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FILE: WAC 04 192 53300 Office: CALIFORNIA SERVICE CENTER Date: **APR 24 2006**

IN RE: Petitioner:   
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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation operating as a manufacturer and wholesale distributor of water purification systems and other water-based products. It seeks to employ the beneficiary as its president and chief executive officer. 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 establish that it has a qualifying relationship with the beneficiary's foreign employer and denied the petition.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments.

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 primary issue in this proceeding is whether the petitioner has a qualifying relationship with the beneficiary's foreign employer.

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 June 24, 2004 statement appended to the petition, counsel stated that the U.S. and foreign entities are affiliates by virtue of the beneficiary's majority ownership of both entities. Specifically, the petitioner indicated that the beneficiary owned 67% of the foreign entity that employed him and 100% of the U.S. entity that currently employs him and which would continue to employ him under an approved petition. As its first exhibit, the petitioner provided a separate statement dated February 6, 2004 indicating that in 1990

beneficiary's foreign employer, merged with [REDACTED]. The petitioner did not provide further information regarding the merger or its effects on the beneficiary's ownership interests, which were key in establishing the necessary qualifying relationship between the U.S. petitioner and the beneficiary's foreign employer. See 8 C.F.R. § 204.5(j)(3)(i)(C).

On April 13, 2005, the director issued a request for additional evidence (RFE) suggesting that further information was needed to establish whether a qualifying relationship exists between the beneficiary's foreign employer and the U.S. petitioner.

The petitioner's response included a letter dated June 30, 2005 in which the petitioner discussed the beneficiary's ownership interests in various Japanese companies, including his foreign employer. The petitioner stressed the beneficiary's ownership and control of 67% of [REDACTED] stock at the time of the beneficiary's U.S. employment as an L-1A nonimmigrant. The petitioner also provided sufficient evidence establishing that the beneficiary owns 100% of the petitioner's stock.

On August 23, 2005, the director issued a decision discussing the beneficiary's ownership of the U.S. petitioner and his claimed ownership of [REDACTED], the petitioner's foreign affiliate company. However, the director denied the petition concluding that the petitioner no longer has an affiliate relationship with [REDACTED], the beneficiary's foreign employer, as a result of the latter company's merger with [REDACTED].

On appeal, counsel asserts that the merger between the beneficiary's foreign employer and [REDACTED] is irrelevant in light of the petitioner's current affiliate relationship with [REDACTED]. However, pursuant to the regulation at 8 C.F.R. § 204.5(j)(3)(i)(C), the petitioner must support its Form I-140 with initial evidence that establishes, "The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed

overseas[.]” (Emphasis added). This provision clearly states that the qualifying relationship with the beneficiary's foreign employer must exist at the time the Form I-140 is filed. The fact that the beneficiary's foreign employer was still in existence in 1990 when a Form I-129 was filed on behalf of the beneficiary is not sufficient for the purpose of establishing eligibility under the provisions of 8 C.F.R. 205.4(j), which pertain to a specific type of immigrant petition.

In the instant matter, the exhibits provided on appeal include a sworn affidavit from the beneficiary in which the beneficiary clearly states that he sold all of his shares in [REDACTED] in 1993. As such, any relationship that may have existed between the beneficiary's overseas employer and the current petitioner was severed and ceased to exist as of the date the beneficiary sold his shares in the foreign entity.

Counsel asserts on page three of the appellate brief that the only issue before the AAO is whether the petitioner and [REDACTED] have a qualifying affiliate relationship. Contrary to counsel's assertion, however, a qualifying relationship between these two companies is entirely irrelevant, since there is no indication that the beneficiary was employed by [REDACTED] in a qualifying managerial or executive capacity for at least one out of three years prior to the beneficiary's entry into the United States as a nonimmigrant.

The petitioner's record of proceeding shows that the beneficiary first entered the United States as an L-1A nonimmigrant in February of 1991. His lawful stay as an L-1A nonimmigrant was extended to December 3, 1993 and on December 13, 1993 the service center approved a petition to change the beneficiary's status to that of an E-2 nonimmigrant. The record suggests that the beneficiary has since remained an employee of the petitioning organization. There is no indication that the beneficiary left the United States to work for [REDACTED] at any time prior to the date the instant Form I-140 was filed. While the AAO does not dispute the beneficiary's apparent advisory role within the [REDACTED] organization, there is no documentation to establish that he has ever been an official employee of that company. In fact, in a letter dated June 30, 2005 (which was submitted in response to the RFE) the petitioner clearly states that even though the beneficiary holds the title of president and chief executive officer of [REDACTED] has never paid the beneficiary a salary. As such, [REDACTED] cannot be deemed the beneficiary's foreign employer for purposes of meeting the requirements specified in 8 C.F.R. § 204.5(j)(3)(i)(C). Rather, the beneficiary's foreign employer is a company, which, by the beneficiary's own admission, ceased to exist more than ten years prior to the date the instant Form I-140 was filed. Accordingly, the AAO finds that the dissolution of the beneficiary's foreign employer precludes the petitioner from being able to establish the requisite qualifying relationship. For this reason, the petitioner's Form I-140 cannot be approved.

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.