



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAY 03 2013** OFFICE: NEBRASKA 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:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 sustained.

The petitioner is a Delaware corporation that seeks to employ the beneficiary as its operational vice president. 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 concluding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

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 issue in this proceeding is whether the petitioner submitted sufficient evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer. 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.

In a letter of support, dated June 3, 2009, counsel for the petitioner stated that the beneficiary's last employer abroad, [REDACTED] "owns 100% ownership of [the petitioner]." In a letter dated May 27, 2009, the petitioner explained that it "has the sole member, [REDACTED] that changed its name to [REDACTED] which is a wholly owned subsidiary of [the foreign company]." The petitioner submitted its Certificate of Formation and Limited Liability Agreement which identified its sole member as [REDACTED]. The petitioner also submitted a Certificate of Amendment to the Certificate of Incorporation of [REDACTED] stating that the name of the corporation is [REDACTED].

On November 12, 2009, the director determined that the petitioner submitted insufficient evidence and requested additional information. The director noted that the evidence did not adequately demonstrate the qualifying relationship between the petitioner and the beneficiary's foreign employer, [REDACTED].

In response, counsel for the petitioner stated the following:

The relationship between the U.S. entity and the foreign entity: please find enclosed audited financial statements of [the petitioner] in 2007 (note A explains the relationship – [the petitioner] is a wholly-owned subsidiary of [redacted] which is ultimately owned by [redacted] – wholly owned by [redacted] financial report of 2007). We also enclosed [redacted] annual report of 2008 which indicated that [the petitioner] is a global subsidiary of [redacted] at page 34).

The notes to the petitioner's audited financial statements, dated December 31, 2007, state that the petitioner is a "wholly-owned subsidiary of [redacted], which is ultimately owned by [redacted]" The audited financial statements also state that the petitioner reorganized, effective on the close of business on August 31, 2007. An audit of financial documents is conducted in accordance with generally accepted auditing standards to obtain reasonable assurance whether the financial statements of the business are free of material misstatement. Here, the submitted evidence is relevant, probative, and credible since the audited financial statement are reviewed by auditing standards, and is highly credible and warrants substantial weight in immigration proceedings. *See Matter of Chawathe*. 25 I&N Dec. 369, 375 (AAO 2010).

On appeal, counsel for the petitioner explains that the petitioner restructured in 2007, so that [redacted] owns the petitioner but it is in turn owned and controlled by [redacted] the beneficiary's foreign employer. Counsel provides a chart of the ownership structure. According to the chart, [redacted] the beneficiary's foreign employer, has direct ownership of the petitioner of 0.743%. Counsel also contends that the foreign company indirectly owns the petitioner since the foreign company wholly owns two companies that in turn own a percentage of [redacted]. The two companies owned by the foreign employer also have 18.825% and 20.516% percent ownership of the petitioner. Thus, the beneficiary's foreign company maintains 39.084% ownership of [redacted]

In addition, counsel claims that the foreign company has indirect ownership, through two other companies that are partially owned by the foreign employer, which totals to 27.472%. The foreign employer has 40.29% ownership of [redacted] which in turn owns part of the petitioner. Even though the foreign employer does not have majority shares of [redacted] they do have majority control since "no other single shareholder has more than 8.0% of ownership." Thus, the other shareholders cannot vote as a majority and therefore, the beneficiary's foreign employer has majority control over [redacted] even though it does not have the majority ownership of the shares of that company.

The legacy Immigration and Naturalization Service (INS) amended the regulations so that the definition of "subsidiary" recognized indirect ownership. *See* 52 Fed. Reg. 5738, 5741-2 (February 26, 1987). To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). The evidence in this case indicates that the foreign company has

(b)(6)

indirect ownership of the petitioner and establishes a qualifying relationship between the petitioner and the beneficiary's foreign employer.

The record establishes that the foreign company has 66.556% ownership of [REDACTED] "directly as well as indirectly," and thus, the petitioner is a subsidiary of the beneficiary's foreign employer. On appeal, the petitioner provides sufficient evidence to overcome the director's concerns in the denial decision. The AAO will withdraw the director's decision and sustain the appeal.

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 sustained that burden. Accordingly, the director's decision dated January 19, 2010 is withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.