

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B4

File: [REDACTED]  
LIN 07 090 53556

Office: NEBRASKA SERVICE CENTER

Date: JUL 28 2009

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:

SELF-REPRESENTED

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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting 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 appeal will be summarily dismissed.

The petitioner filed the 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 (Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New York that claims to be engaging in the international trade of textile products, office products and software products. The petitioner claims to be a wholly owned subsidiary of Nanjing New World Textile Co. Ltd. (the Parent Company), located in Nanjing, China, and seeks to employ the beneficiary as its president.

The director denied the petition on July 29, 2008, determining that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity by the United States entity. The director noted that the petitioner had failed to respond fully to the request for evidence (RFE) issued by the U.S. Citizenship and Immigration Services (USCIS) subsequent to the petitioner's initial filing of the Form I-140, Immigrant Petition for Alien Worker. In his decision, the director listed the information requested in the RFE, extensively quoted or summarized the petitioner's response, and noted that "the record lacked sufficient information to indicate what specific duties the beneficiary would primarily be performing. As such, [USCIS] cannot affirmatively conclude that the beneficiary would primarily perform managerial or executive duties." The director further found the record shows that the majority of the beneficiary's duties have been and will be directly providing the services of the business. In addition, the director noted, the petitioner has not shown that the beneficiary will be primarily supervising a subordinate staff of professional, managerial or supervisory employees who will relieve him from performing non-qualifying duties; that the petitioner has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals or policies would be significant components of the beneficiary's job responsibilities; or that the beneficiary manages an essential function of the organization. Therefore, the director concluded, based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity.

On the Form I-290B Notice of Appeal, filed on August 25, 2008, the petitioner states:

The Service requested additional information from the petitioner on 05/07/2008. The petitioner submitted all the information requested, included the detailed response to every request.

However, the Service issued us a denial decision on 07/28/2008, and the Decision stated that the petitioner failed to submit complete evidence as requested by the Service.

Further, the Service did not explain how and why it consider[ed] the information submitted by the petitioner is partial.

The petitioner stated no other reason for appeal. As the petitioner indicated on the Form I-290B, no brief or additional evidence has been submitted on appeal.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The AAO concurs with the director's conclusion that the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. As noted above, in his decision, the director discussed at some length the content of the RFE and the petitioner's response to it before concluding that the record fails to establish that the beneficiary meets the qualifications for the benefit sought. As such, the petitioner has failed to identify an erroneous conclusion of law or a statement of fact in the director's decision as a basis for the appeal. Thus, the regulations mandate the summary dismissal of the appeal.

Beyond the decision of the director, the AAO finds the evidence is insufficient to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. See section 203(b)(1)(C) of the Act. 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 U.S. 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.

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 this matter, the record contains a material inconsistency regarding the ownership and control of the U.S. company. In a letter dated February 1, 2007, the petitioner claimed that the U.S. company is a wholly owned subsidiary of the Parent Company, which employed the beneficiary from January 2001 through December 2004. The petitioner submitted copies of its stock certificates number 1 through 20. Certificate number 1, dated December 10, 2004, shows the Parent Company as the owner of 200 shares of the U.S. company's common stock, representing all of the authorized shares of the company. Certificates number 2 through 20 are blank. However, the petitioner also submitted its Internal Revenue Service Forms 1120, U.S. Corporation Income Tax Return, for the years 2004, 2005, and 2006, Schedules E of which show that during those years, rather than being 100% owned by the Parent Company as the petitioner claimed, the U.S. company was 90% owned by the beneficiary and 10% owned by [REDACTED], the named vice president of the U.S. company.

In light of the above information, the record does not show conclusively that the U.S. company is a wholly owned subsidiary of the foreign entity, as the petitioner claimed. The record lacks any documentation or explanation that would reconcile or clarify this discrepancy regarding the ownership of the U.S. company. 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). 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. at 591.

In light of the above, the AAO finds the petitioner has also failed to establish that there exists a qualifying relationship between the U.S. company and the beneficiary's foreign employer. For this additional reason, the petition will be denied.

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). 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.

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. Here, that burden has not been met.

**ORDER:** The appeal is summarily dismissed.