



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 04 136 51008

OFFICE: TEXAS SERVICE CENTER

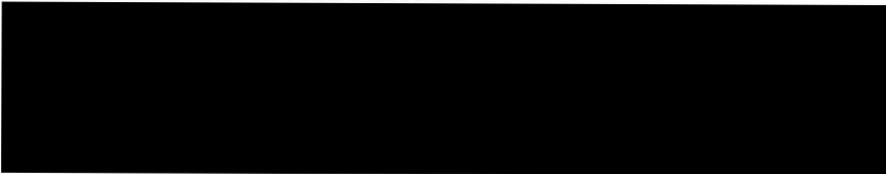
Date: DEC 27 2006

IN RE: Petitioner:
Beneficiary:



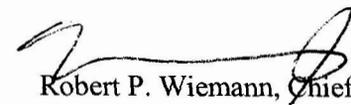
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Florida limited liability corporation operating as a used **automobile dealership and as a** financing services provider. The petitioner indicates that it is an affiliate of the [REDACTED] the beneficiary's foreign employer. It seeks to employ the beneficiary as its 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 denied the petition based on the petitioner's failure to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel disputes the director's conclusions and submits a brief in support of his arguments. No additional evidence was submitted.

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 issue in this proceeding is whether the petitioner established that it 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;

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 director denied the petition concluding that conflicting evidence of the ownership of the petitioner prevented her from finding that a qualifying relationship existed between the petitioner and the foreign employer. The director further concluded that the two or three individuals that own the U.S. entity are not the same persons who own the foreign entity.

On appeal, counsel reiterates the initial claim of the petitioner that it is an affiliate of the foreign entity by way of the majority ownership and control of both entities by one individual.

The assertions of counsel are persuasive. Although the petitioner failed to document the apparent 2003 sale of the remaining 40% of the membership units from [REDACTED] to [REDACTED], it is clear from the evidence of record that at no time after February 2003 did the majority owner of the petitioner relinquish majority ownership and control of either the U.S. or foreign entities. Therefore, the AAO finds that sufficient evidence has been submitted to show that the petitioner is an affiliate of the foreign employer.

As such, the AAO finds that the petitioner has overcome the director's sole ground for denial and hereby withdraws the director's decision. This office sees no other grounds for denying the petition.

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 in the instant case has sustained that burden.

ORDER: The appeal is sustained. The decision of the director is withdrawn and the petition is approved.

