



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF T-F- CORP.

DATE: JULY 18, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a store that sells shoes and leather goods, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Texas Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by interpreting a correction as a disqualifying discrepancy.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further action and a new decision. The Petitioner has overcome the stated grounds for denial, but there are new questions concerning the Petitioner's ongoing business activity.

I. LEGAL FRAMEWORK

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 the alien seeks to enter

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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 Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. A labor certification is not required for this classification.

## II. QUALIFYING RELATIONSHIP

The Director denied the petition based on a finding that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, a 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 section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

### A. Evidence of Record

The Petitioner filed Form I-140 on May 17, 2013. The Petitioner identified the Beneficiary's last foreign employer as [REDACTED] doing business as [REDACTED] and stated that the U.S. company is an affiliate of the foreign entity.

With the petition, the Petitioner submitted copies of the following documents, among others:

- The Petitioner's articles of incorporation, authorizing the issuance of 100 shares;
- Share certificate number 01, stating that the Beneficiary's spouse, doing business as [REDACTED] owns 100 shares of the petitioning company. The certificate itself is undated, but the stub at the top of the certificate is dated November 1, 2007;
- The minutes of a shareholders' meeting, showing that the Beneficiary and his spouse, who is also general manager of the petitioning company, respectively own 40% and 60% of a business in Argentina with the fictitious name [REDACTED] and
- IRS Form 1120, U.S. Corporation Income Tax Return, for 2011.

On Schedule K of the IRS Form 1120 return, in response to question 4a, the Petitioner indicated that no foreign or domestic corporation owned 20% or more of the company's voting stock. Viewed in isolation, this form indicated that no foreign corporation had a substantial ownership interest in the petitioning company.

The Director issued a request for evidence, stating that the Petitioner had not adequately documented the claimed affiliate relationship with [REDACTED]. The Director stated that "the stock certificate . . . was not properly dated and the petitioner failed to provide the stock ledger." The

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Director also noted the above information from the Petitioner's 2011 tax return. The Director asked the Petitioner to submit copies of its stock ledger and its 2012 and 2013 tax returns.

In response, the Petitioner submitted a copy of a stock transfer ledger. The only entry on the ledger indicated that [REDACTED] d/b/a/ [REDACTED] received share certificate number 1, showing 100 shares of the company, on November 1, 2007.

The Petitioner also submitted copies of share certificates numbered 01 and 02. The copy of certificate number 01 matches the copy submitted earlier, except that information has been added to the certificate and to the attached stub. Specifically, the certificate number and the number of shares were added to the stub, and the date November 1, 2007, was added to the certificate. The Petitioner explained that certificate number 02 is blank because it was never issued.

The Petitioner submitted copies of its IRS Form 1120 returns for 2012 and 2013. On both returns, the Petitioner acknowledged corporate ownership by answering "Yes" to question 4a on Schedule K. Each return also included Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, indicating that [REDACTED] owns all of the Petitioner's voting stock.

The Director denied the petition, stating that the Petitioner had submitted inconsistent information. The Director stated that the two copies of share certificate number 01 did not match one another, and that the Petitioner had provided conflicting answers regarding corporate ownership on its tax returns. The Director concluded: "The inconsistencies noted in the record cast[] doubt on the viability of the petition. . . . The petitioner has not demonstrated at the time of filing that a qualifying relationship existed."

On appeal, the Petitioner asserts that its documentation is legally sufficient, and that the evidence, as a whole, supports approval of the petition. The Petitioner submitted a photograph of its stock ledger and a copy of an amended 2011 tax return correcting what the Petitioner stated was an error on the original return.

B. Analysis

We find that the Petitioner has established a qualifying relationship with the foreign entity. The Petitioner has overcome the specific grounds for denial as stated in the Director's decision.

On appeal, the Petitioner states that "the undated certificate is completely proper under Florida law." The Petitioner submits a printout of the Florida statute (F.S. 607.0625) that lists the information required on a share certificate for a Florida corporation. The requirement does not include the date of issuance. Therefore, the lack of an issue date did not compromise or invalidate the certificate.

The Petitioner states that the two copies of certificate number 01 are reproductions of the same document, and that the Petitioner added the date of issuance and other requested information to the certificate and its attached stub after the Director issued the request for evidence. Comparison of the

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two copies confirms that the Petitioner did not alter any material information on the certificate; the only differences between the copies consist of additions that the Petitioner made in response to the request for evidence.

The discrepancies on the income tax returns appear to be the result of simple error, which the Petitioner has remedied by filing an amended 2011 return.

