



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: FEB 01 2013 OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

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:

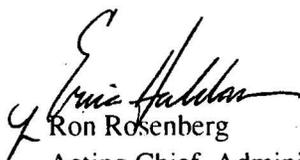
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The petitioner is a Texas corporation that seeks to employ the beneficiary in the United States as its production planning and control 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.

In support of the Form I-140 the petitioner submitted a statement dated April 26, 2011, which contained relevant information pertaining to the petitioner's statutory eligibility. Supporting evidence included the petitioner's 2009 IRS Form 1120, U.S. Corporation Income Tax Return, Schedule E, which identified [REDACTED] as owner of 100% of the petitioner's common stock. With regard to the foreign entity's ownership, the petitioner provided a memorandum of association, which indicated (at Part V, page 14) that [REDACTED] and his wife each owned one equity share. The same information was reiterated in the foreign entity's articles of association (page 13). Additionally, the petitioner provided an undated worksheet, which listed the names and shareholding patterns for three foreign entities, including the beneficiary's employer abroad. It is noted that the shareholding pattern pertaining to the beneficiary's foreign employer showed that [REDACTED] owned approximately 87% of that entity.

The director reviewed the petitioner's submissions and determined that the petition did not warrant approval. The director therefore issued a request for evidence (RFE) dated September 8, 2011 informing the petitioner of various evidentiary deficiencies. Among the issues the director addressed was the petitioner's qualifying relationship with the beneficiary's employer abroad. Specifically, the director instructed the petitioner to provide evidence in support of the information that was included in the worksheet discussed above. The director also asked for evidence showing ownership and control of the petitioning entity.

Although the petitioner responded to the RFE, it failed to provide the requested information pertaining to the petitioner's qualifying relationship with the beneficiary's foreign employer. In fact, Exhibit 1, which was supposed to contain evidence concerning the ownership and control of the beneficiary's foreign and proposed employers, was devoid of any supporting evidence. The petitioner did, however, provide a copy of its 2010 corporate tax return (IRS Form 1120) in response to another portion of the RFE. It is noted that Schedule G of the 2010 Form 1120 listed a total of six shareholders for the petitioning entity. [REDACTED] was shown as owning only 5% of the petitioning entity as compared to his 87% ownership of the foreign entity as indicated in the worksheet that was originally submitted in support of the Form I-140. It is noted that 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).

After considering the petitioner's response, the director determined that the petitioner failed to provide sufficient evidence to establish that it has a qualifying relationship with the beneficiary's employer abroad. The director noted the different ownership breakdowns when comparing the petitioner's 2009 tax return with its subsequent tax return for 2010, observing that no documentation was submitted to support the change in ownership and further finding that the two tax returns were inconsistent on the subject of the petitioner's ownership breakdown. The director also noted the petitioner's failure to comply with the request for supporting evidence regarding the ownership of the beneficiary's foreign employer and specifically pointed

out the lack of evidence regarding the ownership of [REDACTED], one of the foreign entities whose ownership was addressed in the undated worksheet discussed above. Accordingly, the director issued a decision dated January 6, 2012 denying the petition.

On appeal, counsel asserts that sufficient evidence of a qualifying relationship was provided originally in support of the petition and further finds that the director erred in placing any focus on the ownership of [REDACTED] which she claims is irrelevant in the matter at hand. Counsel also provides an appellate brief in an attempt to overcome the director's decision.

Although the AAO concurs with counsel's contention regarding the relevance of [REDACTED], the counsel's remaining statements are not persuasive in overcoming the director's chief concerns regarding the lack of sufficient documentation establishing the existence of a qualifying relationship between the petitioner and the beneficiary's foreign employer. The discussion below will provide an analysis of the relevant factors concerning the issue at hand.

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.

As previously noted, the primary issue in this proceeding is whether the petitioner has a qualifying relationship with the entity that employed the beneficiary abroad. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the

proposed U.S. employer are the same employer (i.e. a U.S. 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;

* * *

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.

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 (Assoc. Comm. 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.

In the present matter, evidence leading up to, but not including that which was submitted on appeal indicates that there was a change in the ownership of the petitioning entity. Namely, while the petitioner's 2009 tax return names [REDACTED] as owner of 100% of the petitioning entity, the petitioner's 2010 tax return indicates that there was a change in the petitioner's ownership such that [REDACTED] not only became a minority owner, holding only 5% of the petitioner's stock, but that five additional owners had been added to the petitioner's ownership roster. Thus, even if the AAO overlooks the petitioner's failure to comply with the RFE's request for additional documentation pertaining to ownership of the foreign entity and instead relies entirely on the undated worksheet that was submitted originally with the Form I-140, the record would show that while [REDACTED] owns a majority of the foreign entity's shares, the petitioning U.S. entity has no one individual holding a majority of the shares and, in fact, [REDACTED] now owns fewer shares than four of the petitioner's shareholders.

On appeal, counsel offers a statement from the petitioner's accountant and evidence of an established limited partnership in which [REDACTED] is owner of the entity that is the general partner and thus the key decision-making individual of the limited partnership. However, neither document establishes that [REDACTED] is majority shareholder of the petitioning entity; nor is either document an adequate substitute for the documentation that the director requested in the RFE, where he sought evidence to corroborate the undated and unsigned worksheet, which purported to outline the foreign entity's ownership. The AAO notes that while the limited partnership may have been an effective estate planning tool, it is the petitioner's burden to establish that the partnership did not affect the [REDACTED] majority ownership of the U.S. petitioner, as ownership, not just control, of the petitioning entity must be established in order to determine the existence of a qualifying relationship. Mere assertions of the petitioner's counsel are not sufficient to establish that majority ownership and control of the petitioning entity remain with [REDACTED]. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the petitioner has now provided adequate documentation establishing [REDACTED] majority ownership of the foreign entity, in light of the grave deficiencies discussed above with regard to the ownership of the U.S. entity, the AAO finds that the petitioner has failed to adequately document the existence of a qualifying relationship between itself and the beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

Finally, with regard to counsel's reliance on to the petitioner's current approved L-1 employment of the beneficiary, the AAO notes that 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 prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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, the record shows that at least one of the petitioner's L-1A petitions was issued prior to the filing of the petitioner's 2010 tax return, which contained the information indicating that a change in the petitioner's ownership had occurred. Regardless, 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).

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.