

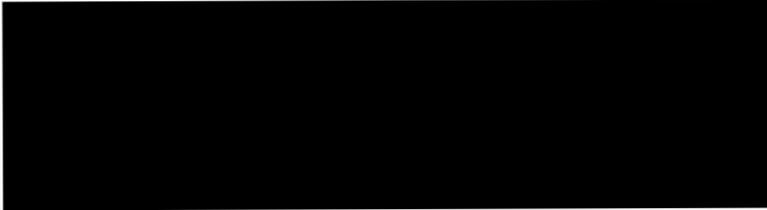


U.S. Citizenship
and Immigration
Services

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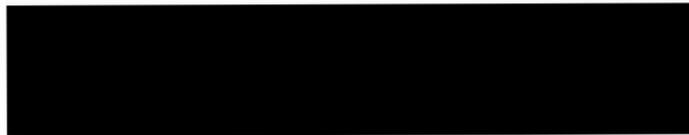
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FILE: WAC 03 149 53890 OFFICE: CALIFORNIA SERVICE CENTER Date: MAR 09 2006

IN RE: Petitioner:
Beneficiary:



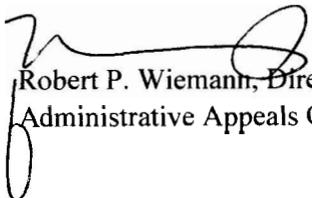
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

The petitioner was incorporated on the Territory of Guam and is a tour operating enterprise. The petitioner indicates that it is an affiliate of the beneficiary's foreign employer [REDACTED] located in Japan. It seeks to employ the beneficiary as manager of its tour counter division. 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.

On appeal, counsel disputes the director's conclusions and submits additional evidence regarding the common ownership of the petitioner and the beneficiary's foreign employer.

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 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 sole 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.

In support of the initial petition, the petitioner submitted the following documents regarding the ownership of the petitioner and the beneficiary's foreign employer:

1. Exhibit 3, page 55 providing a consolidated list of affiliates commonly owned by Japan [REDACTED]. Included in that list are the beneficiary's foreign employer, the petitioner, and [REDACTED], the petitioner's direct owner.
2. Exhibit 5A amending the petitioner's Articles of Incorporation and changing the petitioner's name from [REDACTED] to [REDACTED].
3. Exhibit 5B. Unanimous Consent to the Adoption of a Resolution by the Board of Directors of [REDACTED] Inc. approving the sale the company's shares to [REDACTED] U.S.A., Inc.
4. Exhibit 11, an audited financial statement for the petitioner identifying it as a wholly owned subsidiary of [REDACTED].

On June 16, 2004, the director denied the petition concluding that the petitioner and the beneficiary's foreign employer are not similarly owned. The director stated that while [REDACTED] owns 76.2% of the foreign entity, it does not own any part of the U.S. petitioner, 98% of which is evenly split between [REDACTED] and [REDACTED].

On appeal, counsel challenges the director's conclusion and submits a brief explaining the breakdown of the ownership of the U.S. and foreign entities in question. Counsel refers to the evidence previously submitted in support of the petition and asserts that the petitioner and the beneficiary's foreign employer ultimately have one common owner—[REDACTED]. A thorough review of the record indicates that this claim is well documented. The ownership breakdown as recited by the director was incorrect as of the

date the petition was filed. The petitioner submitted sufficient documentation indicating that the sale of the petitioner's stock to [REDACTED], which took place in 1999, effectively put the U.S. petitioner and the beneficiary's foreign employer under a common ownership umbrella making them affiliates. The director failed to consider this significant change.

On review, based on the evidence of record and the additional evidence submitted on appeal, the AAO finds that the petitioner has overcome the sole ground of the director's denial. There are no other grounds for denying this 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.