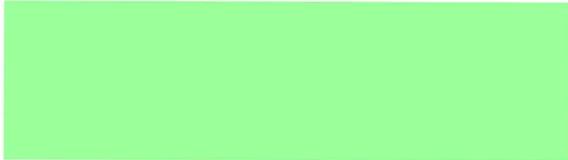


(b)(6)



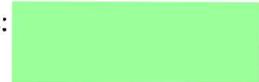
**U.S. Citizenship  
and Immigration  
Services**



DATE: AUG 08 2014

OFFICE: TEXAS SERVICE CENTER

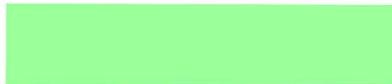
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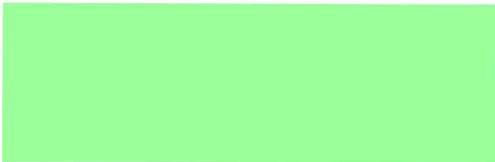
Petitioner:

Beneficiary:



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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a circular stamp.

Ron Rosenberg  
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 sustained.

The petitioner is engaged in "automation product distribution," and seeks to employ the beneficiary as its President and CEO. 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 on October 11, 2013, concluding that the petitioner failed to establish that it has a qualifying relationship with a foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, counsel for the petitioner asserts that the petitioner provided sufficient evidence to establish that the U.S. company is wholly owned by the foreign entity. The petitioner submits a brief and additional evidence in support of the appeal.<sup>1</sup>

#### I. THE LAW

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

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<sup>1</sup> We conduct appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)).

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.

## II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the United States and foreign entity are qualifying organizations.

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).

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 the support letter dated May 20, 2013, the petitioner stated that it is a wholly-owned subsidiary of [REDACTED] located in Russia. The director denied the petition, concluding that the petitioner failed to establish that it had a qualifying relationship with a foreign entity, noting that the foreign entity failed to transfer the necessary capital contribution in exchange for ownership in the U.S. company. The director found that there was no documentary evidence that, at the time certificate number one was issued, the petitioner received monies from the foreign entity for the 100 shares.

The director observed that the petitioner did not submit any wire transfer receipts indicating that the foreign company transferred the necessary capital contribution in exchange for ownership in the U.S. company, and therefore, failed to establish that a qualifying relationship existed at the time of filing.

On appeal, counsel for the petitioner contends that the foreign entity owns the U.S. company in that it had already funded the U.S. company with an initial bank deposit of \$100, the par value of shares issued, on April 14, 2011, and had transferred an amount exceeding the par value, an amount of \$150,100 on April 25, 2011, prior to filing the petition. Counsel contends that the petitioner provided evidence of the wire transfer in excess of the shares' par value.

The record also contains the share certificate, the stock ledger, bank statements indicating wire transfer details, the corporate minutes indicating that all issued and outstanding shares are owned by the foreign company, a signed letter from the petitioner's accountant confirming that the foreign company is the petitioner's sole owner, and tax returns.

Upon review, the record is persuasive in establishing that the petitioner is a wholly owned subsidiary of the foreign entity, thus the existence of a qualifying relationship. The petitioner submitted sufficient evidence to show that it had provided capital contributions to the U.S. company in exchange for ownership prior to filing the petition.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50

percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence is relevant, probative, and credible. The petitioner has established that a qualifying relationship exists between the U.S. and foreign entities.

### III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

**ORDER:** The appeal is sustained.