

**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]

OFFICE: NEBRASKA SERVICE CENTER

Date: OCT 05 2009

LIN 08 005 50473

IN RE:

Petitioner:

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.

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).

Perry Rhew  
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 corporate entity that seeks to employ the beneficiary as its sales and training 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 concluded that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer and denied the petition on that basis. On appeal, counsel disputes the director's conclusion, claiming that the beneficiary's foreign and U.S. employers are affiliate entities. An appellate brief and additional supporting documents were later submitted. All relevant submissions will be addressed in the discussion below.

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, counsel submitted a letter dated August 16, 2007 stating that the petitioner was established in 2002 and is owned by Raymond Sales Corporation, a New York corporation, which in turn is owned and controlled by The Raymond Corporation. Counsel further asserted that G.N. Johnston Equipment Co., Ltd., the beneficiary's foreign employer, is directly owned by Raymond Handling Equipment and Raymond Industrial Equipment, Ltd., both of which are owned by The Raymond Corporation, thus suggesting that the beneficiary's foreign and U.S. employers are affiliates. In support of these claims, the following documentation was provided:

1. The petitioner's 2005 corporate tax return, including Schedule K, which identified Raymond Sales Corporation as a subsidiary in an affiliated group or a parent/subsidiary group. It is noted that item 7 of Schedule K indicated that a foreign entity owns 100% of the petitioning entity and identified Japan as the home country of the owner.
2. Stock certificate no. 1 issued by the petitioner on January 19, 2002. The certificate issued 1,000 shares out of a possible one million authorized shares of its stock to Raymond Sales Corporation.
3. Stock certificate no. 7 issuing 4997 shares of Raymond Handling Equipment, Ltd.'s stock to The Raymond Corporation on December 28, 1963.
4. Stock certificate no. 1 issued by Raymond Sales Corporation on July 16, 1985. The certificate issued 5,000 shares out of a possible 500,000 authorized shares of its stock to The Raymond Corporation.

5. Stock certificate no. 33 issued by G.N. Johnston Equipment Co., Ltd. on January 30, 1998. The certificate issued 799 shares of its stock to Raymond Industrial Equipment, Ltd.
6. A merger document entitled "Articles of Amalgamation," which identified Raymond Handling Equipment, Ltd. and Raymond Industrial Equipment, Ltd. as the two "amalgamating" entities.

On July 23, 2008, the director issued a request for additional evidence (RFE) instructing the petitioner to provide corroborating documentation establishing that a qualifying relationship exists between the beneficiary's foreign and proposed employers. The director acknowledged the petitioner's provision of various stock certificates, but informed the petitioner that further documentation was needed to determine the total shares issued and outstanding. The director also stated that further documentation was necessary to clarify the ownership of Raymond Industrial Equipment, Ltd. after its amalgamation with Raymond Handling Equipment, Ltd.

In response, counsel provided a letter dated August 29, 2008 in which she stated that an "[e]xplanation of Japanese ownership will follow shortly[.]" Counsel later submitted a letter dated September 16, 2008 claiming that a letter from [REDACTED] was being submitted to clarify the relationship between the petitioner and its foreign owner. Although a September 16, 2008 letter from [REDACTED] vice president of distribution development, followed, [REDACTED] merely confirmed that the petitioner is an authorized dealer of Raymond products and services. No mention was made about the petitioner's ownership. Thus, contrary to counsel's belief, the letter from [REDACTED] did not resolve or even address the director's concern regarding the petitioner's ownership by a Japanese company.

In a decision dated October 9, 2008, the director issued a decision denying the petitioner's Form I-140 based on the conclusion that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's employer in Canada. With regard to the petitioner's prior submission of stock certificates to establish a qualifying relationship between the beneficiary's foreign and U.S. employers, the director informed the petitioner that stock certificates alone are not sufficient evidence. The director explained that a 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. The director stressed that without full disclosure of all relevant documents, U.S. Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control, which 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).

