

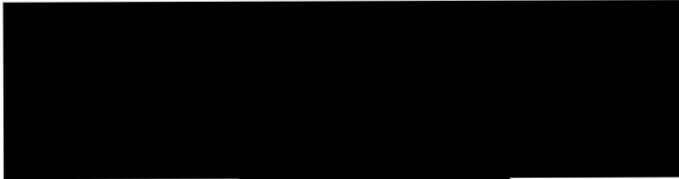


U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 06 2007

WAC 05 222 51113

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.¹ The appeal will be dismissed.

The petitioner is a California corporation² engaged in the business of importing, exporting, and selling garments. It seeks to employ the beneficiary as its vice 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. 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 findings 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.

¹ Instead of forwarding the appeal to the AAO as required by 8 C.F.R. § 103.3(a)(2)(iv), the director determined that the appeal was improperly filed and rejected it. Upon review, it is determined that the director lacked jurisdiction to take such action. Furthermore, contrary to the director's decision, the appeal was not untimely filed. Accordingly, the AAO will now review the appeal initially filed with the office on a de novo basis.

² The record contains documentation showing that the petitioner or its affiliate was incorporated in the state of New York on November 2, 1998.

The primary issue in this proceeding is whether the petitioner has established 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 a letter dated July 6, 2005, which was submitted in support of the petitioner's Form I-140, the petitioner stated that the beneficiary was employed abroad by Liaoning Times Garments Import and Export, Inc. (LTGIEI), located in China. The petitioner claimed that as of May 2002 all of its outstanding shares were transferred to the beneficiary's foreign employer. The petitioner stated that prior to the execution of a purchase and sale document, its outstanding shares were owned by Shenyang Garment Importing and Exporting Corporation (SGIEC). In support of these claims, the following documentation was provided:

1. A Statement and Designation by Foreign Corporation dated February 25, 2000. The statement identifies the petitioner as a New York corporation consenting to a California-based agent.
2. A California Certificate of Qualification indicating that the petitioner as a New York corporation is authorized to do business in the state of California as of February 25, 2000.
3. The petitioner's Articles of Incorporation filed in the state of California on December 10, 2001. Article IV indicates that the petitioner is authorized to issue 1,000,000 shares.
4. A State of California Statement by Domestic Stock Corporation filed on March 4, 2002. The document identifies the petitioner's officers and directors.
5. The petitioner's Articles of Incorporation filed in the state of California on September 10, 2003 showing the petitioner's change of address.

6. The petitioner's corporate tax returns for 2001-2004. The tax returns for 2001 and 2002 show the petitioner's employer identification number (EIN) as [REDACTED] and name SGIEC as the petitioner's foreign owner. The petitioner's tax return for September 10 through December 31, 2003 and for 2004 shows the petitioner's EIN as [REDACTED] and identifies [REDACTED] as the petitioner's owner. Additionally, Schedule L of the first two documents shows that the petitioner received \$600,000 in exchange of issued stock, while Schedule L of the second two tax returns shows that \$50,000 was received in exchange for the issuance of stock.
7. A sales agreement showing LTGIEI, the beneficiary's foreign employer, as the purchaser and SGIEC as the seller of its ownership interest in the petitioner. The purchase price is shown as \$600,000. The document is dated March 2002.
8. A fund transfer document dated May 10, 2002 showing LTGIEI as the originator and SGIEC as the recipient of \$600,000. The document indicates that the funds were transferred for the purpose of purchasing the petitioner's shares.
9. Stock certificate No. 1 issuing 1,000,000 shares of the petitioner's stock to LTGIEI on September 10, 2003. The stock certificate indicates that 1,000,000 shares are authorized.

On January 18, 2006, Citizenship and Immigration Services (CIS) issued a request for additional evidence (RFE) instructing the petitioner to provide the following documentation: 1) original wire transfer receipts showing the purchase of the petitioner's stock; 2) all issued stock certificates showing the names of all of the petitioner's shareholders; 3) the petitioner's stock ledger showing all stock certificates issued to the present date; and 4) the foreign entity's annual report showing its affiliates, subsidiaries, and/or branch offices and the corresponding percentage of ownership. The RFE also requested further explanation for the change in EIN some time during September 2003 (cited in No. 6 above) as well as [REDACTED]'s relationship and/or his possible ownership interest in LTGIEI.

In response, counsel submitted a letter dated April 4, 2006 reiterating the claim that LTGIEI purchased the petitioner's stock from SGIEC, the prior owner of the petitioning entity. In support of counsel's explanation, the petitioner resubmitted the documents cited in Nos. 7 and 8 above. With regard to the petitioner's change in its EIN, counsel explained that after purchasing the petitioner's stock, LTGIEI ordered a reorganization of the U.S. entity, which resulted in the new EIN. Counsel further stated that [REDACTED] was originally an employee of SGIEC, the petitioner's prior owner, and denied that [REDACTED] has any ownership interest in the petitioning entity although he does serve as the petitioner's president. The petitioner also provided the following additional documents:

1. Stock certificate No. 2 issuing 200 shares of the petitioner's stock to LTGIEI on May 10, 2002. The stock certificate indicates that only 200 shares are authorized.
2. Stock ledger showing that 200 shares were issued to SGIEC on November 2, 1998 via stock certificate No. 1. The issuer of the stock is not identified.
3. A separate stock ledger showing that 200 shares were issued to LTGIEI on May 10, 2002 via stock certificate No. 2. The issuer of the stock is not identified.

4. The petitioner's 2005 tax return complete with schedules and supplemental statements. Schedule E identifies [REDACTED] as 100% owner of the petitioning entity. The supplement to Schedule K, question 5 also identifies [REDACTED] as the owner of the filing entity.

