



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006
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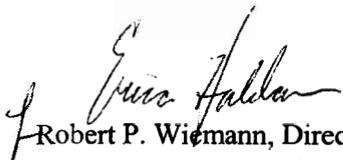
IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a corporation organized in the State of Nevada in July 2000 and authorized to conduct business in the State of California in August 2000. It manufactures, imports, wholesales, and distributes fashion apparel and law enforcement and security outerwear. It seeks to employ the beneficiary as its managing director and 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.

On August 15, 2005, the director denied the petition determining that the petitioner had not established that a qualifying relationship existed between the petitioner and the beneficiary's foreign employer; thus the beneficiary was not eligible for this visa classification. The director also referenced without discussing that the evidence failed to establish that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director failed to consider primary evidence submitted by the petitioner establishing a qualifying relationship and misinterpreted secondary evidence confirming the existence of a qualifying relationship.

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.

The record includes: the petitioner's stock certificates issued to four individuals in the same share amount; evidence that the same four individuals own the foreign entity, each holding the same proportionate interest; and the petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, for the 2002 and 2003 years. The four equal owners are identified as: [REDACTED] and [REDACTED]

The petitioner initially submitted IRS Forms 1120 that identified the beneficiary as the 100 percent owner of the petitioner's shares on Schedule E of each Form 1120. The same IRS Forms 1120 submitted, each included IRS Form 5472, Information Return of a 25 % Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. The IRS Forms 5472 identified [REDACTED] and [REDACTED] as at least 25 percent owners of the petitioner.

The director in a notice of intent to deny issued December 2, 2004, questioned the petitioner's identification of the beneficiary as the petitioner's 100 percent owner as detailed on Schedule E of the petitioner's IRS Forms 1120. In response, the petitioner provided a statement by its corporate accountant indicating that he incorrectly attributed 100 percent ownership of the petitioner to the beneficiary and referencing the IRS Form 5472 that correctly identified the other shareholders. The petitioner also provided copies of IRS Forms 1120X, Amended U.S. Corporation Income Tax Return, and copies of certified mail receipts addressed to the Franchise Tax Board.

The director denied the petition on August 15, 2005, determining that the statements made on the 2001 and 2002 IRS Forms 1120, raised doubts regarding the credibility of the copies of the stock certificates submitted. The director, quoting *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), also noted that a petitioner may not make material revisions to a petition for purposes of making a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. The director also noted that a husband and wife could not be considered a single entity in the absence of a voting agreement or proxies allowing one of them control over the U.S. entity.

On appeal, counsel re-submits the petitioner's amended IRS Forms 1120 and the petitioner's stock certificates and asserts the documents submitted establish a qualifying relationship exists between the petitioner and the beneficiary's foreign employer.

The record in this matter is persuasive in establishing that four individuals own the U.S. petitioner and the same four individuals also own the foreign entity. Thus, the companies are affiliates as both companies are owned and controlled by the same individuals. Based on the evidence submitted, it is concluded that the petitioner has established that a qualifying relationship exists between the U.S. and foreign organizations.

The AAO finds that the petitioner's original IRS Forms 1120 contained an internal inconsistency between the Schedule E and the Forms 5472. The petitioner's accountant acknowledged his error and rectified the internal inconsistency within the IRS Forms 1120. The AAO does not find that the amendments to the IRS Forms 1120, are revisions made for the purpose of conforming a deficient petition to CIS requirements; but rather, amendments to correct an internal inconsistency within the petitioner's own IRS Forms 1120. The AAO also observes that a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). In addition, the petitioner has clarified and resolved the one error in the record of proceeding identified by the director. Although the director in this instance has noted certain standards used when considering the issue of a petitioner's qualifying relationship, the director has failed to consider the entirety of the record when making his decision. Upon review of the totality of the record, the petitioner has provided sufficient evidence of a qualifying relationship with the beneficiary's foreign employer.

Moreover, the director's conclusory statement regarding the beneficiary's managerial or executive capacity is withdrawn..

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 been met. For the foregoing reasons the decision of the director will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.