



U.S. Citizenship
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FILE: LIN 06 200 52703 OFFICE: NEBRASKA SERVICE CENTER

Date: DEC 19 200

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Michigan corporation operating as an automotive interior parts designer and manufacturer. The petitioner seeks to employ the beneficiary as its quality manager. 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 denied the petition based on the determination that the petitioner failed to establish that it has a qualifying relationship with the foreign entity that employed the beneficiary abroad.

On appeal, counsel disputes the director's findings and submits a brief and further documentation 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.

The primary issue in this proceeding is whether the petitioner 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;

* * *

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 support of the Form I-140, the petitioner submitted a letter dated June 8, 2008 claiming that the Canadian entity that employed the beneficiary "is a wholly owned and controlled division of the U.S. [p]etitioner." A simple diagram chart was provided to further illustrate the claimed ownership arrangement between the U.S. petitioner and the beneficiary's employer in Canada. The petitioner explained that it obtained a license to operate its business in Canada and submitted a copy of a document showing that Assemblies International, Inc.'s application for extra-provincial license was approved on December 4, 1996 allowing that entity to operate its business in Ontario, Canada. The petitioner also provided its own articles of incorporation as well as the articles of incorporation belonging to Assemblies International, Inc. showing that both entities were incorporated in the State of Michigan and that each is authorized to issue 50,000 shares of stock. Lastly, the petitioner provided its own 2004 corporate tax return, Form 1120S, as well as the tax return of Assemblies International, Inc. for the same year.

On March 29, 2007, the director issued a request for additional evidence (RFE) notifying the petitioner that further documentation was needed to establish that a qualifying corporate interrelationship exists between the beneficiary's prospective employer in the United States and his prior employer in Canada. The director summarized the petitioner's claim of being the owner of the beneficiary's foreign employer and determined that the evidence submitted thus far was not sufficient to show that the two entities are commonly owned and controlled per the above definitions. The director also provided examples of documentation the petitioner could provide to meet its burden of proof.

In response to the RFE, the petitioner resubmitted both entities' articles of incorporation and further provided each entity's list of stockholders and several of the corresponding stock certificates as well

as a 2005 corporate tax return for Assemblies International, Inc. The petitioner's own stock transfer ledger shows that the petitioner has issued a total of 10,520 shares of which 6,430 are owned by [REDACTED]. The petitioner also provided stock certificate nos. 4, 7, 9, 12, and 13, which contain information that corresponds directly with that submitted stock transfer ledger. The stock transfer ledger for Assemblies International, Inc. shows that the entity issued 10,000 shares, which were broken down into three stock certificates. Stock certificate no. 1 issued 5,500 shares, or 55%, to [REDACTED] and his wife as tenants by the entirety; stock certificate no. 2 issued 3,825 shares to [REDACTED] and his wife as tenants by the entirety; and stock certificate no. 3 issued 675 shares to [REDACTED] and his wife as tenants by the entirety. It is noted that the 6,430 shares issued by the petitioner to [REDACTED] were issued to him alone. The 2005 tax return belonging to Assemblies International, Inc. contains schedules K, which indicates that 55% of the entity is owned by an individual, partnership, corporation, estate, or trust. It is further noted that schedule L, no. 22 of the same tax return shows that to date the entity only received \$1,000 in exchange for issuance of stock, despite the fact that the par value of the company's stock as shown in its stock certificates was \$1 per share. On the basis of the information provided in the stock certificates, the issuance of 10,000 shares should have resulted in the entity being compensated \$10,000.

The director reviewed the documentation provided and subsequently issued a decision dated January 14, 2008, finding that the documentation provided does not support the petitioner's claim that a qualifying relationship exists between the beneficiary's prospective employer in the United States and his employer in Canada. The director summarized the information contained in the stock transfer ledgers and stock certificates, finding that [REDACTED] who is shown as owning a controlling interest in Assemblies International, Inc., is shown as owning only 1100 out of 10,520 shares of the petitioning entity, thereby indicating that the two entities are not commonly owned and controlled.

Additionally, the director noted a number of inconsistencies among the documents submitted to support the petitioner's claim. Specifically, the director noted that the shareholder summary, which the petitioner included in its 2004 tax return, shows [REDACTED] as owning 15% of its stock and [REDACTED] as the majority shareholder owning 38.25% of its stock. The director further noted that the list of stockholders named individuals that were not previously named in the petitioner's stock transfer ledger, including [REDACTED] and [REDACTED], each shown as owning 20% of the petitioning entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the present matter, counsel does not dispute the ownership breakdowns that were previously provided in the petitioner's 2004 tax return and the stock transfer ledger belonging to Assemblies International, Inc., showing five different owners with no one owning more than 50% of the petitioner and three different owners of Assemblies International, Inc. with [REDACTED] owning 55% of the entity. Counsel argues that 55% of the petitioning entity's stock is owned by members of the [REDACTED] family and that this family ownership interest must be considered in tandem with the 55% ownership interest [REDACTED] retains in Assemblies International, Inc. Counsel's argument, however, is not persuasive and does not overcome the director's sound reasoning. The

familial relationship described by counsel does not constitute a qualifying relationship under the regulations.

Additionally, even if common control of both entities could be established, there is no evidence that the requisite common ownership exists such that it could be found that the foreign and U.S. entities have a qualifying relationship. 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 present matter, the degree of common ownership the two entities currently share as described by the petitioner is not sufficient. While Assemblies International, Inc. is majority and owned and controlled by ██████████ the same cannot be said of ██████████ ownership interest in the petitioning entity of which ██████████ is shown as owning only 15%.

Further, the AAO notes yet another inconsistency with regard to the petitioner's ownership. Namely, Form 8594 Asset Acquisition Statement, which was included with the petitioner's 2004 tax return, indicates that the petitioner issued additional stock to Plastech Engineered Products, Inc. and National Plastics Corporation, in exchange for \$7,583,018 and \$7,139,611, respectively. In light of previously submitted documentation showing that the petitioner was only authorized to issue 50,000 shares of its stock with a par value of \$1 per share, the monetary compensation indicated in Form 8594 indicates further inconsistencies with regard to either the value of the petitioner's stock, or the number of authorized shares, or with regard to both.

In light of all of the above, the AAO finds that the director's reasoning was sound and the denial was warranted. Counsel's arguments on appeal do not overcome the director's basis for denial.

Furthermore, the record does not support a finding of eligibility based on at least one additional ground that was not previously addressed in the director's decision. Namely, 8 C.F.R. § 204.5(j)(2) defines an entity as *multinational* when it is determined that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States. The regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) further requires the petitioner to 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." In the present matter, while the petitioner provides tax returns for the beneficiary's employer in Canada and his prospective U.S. employer, such documentation is not an appropriate indicator of whether either or both entities are conducting business in the manner prescribed. The petitioner has not provided documentation to establish that either entity has been and currently is providing goods and/or services on a "the regular, systematic, and continuous" basis. *Id.*

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 discussed above, this petition cannot be approved.

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.

As a final note, the petitioner's prior counsel makes a brief reference to the petitioner's current 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 U.S. Citizenship and Immigration Services (USCIS) 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. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS 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 the 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 USCIS 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).

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.