioner provided copies of its California Forms DE-6, which show that the petitioner has on average throughout its existence, seven employees. Counsel claims that the beneficiary hired personnel to carry out the supervision and production of the company's product lines.

Counsel's contentions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Counsel, on appeal, asserts that the petitioner has provided a specific and detailed description of the beneficiary's duties but also notes that the description is a summary of the beneficiary's duties. Upon review, the description of the beneficiary's duties initially provided is general and conclusory. For example, responsibility for managing and directing development activities pertaining to international marketing operations; formulating strategic product plans to ensure business and strategic policies are incorporated into international business activities; establishing and promoting standardization of support and service are all generic duties associated with operating a company. Likewise, meeting with department and development units to review policies and procedures and developing plans to ensure consistency are all general principals connected with operating a company. It is not sufficient to state that the beneficiary manages and directs development activities and formulates strategies and promotes standardization without providing pertinent details regarding the daily tasks required and exercised to carry out the general duties. The petitioner does not explain how these general responsibilities and principals elevate the beneficiary's position to that of a manager or executive as defined by the regulations. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, on October 12, 2004, the director specifically requested a more detailed description of the beneficiary's duties. In response, counsel for the petitioner provided only a general and conclusory statement indicating that the beneficiary: "As President of the company, [the beneficiary] is charge [sic] with determining all corporate decisions affecting the direction, growth, production and sales of his company." The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion may deem necessary. The purpose of the request for evidence is to elicit further information that

clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this matter, the initial recitation of the beneficiary's vague job responsibilities and broadly-cast business objectives did not establish the beneficiary's managerial or executive capacity. The petitioner failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner, rather than providing a detailed description of the beneficiary's daily job duties, provided only a conclusory statement.

Further, the petitioner has provided conflicting and incomplete information regarding its staffing levels. The petitioner's California Form DE-6 for the quarter in which the petition was filed lists seven employees. This information does not correspond to the petitioner's organizational chart, although the director specifically requested that the petitioner submit a chart depicting its organizational structure as of the date the petition was filed. 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, even if Citizenship and Immigration Services (CIS) assumed that the petitioner employed seven individuals, directly overseeing employees and hiring, firing, training, remuneration, promotions, discipline, and delegating assignments are duties of a supervisor. The petitioner noted that its employees reported directly to the beneficiary, confirming that the beneficiary is a first-line supervisor. The AAO notes that although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. In this matter, the petitioner has not established that any of the beneficiary's subordinates' positions require the services of employees who possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that any of these employees primarily supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

In this matter, the petitioner has not substantiated that the beneficiary manages or directs the enterprise or an essential function of the enterprise through the work of others. The record contains disparate evidence regarding the petitioner's number of employees and little evidence of their job duties and titles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record is insufficient to establish that the beneficiary is relieved from performing primarily non-qualifying duties.

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the petitioner comprise primarily executive or managerial duties.

The second issue in this proceeding is whether the petitioner has established a qualifying relationship between the petitioner and the foreign entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

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.

The record includes inconsistencies regarding the petitioner's qualifying relationship with the foreign entity. The petitioner claims that the foreign entity owns 100 percent of its authorized issued shares. The petitioner provides its stock certificate number 1 to demonstrate this fact. However, as the director observed, the petitioner's 2002 and 2003 Internal Revenue Service (IRS) Forms 1120, U.S. Corporate Income Tax Return, show that the beneficiary owns 100 percent of the petitioner. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The record also contains numerous wire transfers from individuals unrelated to the foreign entity transferring funds to the beneficiary's account. The wire transfers do not assist in establishing that the foreign entity actually purchased the petitioner's stock.

On appeal, counsel acknowledged that the petitioner's corporate books and tax returns contained internal inconsistencies. Counsel offered a letter from the petitioner's accountant indicating that the original tax returns "mistakenly listed" the beneficiary as the petitioner's owner. Counsel offered amended tax returns that eliminated the reference to the beneficiary's ownership of the petitioner. However, the record does not contain evidence that the amended returns were filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg.

Comm. 1972)). Furthermore, evidence that the petitioner creates after CIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice. Finally, like a delayed birth certificate, the amended tax returns filed two to three years after the claimed transaction, if filed at all, raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

The petitioner has not substantiated its qualifying relationship with the foreign entity in this matter. Neither counsel nor the petitioner has provided sufficient evidence to verify a foreign entity, rather than the beneficiary, owns the petitioner. Neither counsel nor the petitioner has submitted evidence to sufficiently resolve inconsistencies in the record. 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. *Matter of Ho*, 19 I&N Dec. at 591-92. Finally, the assertions of counsel without documentary evidence to support the claim will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.