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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **MAY 23 2013** OFFICE: TEXAS SERVICE CENTER

FILE:

[Redacted]

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:

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 AAO inappropriately applied the law in reaching its 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 motion 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 any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner is a Texas corporation organized on November 17, 2004. The petitioner states on the Form I-140, Immigrant Petition for Alien Worker, that it is engaged in investment and management services, employs 12 personnel, and reported a gross annual income of \$227,015 in 2010. It seeks to employ the beneficiary as its 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.

On December 21, 2012, the director denied the petition determining that the petitioner failed to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes the beneficiary's eligibility for the requested classification.

### I. The Law

To establish eligibility for the employment-based immigrant visa classification, the petitioner must meet the criteria outlined in section 203(b) of the Act. 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.

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 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.

The regulation at 8 C.F.R. § 204.5(j)(2) provides in pertinent part:

*Affiliate* means:

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (2) 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.

## II. The Issue on Appeal

The issue to be discussed in this matter 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 above* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

In this matter, the director notified the petitioner in a Notice of Intent to Deny (NOID) that the record presented inconsistent information regarding the ownership of the petitioner. The director noted that the petitioner claimed that it was wholly owned by the foreign entity, [REDACTED]. The director pointed out, however, that the petitioner's 2010 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, did not report the petitioner's foreign ownership, but rather stated that the beneficiary owned 100 percent of the petitioner. The director requested probative evidence establishing who owned and controlled the petitioner including documentary evidence of the exchange of monies, property, or other consideration for the issuance of stock, copies of stock purchase agreements, subscription agreements, corporate minutes or relevant shareholder meetings or other legal documents governing the acquisition of the ownership interest. The director also

requested a copy of the stock ledger or share register, certified complete tax returns, and any other evidence supporting the petitioner's eligibility for petition approval.

In response, the petitioner provided an affidavit signed by the beneficiary as the company's president attesting that the petitioner is 100 percent owned by the [REDACTED] an Indian company (foreign entity). The president acknowledged that the 2010 and 2011 IRS Forms 1120 did not list the foreign entity as the petitioner's owner and that the petitioner had filed amended tax returns to reflect the correct ownership. The petitioner, through its president, also asserted that the error on the tax returns was not intentional and upon realizing the mistake, it had acted promptly to correct the mistake.

The record includes the petitioner's Articles of Incorporation indicating that it is authorized "to issue one million (1,000,000)" shares and the "shares shall have a par value of One Dollar (\$1.00)." The Articles of Incorporation also indicated that the "corporation will not commence business until it has received for the issuance of its shares consideration of the value of \$1,000.00, consisting of money, labor done, or property actually received." The petitioner also provided a photocopy of one share certificate issuing 1,000 shares to the foreign entity on January 1, 2005.

The record in response to the director's NOID also included what the petitioner described as "amended" U.S. corporate tax returns for the 2010 and 2011 tax years. The petitioner attached a copy of its 2011 Form 1120 which bears a stamp from the IRS on the first page indicating that the return was received on November 5, 2012. The Form 1120 was signed only by the preparer on October 31, 2012. The petitioner also provided a photocopy of its 2010 Form 1120, signed only by the preparer on October 25, 2012 as well as an IRS account transcript confirming the Form 1120 had been filed on May 16, 2011. The account transcript did not provide information regarding the petitioner's ownership, and the petitioner did not provide evidence that an amended return had been filed for 2010. Both of the submitted Forms 1120 identified the foreign entity as the petitioner's sole owner. The petitioner did not provide an IRS Form 1120X, Amended U.S. Corporation Income Tax Return, for either tax year, in response to the Notice of Intent to Deny despite indicating that both were "amended" tax returns.

On appeal counsel for the petitioner asserts that the date stamp on the IRS Form 1120 submitted is evidence that the Form 1120 was properly filed. Counsel provides an IRS Tax Return Transcript for the 2011 filing along with a IRS date-stamped copy of the petitioner's 2011 IRS Form 1120, which indicates its ownership by the foreign entity at Schedules K and G. Counsel also submits IRS Form 1120X, Amended U.S. Corporation Income Tax Return, for the 2010 year with the first page date stamped by the IRS as received January 10, 2013. The second page appended to the Form 1120X, bearing no evidence of filing, notes four errors in the initially filed 2010 Form 1120 relating to the ownership of the petitioner. The petitioner explains that it had incorrectly stated that the beneficiary owned 100 percent of the petitioner rather than the foreign entity. Counsel contends that the petitioner has met its burden of establishing a qualifying relationship between the foreign entity and the petitioner with the documentary evidence submitted.

### III. Analysis

To establish that the foreign entity and the petitioner enjoy a qualifying parent/subsidiary relationship, the petitioner must provide probative, consistent evidence establishing the relationship. The director properly determined that the initial record did not include consistent evidence establishing the qualifying relationship. The petitioner's response to the director's NOID also failed to clarify with probative documentary evidence that the petitioner is, in fact, the foreign entity's subsidiary.

The regulation and case law confirm that ownership and control are the factors that must be examined when 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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 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.

We observe that tax documents alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. Additionally, as general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate by-laws, 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. Moreover, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, United States Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control.

In this matter, despite the director's requests in the Notice of Intent to Deny, the petitioner failed to submit any additional evidence of ownership such as the corporate stock certificate ledger, stock certificate registry, corporate by-laws, the minutes of relevant annual shareholder meetings, and evidence of the exchange of monies, property, or other consideration for the issuance of stock, copies of stock purchase agreements, and/or subscription agreements. 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).

Further, the record does not include any documentary evidence from the foreign entity acknowledging its 100 percent ownership of the petitioner. Nor does the record include evidence that the foreign entity received any distribution of profit or accepted any liability in regards to its claimed ownership of the petitioner.

Counsel failed to submit any additional evidence on appeal to establish the qualifying relationship and overcome the director's concern. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). For this reason, the appeal will be dismissed.

The AAO acknowledges that USCIS previously approved an L-1A nonimmigrant petition filed on behalf of the beneficiary, a classification which also requires the petitioner to establish a qualifying relationship with the beneficiary's foreign employer. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *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). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Moreover, in making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner had not established a qualifying relationship with the foreign employer. In both the NOID and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. If the previous nonimmigrant petition(s) was approved based on the same evidence of the qualifying relationship as submitted in this matter, the previous approval(s) would constitute gross error on the part of the director. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

#### IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. 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 the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.