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U.S. Citizenship
and Immigration
Services

BU

JUN 20 2005

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 03 094 52252

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:

[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

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

The petitioner indicates it is a corporation established in June 1995 in the State of Florida. It is a restaurant. It seeks to employ the beneficiary as its restaurant manger. 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 would not be the beneficiary's actual employer and is therefore ineligible to file the petition on his behalf. The director observed that an employee leasing company has been and would be the actual employer.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on November 18, 2004, counsel for the petitioner indicated that a brief or evidence would be submitted within 30 days. Counsel did not indicate why the brief would be submitted late or otherwise provide good cause for the requested extension. To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision. Regardless, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief is denied as a matter of discretion for failure to show good cause.

The statement on the appeal form reads:

The alien meets the standard of Section 203(b)(1)(C), since:

- A. The alien has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof.
- B. The alien was employed in the 3 years preceding the time of the alien's application for classification and admission into the United States.
- C. The alien 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.

Specifically, the alien was employed abroad by Porcao and seeks to enter to render managerial services to its affiliates.

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.

Counsel's incomplete iteration of the statute regarding multinational executives and managers does not identify an erroneous conclusion of law or a statement of fact in the director's decision as a basis for the appeal; thus, the regulations mandate the summary dismissal of the appeal. The petitioner does not provide evidence that the beneficiary is or will be employed by the petitioner. Accordingly, the AAO concurs with the director's decision and affirms the denial of the petition.

Moreover, 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. 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 petitioner did not provide evidence that it is the same employer or an affiliate, or subsidiary of the beneficiary's foreign employer. The record shows that the petitioner is a Florida corporation and the majority stockholder is Florida Hunters Corporation. The record shows that several individuals own the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The only association between the petitioner and the foreign entity is through a franchise agreement. However, an association between a foreign and U.S. entity based on a franchise agreement is usually insufficient to establish a qualifying relationship. As in the present matter, if the petitioner is a separate and distinct entity from the foreign entity and the foreign entity does not own or control the United States entity, there is no qualifying relationship between the two entities. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual").

Counsel's assertion that the petitioner is a "branch" of the foreign entity is not persuasive. The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(I)(1)(ii)(J). If the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. 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).

Inasmuch as the petitioner's statement does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal. Moreover, the record does not establish a qualifying relationship between the petitioner and the beneficiary's foreign employer.

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 summarily dismissed.