U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: [illegible]
WAC 03 254 54831

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

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's December 18, 2004 decision will be withdrawn and the matter will be remanded to the director for further consideration.

The petitioner is a corporation organized in the State of California in April 1993. It operated a hotel when the petition was filed and now purchases and exports dacron, chemicals, and plastic articles to China. It seeks to employ the beneficiary as its vice-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 determined that the petitioner had not established a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that the petitioner is a wholly owned subsidiary of the beneficiary's foreign employer, thus a qualifying relationship has been established.

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 issue in this proceeding is whether the petitioner has established a qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer. 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:
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> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
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> (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.
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> *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.
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> *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 petitioner initially provided: (1) a copy of its Articles of Incorporation filed with the California Secretary of State in April 1993; (2) its stock certificate number 1, dated November 10, 1993, issuing 800,000 shares to Hebei Grand Hotel, the beneficiary's foreign employer; (3) its stock certificate ledger showing that the foreign entity paid $80,000 for the 800,000 issued shares; (4) a grant deed showing the petitioner purchased property in the County of Los Angeles, California;[1] (5) a certificate of occupancy dated February 28, 1995 showing the petitioner as the building and owner of a Days Inn & Suites, located at [redacted] California (hereinafter [redacted] property); (6) an undated (but expiring December 31, 2003) business license certificate stating that [redacted][2] is the owner of the Days Inn & Suites located at the [redacted] and, (7) the petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, for the years 2001 and 2002, indicating that the beneficiary's foreign employer wholly owned the petitioner.

In an August 11, 2004 request for evidence, the director asked that the petitioner provide the following documentation related to the claimed parent-subsidiary relationship: (1) original wire transfers documenting

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[1] The grant deed referenced an Exhibit A detailing the legal description of the property conveyed but the record does not contain the Exhibit A.

[2] Other documents in the record indicate that [redacted] is the petitioner's corporate secretary.

funds transferred from the foreign company to the United States entity, clearly showing where the funds originated; (2) if funds did not originate from the foreign entity, an explanation of the source of funds and the names of all account holders, depositing these funds and their affiliation to the foreign or U.S. company; (3) copies of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f) reflecting the total offering amounts; and, (4) a complete copy of the petitioner's franchise agreement, including all addenda, attachments, additional statements, exhibits, etc.

In an October 26, 2004 response, the petitioner: attached copies of wire transfers from 1994 to 1997 totaling $2,825,000 from Hebei Grand Hotel to the petitioner; noted that its federal and state tax returns showed the value of its capital stock as $2,350,644; attached a notarized copy of an April 19, 1996 Modification of Deed of Trust indicating that no one other than the trustor (the petitioner) held an interest in the Monterey Park property; and attached a copy of its February 10, 1999 license agreement with Days Inns of America, Inc.

The wires transfers included:

A wire transfer dated December 15, 1994 in the amount of $1,400,000;
A wire transfer dated December 28, 1994 in the amount of $500,000;
A wire transfer dated February10, 1995 in the amount of $35,000;
A wire transfer dated January 13, 1997 in the amount of $500,000; and
A wire transfer dated January 17, 1997 in the amount of $390,000.

In a decision dated December 18, 2004, the director denied the petition determining that: (1) "the evidence of stock ownership is immaterial because the petitioner is a 'Franchisee of Days Inn of America, Inc.';" (2) because the foreign entity is allowed to use the name of the franchising organization but must comply with certain operational restrictions, there can never be any actual control of the petitioning organization by the foreign entity; and (3) the franchisor (Days Inns of America, Inc.) essentially controls the store while the petitioner (the franchisee) has only purchased the license to operate it. The director concluded that the petitioner had failed to establish eligibility for this visa classification.

On appeal, counsel for the petitioner asserts that the evidence submitted demonstrates that the petitioner purchased the [redacted] property in 1995, the Monterey Park property was transferred to the petitioner, the petitioner has operated the [redacted] property since 1995, and has been responsible for the [redacted] property's payment of all Federal and State income, payroll, and property taxes. Counsel also asserts that the "Days Inn Franchise Agreement" never transferred control, ownership, property title, equity interest, employees, or tax obligations from the petitioner or its parent company to Days Inns of America, Inc. Counsel contends that the director erred by characterizing the evidence of stock ownership as immaterial and erred by concluding that Days Inn owned the Monterey Park property.

Counsel's assertions are persuasive. The qualifying relationship at issue in this matter is that between the U.S. petitioner and the beneficiary's foreign employer. *See* section 203(b)(1)(C) of the Act. In this instance the U.S. petitioner, High Stone Group International, Inc., employs the beneficiary, not Days Inns of America, Inc. The record contains the petitioner's California Forms DE-6, Quarterly Wage Reports substantiating that the petitioner employed the beneficiary. The record also contains evidence that Hebei Grand Hotel employed the

beneficiary prior to his entry into the United States. As such, the "qualifying relationship" that the petitioner must establish in order to satisfy the regulatory requirements for this visa classification is the relationship between the foreign entity and the petitioner. The license held by the petitioner to use the "Days Inns & Suites of America" name does not affect the qualifying relationship between the U.S. petitioner and 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 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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N at 362. Without full disclosure of all relevant documents, Citizenship and Immigration Services (CIS) is unable to determine the elements of ownership and control.

Here, the totality of the record supports the petitioner's claim of a parent-subsidiary relationship. To establish ownership and control, the petitioner presented a copy of the stock certificate issued by the organization and its stock transfer ledger, which identified the foreign entity as the sole shareholder. The petitioner submitted its IRS Forms 1120 and wire transfers all evidencing the foreign entity's interest in the petitioner. Because the petitioner has demonstrably traced the money from the claimed parent company to the United States petitioner, the petitioner has sufficiently demonstrated the consideration furnished to the entity in exchange for stock ownership.

Although the record contains some minor discrepancies regarding the foreign entity's ownership of the petitioner, these discrepancies appear administrative and do not overcome the numerous bank statements, wire transfers, and IRS Forms 1120 showing the beneficiary's foreign employer capitalized and owns the petitioner. The record confirms the existence of a qualifying relationship as required in Section 203(b)(1)(C) of the Act.

Although the director's decision on this issue will be withdrawn, an examination of the record reveals a number of issues that must be addressed prior to the approval of the petition.

The petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). When the petition was filed, the petitioner's organizational chart and California Forms DE-6, Employer's Quarterly Wage Report confirmed the petitioner's employment of sixteen employees. Although the petitioner did not provide a comprehensive description of the beneficiary's duties, the totality of the record suggested that the beneficiary would be working in a managerial capacity. However, in response to the director's request for further evidence on August 11, 2004, the petitioner revealed that it had sold its major asset, a hotel, in January 2004, and was now in the business of exporting goods to China. The petitioner noted that it employed only the beneficiary and the president of the organization who spent the majority of his time in China. The petitioner also noted that it had hired an employee to engage in market research and that once the petitioner purchased a warehouse, it would hire an additional six to eight employees. This drastic reduction in workforce and change in business requires further examination regarding the beneficiary's continued managerial or executive capacity. The AAO also observes that if significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is no longer supported by the facts in the record.

Moreover, the change in the petitioner's type of business may require examination of other issues concerning the petitioner's regular, systematic, and continuous provision of goods or services and its continuing ability to pay the beneficiary the proffered wage.

Accordingly, this matter will be remanded for the purpose of a new decision. 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. The director must afford the petitioner reasonable time to provide evidence that is pertinent to the above issues, 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.

ORDER: The director's decision of December 18, 2004 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.

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