

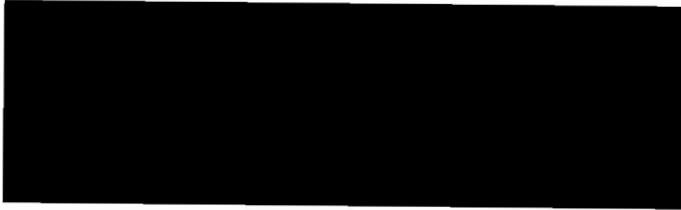


U.S. Citizenship  
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FILE: WAC 02 287 53843 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2006

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, Director  
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 sustained.<sup>1</sup>

The petitioner is a California corporation claiming to operate as a manufacturer of electrical equipment. It seeks to employ the beneficiary as its vice president of operations. 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 a foreign entity and that it has the ability to pay the beneficiary's proffered wage.

On appeal, counsel disputes the director's conclusions and submits additional evidence to support the petitioner's claim.

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

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<sup>1</sup> The AAO also notes that CIS records reflect that the beneficiary is a lawful permanent resident. The electronic record for the beneficiary's permanent A-file (██████████) reflects that he entered as a "non-preference immigrant" on August 6, 1969, at the age of seven. Accordingly, these proceedings appear to be

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 first issue in this proceeding is whether the petitioner has a qualifying relationship with a 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;

*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 denial the director referred to the U.S. entity as [REDACTED] (from hereon) and stated that [REDACTED] (from hereon) owns 100 shares of that entity. While the director accurately restated the ownership breakdown of [REDACTED], he was incorrect in referring to this company as the petitioner. The petitioner in this case is [REDACTED] (from hereon), not [REDACTED]. The director seemingly missed the crucial distinction between these two companies, which resulted in the conclusion that the petitioner submitted conflicting information regarding the number of shares it issued and the par value of those shares. A thorough review of the record indicates that [REDACTED] originated from a company called [REDACTED] (from hereon), which sold 3,785 of its shares to [REDACTED] on August 31, 1999. The record contains the stock certificate and stock power transfer to evidence this transaction. The record also contains [REDACTED] Restated Articles of Incorporation. The first clause of this document, which was dated August 8, 2001, states that the name of the company shall now be [REDACTED], the petitioner in the instant case. Further, Schedule L, No. 22 of [REDACTED] 1999 tax return accurately shows the issuance of 3,785 shares during the second half of that tax year. The subsequent tax returns for the years 2000 and 2001 accurately reflect [REDACTED] new name, [REDACTED], and continue to show the issuance of 3,785 shares in Schedule L, No. 22 in regard to the shareholder liability.

The director's apparent confusion regarding the issuance of 100 shares at a par value of \$.01 per share seems to have resulted from his failure to acknowledge that the 100 shares was issue by PPI, not by PPSI. Therefore, based on the contemporaneous evidence submitted in support of the petition, the AAO concludes that the petitioner has established that it has a qualifying relationship with the foreign entity.

The other issue in this proceeding is whether the petitioner has adequately established its ability to pay the petitioner's proffered wage.

8 C.F.R. § 204.5(g)(2) states the following, in pertinent part:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the denial the director focused on the petitioner's tax returns for 1999, 2000, and 2001, all of which showed significant net operating losses. The director concluded that such operating losses are an indication of the petitioner's inability to pay the beneficiary's proffered wage of \$180,000 annually. However, on appeal, the petitioner submitted the beneficiary's personal tax returns and his W-2 wage statement for 2002, the year during which the petition was filed. This document clearly indicates that in 2002 the beneficiary's gross wages totaled \$181,532.61. Therefore, based on this documentation submitted on appeal, the petitioner has successfully overcome this portion of the director's denial.

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 sustained that burden.

**ORDER:** The appeal is sustained.