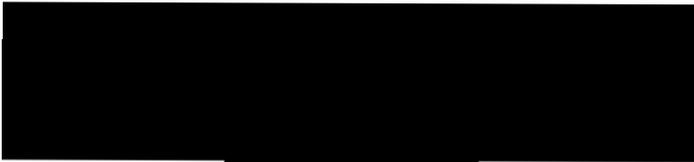


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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **JAN 11 2007**

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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 Director, Nebraska Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Wisconsin that is engaged in manufacturing environmental controls and automobile interiors. The petitioner seeks to employ the beneficiary in the position of manager-manufacturing quality.

The director denied the petition concluding that the petitioner had not established the existence of a qualifying relationship between the United States company and the beneficiary's foreign employer.

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) erroneously concluded that the United States and foreign entities do not enjoy a qualifying relationship. Counsel claims that the United States company owns the beneficiary's foreign employer in Mexico, thereby establishing a parent-subsidiary relationship. In support of the appeal, counsel submits a brief and affidavits from representatives of the petitioning entity and a second Mexican company purportedly related to the petitioner.

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 or 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 issue in this proceeding is whether the beneficiary's foreign employer and the United States company enjoyed a qualifying relationship at the time of filing the instant immigrant visa petition.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See generally § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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 petitioner filed the Form I-140 on October 27, 2005. In an appended letter, dated October 24, 2005, the petitioner represented the existence of the requisite qualifying relationship between the foreign and United States entities, stating that the beneficiary's foreign employer, [REDACTED] is a wholly owned subsidiary of the petitioning corporation. The petitioner attached an organizational chart depicting its 2005 "tax legal structure," on which the beneficiary's foreign employer was represented as an indirect subsidiary of the petitioning entity. Specifically, the organizational chart identified the following sequence of ownership between the petitioning company and I [REDACTED] the petitioner wholly owns [REDACTED], a Delaware corporation, which in turn owns 83.28 percent of [REDACTED] which in turn owns 100 percent of [REDACTED] which owns 100 percent of [REDACTED], which owns 100 percent of [REDACTED], the purported parent company of Industrias Savasa, the beneficiary's foreign employer. The petitioner also submitted a copy of its 2004 annual report. The petitioner did not provide additional evidence establishing the purported ownership of the respective companies identified above.

In a notice dated January 13, 2006, the director requested additional evidence of the parent-subsidiary relationship between the United States corporation and the beneficiary's foreign employer. The director informed the petitioner that "[i]nternally produced organizational charts are not sufficient to demonstrate a qualifying relationship, and the annual report submitted does not address specific subsidiaries." The director directed the petitioner to submit documentary evidence of the claimed interrelationship between the petitioner and I [REDACTED] and establishing [REDACTED] as a subsidiary of the petitioning entity. The director noted that relevant evidence may include "annual reports, statements from the organization's

president or corporate secretary, articles of incorporation, financial statements, and/or evidence of ownership of all outstanding stock for both entities."

In response, counsel for the petitioner submitted a March 24, 2006 letter, in which the petitioner again claimed a parent-subsidary relationship between the United States corporation and the beneficiary's foreign employer. As evidence of the purported qualifying relationship, the petitioner submitted the same "tax legal structure" organizational chart, and a partial copy of its Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ending September 30, 2003. The petitioner's Form 10-K consisted of Exhibit 21, which was a list of the petitioner's "significant subsidiaries." Among other companies, the list included [REDACTED] c. and [REDACTED] both named in the above organizational structure. The petitioner's list of "significant subsidiaries" did not include the other four companies named in the organizational chart.

In a May 3, 2006 decision, the director concluded that the petitioner had not demonstrated that the United States corporation and the beneficiary's foreign employer enjoyed a qualifying relationship on the date of filing. The director restated the purported corporate relationship outlined on the organizational charts submitted by the petitioner, and stated that the ownership of each corporation "is not corroborated by any actual documentary evidence." The director again noted that the organizational charts prepared by the petitioner are not sufficient to establish the qualifying relationship claimed to exist between the foreign and United States entities. The director also referenced the list adjoined to the petitioner's 2003 Form 10-K, stressing that the beneficiary's foreign employer is not named as a subsidiary. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on May 30, 2006. In a subsequently submitted appellate brief, dated June 29, 2006, counsel contends that CIS erred in concluding that the beneficiary's foreign employer is not a subsidiary of the petitioning corporation. With respect to the omission of the beneficiary's foreign employer on the petitioner's list of subsidiaries, counsel explains that the petitioner is required to list its "significant subsidiaries" only. Counsel points out that the petitioner included on its list of subsidiaries the company [REDACTED] the purported direct parent of [REDACTED]. The AAO notes that counsel did not define the term "significant subsidiaries," so as to clarify why the petitioner's list of subsidiaries would include only a few of the petitioner's purported subsidiary companies. Counsel further claims that the internally produced "tax legal structure" organizational chart demonstrates that [REDACTED] is the sole owner of the beneficiary's foreign employer.