We find that the Petitioner has established a qualifying relationship with [REDACTED] by a preponderance of the evidence. The Petitioner has sufficiently overcome the Director's specific findings with respect to this issue. Because the denial rested entirely on those findings, the denial cannot stand, and we withdraw that decision.

But even though the Petitioner has overcome the stated grounds for denial, we cannot properly approve the petition without additional evidence and information, as explained below.

### III. DOING BUSINESS

For the petition to be properly approved, it must have been approvable at the time of filing and have remained approvable throughout the time of adjudication.<sup>1</sup> Here, disqualifying circumstances may have arisen after the Petitioner filed its petition.

The Petitioner may have stopped doing business, defined as the regular, systematic, and continuous provision of goods and/or services.<sup>2</sup> The Petitioner has submitted printouts from its website and that of its subsidiary, [REDACTED] but those websites are no longer active and the site names are for sale.<sup>3</sup>

The Petitioner has left the address shown on the petition form, and there is no evidence in the record to show where the Petitioner's store now conducts business. U.S. Citizenship and Immigration Services records show that the Petitioner sent notice of a change of address in April 2015, but the new address belongs to the Petitioner's attorney of record. The web site of the shopping center where the Petitioner had its store no longer lists the Petitioner in its directory.<sup>4</sup> The Fall 2015 edition of [REDACTED] a local business publication, listed a different store, under "New Businesses," at the same address and suite number shown on the Petitioner's documents.<sup>5</sup> These new facts call for further inquiry into the Petitioner's current status. Without a working place of business, the Petitioner's continued existence on paper as a corporation is not sufficient to show that it continues to do business.

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<sup>1</sup> See 8 C.F.R. § 103.2(b)(1).

<sup>2</sup> 8 C.F.R. § 204.5(j)(2).

<sup>3</sup> Printouts from [REDACTED] added to the record May 18, 2016.

<sup>4</sup> Printout from [REDACTED] added to the record May 13, 2016.

<sup>5</sup> Printout from [REDACTED] added to the record May 18, 2016.

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Because the Petitioner no longer operates from its stated address, it is not evident that the Petitioner has been actively doing business.<sup>6</sup>

When the Director requests evidence to show the Petitioner's ongoing business activity, that evidence must also include copies of the Petitioner's most recent income tax returns. The tax returns would not only establish the extent of the Petitioner's business activity, but also show whether or not the company continues to have enough income or current assets to cover the Beneficiary's salary of \$48,000 per year. The Petitioner must establish its ability to pay this salary beginning on the filing date, and continuing until the Beneficiary becomes a lawful permanent resident.<sup>7</sup>

If the Petitioner is able to show that it is still doing business, but under significantly changed circumstances, then the Petitioner must also demonstrate that the Beneficiary's duties continue to qualify as those of a manager or executive as the statute defines those terms.<sup>8</sup>

Also, there is reason to question whether the Petitioner's claimed foreign affiliate remains in business. If the foreign company is no longer doing business, then the Petitioner is not part of a qualifying multinational organization. The foreign company's website, like the Petitioner's, is no longer active and the site name is for sale.<sup>9</sup> We note that, although the Petitioner stated that the foreign company does business under the fictitious name of [REDACTED] the submitted evidence from that company (including website printouts and sales invoices) do not show that name. Instead, they show that the foreign company operated under the name of the Beneficiary's spouse. We also note that the Beneficiary's spouse is now the beneficiary of an approved employment-based nonimmigrant petition filed by a different company, [REDACTED] which listed her as its president on annual reports filed with the State of Florida in 2015 and 2016.<sup>10</sup> This new information calls into question the extent of her continued involvement with the Petitioner and with the company in Argentina that operates under her name.

#### IV. CONCLUSION

The Director's decision is withdrawn and the case remanded for the above stated reasons. 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; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013).

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<sup>6</sup> The Petitioner may, at one time, have also conducted business through its wholly-owned subsidiary, [REDACTED], but the Florida Department of State, Division of Corporations, lists that company's status as inactive and administratively dissolved as of September 26, 2014. See Florida's searchable online database of corporate records is available at <http://search.sunbiz.org/Inquiry/Corporation Search/ByName> (last accessed May 25, 2016).

<sup>7</sup> See 8 C.F.R. § 204.5(g)(2).

<sup>8</sup> See section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B).

<sup>9</sup> Printout from [REDACTED] added to the record May 18, 2016.

<sup>10</sup> Printout from Florida's corporation search database added to the record May 18, 2016.

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**ORDER:** The decision of the Director, Texas Service Center, is withdrawn. The matter is remanded to the Director, Texas Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of T-F- Corp.*, ID# 17040 (AAO July 18, 2016)