In a decision dated May 1, 2006, the director denied the petition concluding that the petitioner failed to establish a qualifying relationship with LTGIEI, the entity currently claimed as its parent. The director commented on the petitioner's failure to submit documentation establishing a parent/subsidiary relationship between SGIEC and the petitioner, respectively, and stated that the failure to establish the nexus precludes CIS from giving validity to the sales agreement between SGIEC and LTGIEI. The director also commented on the inconsistency between the petitioner's claim regarding its ownership and Schedule E of the petitioner's tax returns for 2003-2005. Lastly, the director noted that while the petitioner provided LTGIEI's annual report, the document does not name the petitioner as a relation of the latter company. The director stated that the record does not establish anything beyond a possible business relationship between the petitioner and its claimed owner.

On appeal, counsel asserts that a parent/subsidiary relationship between SGIEC and the petitioner, respectively, is corroborated in the state of California stock certificate No. 1, issuing all 10,000 authorized shares to SGIEC, and the state of New York stock certificate No. 0, issuing all 200 authorized shares to SGIEC. The California stock certificate is accompanied by an Articles of Incorporation filed on June 12, 1996, indicating that the company was incorporated in California. The New York stock certificate is accompanied by a Certificate of Incorporation dated October 28, 1998, indicating that a company with the same name as that of the petitioner was incorporated in New York. However, counsel fails to address the most obvious confusion that arises from the submission of documents suggesting that the same company was incorporated twice—once in California in 1996 and a second time in New York in 1998. These two separate incorporations suggest that two separate entities have been created with the same name. Counsel also fails to explain why the California incorporation authorized 10,000 to be issued, while the later New York incorporation authorized the issue of only 200 shares. Furthermore, the record shows that the petitioner issued a total of four stock certificates. Rather than consolidate each stock issuance into a single stock ledger, the record contains four different stock ledgers, of which the two latest issuances fail to identify the transferor of the petitioner's stock. While counsel attempts to account for some of the confusion by discussing the petitioner's decision to reorganize and obtain a different EIN in the process, he fails to explain why stock certificate No. 1, dated September 2003, was issued after stock certificate No. 2, which was dated May 2002. Nor is there any explanation for the petitioner's issuance of two No. 1 stock certificates, each purportedly issuing the petitioner's stock to a different company.

Furthermore, counsel has failed to adequately address the director's valid concern regarding the claimed relationship between SGIEC and the petitioner, which is a necessary prerequisite to the claimed relationship between the petitioner and LTGIEI. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. In the present matter, the only documentation addressing the matter of SGIEC's ownership and control of the petitioner consists of the California and New York issued

stock certificates and the corresponding stock ledgers. The record lacks documentation establishing the latter company's original purchase of the petitioner's stock.

With regard to the tax returns that identify ██████ as the owner of the petitioner's stock, counsel explains that because LTGIEI cannot directly oversee a foreign subsidiary without government approval, it has chosen to use ██████ as its "proxy" in order to expedite the usual process. However, the only documentation submitted to corroborate counsel's claim is a photocopied letter signed by a claimed official of LTGIEI. The petitioner provided no evidence of the purported Chinese laws that resulted in the petitioner's misleading claim in Schedule E of its tax returns for 2003-2005. Moreover, the record shows that SGIEC, the petitioner's prior owner, was previously identified as the petitioner's owner. If LTGIEI ultimately acquired ownership of the petitioner's stock from SGIEC, it is unclear why LTGIEI did not follow its predecessor's example in claiming its ownership of the petitioner in the tax returns. The fact that the petitioner willingly circumvented Chinese law in denying its claimed business relationship with LTGIEI gives rise to serious doubt as to the petitioner's overall credibility.

That being said, even if the petitioner were able to establish the parent subsidiary relationship between SGIEC and the petitioner, the numerous inconsistencies and anomalies in the record create doubt as to the validity of the supporting documentation and the claim itself. 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). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested immigrant visa classification.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(B) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to entering the United States as a nonimmigrant. In the instant matter, the director specifically addressed this issue in the RFE by instructing the petitioner to provide a detailed analysis of the beneficiary's daily activities during her employment abroad as well as a percentage breakdown of time spent performing each duty. However, the petitioner failed to provide the requested information; nor did the petitioner provide any information regarding this issue when the Form I-140 was initially submitted. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Second, 8 C.F.R. § 204.5(j)(3)(i)(D) states that the petitioner must establish that it has been doing business for at least one year prior to filing the Form I-140. The regulation at 8 C.F.R. § 204.5(j)(2) states that doing business means "the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office." Although the petitioner provided sufficient documentation to establish that it has been doing business since February 2005, the relevant one-year period is from August 2004, the year prior to the date the Form I-140 was filed, through

August 8, 2005, the date of filing. The petitioner has provided no invoices or shipping documents to establish that it was doing business from August 2004 through January 2005. Although the petitioner provided 2003 and 2004 tax returns as well as bank statements, these documents are not accurate indicators of a company's business activity, as neither shows the frequency of the petitioner's purchase and sales transactions. As such, the AAO cannot conclude that the petitioner was doing business for the requisite 12-month period prior to filing the Form I-140.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional grounds of ineligibility as discussed above, this petition cannot be approved.

As a final note, service records show the petitioner's previously approved L-1 employment of the beneficiary. With regard to the beneficiary's L-1 nonimmigrant classification, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Furthermore, if any previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service

center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for 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 not sustained that burden.

ORDER: The appeal is dismissed.

FURTHER ORDERED: The director shall review the previously approved immigrant petition approved on behalf of the beneficiary for possible revocation pursuant to 8 C.F.R. § 205.2.