- Counsel submits on appeal affidavits from the petitioner's paralegal manager and the manager of [REDACTED] Controls, Mexico, in which each attests to the corporate relationship outlined above and the petitioner's indirect ownership of the beneficiary's foreign employer. Counsel resubmits on appeal the "tax legal structure" organizational chart and the 2003 Form 10-K.

Upon review, the petitioner has not established the existence of a qualifying relationship between the United States entity and the beneficiary's foreign employer.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289

(Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

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. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Here, the petitioner identified six companies, claiming that the ownership of each resulted in an indirect parent-subsidary relationship between the United States company and the beneficiary's employer in Mexico. The petitioner, however, did not provide independent objective documentary evidence corroborating the purported ownership of [REDACTED] by [REDACTED] an acknowledged subsidiary of the petitioning entity. This evidence is essential to establishing a relationship between the petitioner and [REDACTED]. As noted by the director, the petitioner's internally produced organizational charts are not probative of the purported parent-subsidary relationship. The director specifically requested evidence related to the ownership of the beneficiary's foreign employer, which was to include "annual reports, statements from the organization's president or corporate secretary, articles of incorporation, financial statements, and/or evidence of [stock] ownership." The petitioner did submit any of the requested documentation establishing the foreign entity's ownership. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The limited documentary evidence offered by the petitioner in support of the purported parent-subsidary relationship is not sufficient to establish the requisite qualifying relationship between the petitioner and the beneficiary's foreign employer. The petitioner's Form 10-K, despite omitting Industrias Savasa from its list of subsidiaries, illustrates the petitioner's financial condition at the end of its fiscal year in September 2003, approximately two years prior to the instant filing date, thus allowing for changes in the organizational relationship identified on the petitioner's annual report. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must establish eligibility at the time of filing). The petitioner's 2004 annual report is equally insufficient in corroborating the claimed parent-subsidary relationship, as it does not address the petitioner's purported ownership of any United States or foreign companies. The AAO notes that the petitioner could reasonably be expected to submit documentation in addition to its annual report since Industrias Savasa is not listed in it as a subsidiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO recognizes that counsel submitted affidavits on appeal from the petitioner's paralegal manager and the manager of [REDACTED], Mexico, in which each attests to the purported chain of ownership between the petitioner and [REDACTED]. The AAO notes that the director requested a statement of ownership from the president or corporate secretary of either the foreign or petitioning entities. The submitted affidavits, without additional documentary evidence, are not sufficient to establish that the petitioner indirectly owns and controls the beneficiary's foreign employer. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Lastly, the AAO notes that three of the four payroll statements submitted as evidence of the beneficiary's foreign employment from July 25, 2004 through September 5, 2004 identify the company [REDACTED] as the beneficiary's employer. [REDACTED] is identified on the remaining payroll statement as the beneficiary's foreign employer. The inconsistent representations as to where the beneficiary was employed overseas raises the additional question of whether, if the beneficiary was in fact employed by [REDACTED], the petitioner possessed a qualifying relationship at the time of filing with [REDACTED], a company that is not specifically identified on the organizational chart presented by the petitioner. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Absent additional evidence, such as the documents specified above, verifying the ownership of the five organizations purportedly linking the petitioner and [REDACTED] the AAO cannot conclude that the petitioner possessed the claimed indirect ownership and control of the beneficiary's foreign employer at the time of filing the immigrant visa petition. Accordingly, the appeal will be dismissed.

The AAO recognizes that CIS previously approved a blanket petition filed by the petitioner on behalf of the beneficiary. The AAO notes that the petitioner submitted a copy of the first page of the Form I-797, but did not provide the attachment of the approved organizations included in the petition. It is not known whether [REDACTED] was approved under the blanket petition as a qualifying organization. However, based on the petitioner's representations, Industrias Savasa was incorporated in Mexico on July 31, 1996. The blanket petition utilized by the beneficiary was approved on May 10, 1996 (LIN 96 155 50274), therefore there is sufficient reason to believe that the beneficiary's foreign employer was not on the approved list of qualifying entities attached to the petitioner's blanket L approval notice. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of 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).

Regardless, it must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *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). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend

an L-1A petition's validity). Furthermore, 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. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approval and denying the immigrant 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. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.