On appeal, counsel refers to the previously submitted stock certificates as evidence of the petitioner's qualifying relationship with the beneficiary's foreign employer. Counsel's argument, however, is not persuasive and fails to give due consideration to the director's explanation of the basis for denial,

which expressly states that stock certificates alone are not sufficient evidence of a qualifying relationship. The AAO concurs with the director's sound reasoning. For instance, stock certificate no. 33, which was issued by the beneficiary's foreign employer on January 30, 1998, fails to establish the number of shares the company was authorized to issue. Additionally, the fact that the stock certificate itself is no. 33 indicates that other certificates, i.e., nos. 1-32, may have been issued to other shareholders. There is no explanation as to what happened to certificate nos. 1-32. Similarly, stock certificate no. 7, issuing 4,997 shares of Raymond Handling Equipment's stock to The Raymond Corporation, indicates that the entity was authorized to issue a total of 10,000 shares. The fact that Raymond Handling Equipment was authorized to issue another 5,003 shares and may have issued stock certificate nos. 1-6 to other shareholders leaves open the possibility that The Raymond Corporation was not the majority owner of Raymond Handling Equipment's stock.

The petitioner also submitted an unnumbered stock certificate issued by Raymond Sales Corporation indicating that the entity was authorized to issue 500,000 shares of stock of which only 5,000 shares were issued to The Raymond Corporation. Thus, the possibility that more stock was issued to other shareholders cannot be ruled out. As properly discussed by the director, the petitioner's failure to furnish corporate stock certificate ledgers, stock certificate registries, corporate bylaws, and the minutes of relevant annual shareholder meetings for the companies issuing stock precludes a valid assessment of the number of shares issued and to whom the shares were issued. Therefore, while strictly relying on the submitted stock certificates may give the appearance that a qualifying relationship exists between the petitioner and the beneficiary's foreign employer, stock certificates are not sufficient to establish that the two entities are commonly owned and controlled.

With regard to the letter indicating that the petitioner is an authorized dealer of Raymond products and service, the relevance of this information is questionable at best, particularly in light of the fact that the letter was meant for the purpose of explaining why the petitioner claimed to be 100% owned by a Japanese company when filing its 2005 corporate tax return. The petitioner's claim that it is owned by Raymond Sales Corporation is inconsistent with the claim that it is wholly owned by a Japanese 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). In the present matter, the petitioner failed to submit evidence establishing how it can be wholly owned by a Japanese entity while being simultaneously owned by the Raymond Sales Corporation.

In summary, the record in the present matter is fraught with unanswered questions about the ownership and control of the numerous corporations that link the beneficiary's foreign and U.S. employers. As the petitioner has failed to provide sufficient documentation establishing the true ownership of those entities, the AAO cannot conclude that the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision. Specifically, the record lacks sufficient evidence and information establishing that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity.

The regulation at 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 his entry to the United States as a nonimmigrant to work for the same employer. Similarly, 8 C.F.R. § 204.5(j)(5) states that the petitioner must provide an offer of employment specifically describing the beneficiary's proposed employment. Case law has firmly established that the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Thus, the petitioner must describe the beneficiary's past and proposed job duties with sufficient detail such as to enable USCIS to determine whether the primary portion of the beneficiary's time abroad and in his proposed position has and would consist of tasks within a managerial or executive capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In the instant matter, the petitioner's descriptions of the beneficiary's foreign and proposed employment are insufficient, as they fail to establish the beneficiary's daily job duties. Without this highly relevant information, the AAO cannot conclude that the beneficiary was employed abroad and that he would be employed in his proposed U.S. position in a qualifying managerial or executive capacity.

Additionally, 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." In the present matter, the petitioner claims to be a forklift distributor. However, the record lacks any evidence that the petitioner was engaged in the distribution of forklifts on a "regular, systematic, and continuous" basis for the year immediately prior to the filing of the petition. See *id.* 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)).

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.

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.