



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted]

Office: Nebraska Service Center

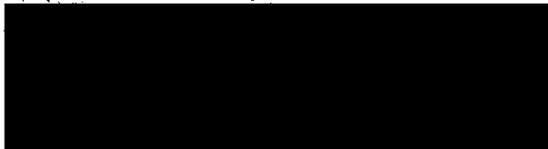
Date: AUG 15 2000

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be dismissed.

The petitioner, a trading company, seeks classification of 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, to perform services as its vice president/manager. The director determined that the petitioner had submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities.

On appeal, counsel argued that there is a qualifying relationship between the U.S. and foreign entities.

The Associate Commissioner dismissed the appeal, reasoning that the petitioner had submitted insufficient evidence to establish that there is a qualifying relationship between the U.S. and foreign entities.

On motion, counsel submits documentation which he claims is "new evidence" that there is a qualifying relationship between the U.S. and foreign entities.

8 C.F.R. 103.5(a)(2) states, in pertinent part, that a motion to reopen must state new facts to be provided and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

Service regulations at 8 C.F.R. 204.5(j)(2) state, in pertinent part, that:

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....

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.

Doing business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or the entity and does not include the mere presence of an agent or office.

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.

The issue in this proceeding is whether there is a qualifying relationship between the U.S. and foreign entities.

The U.S. petitioner, [REDACTED] seeks to employ the beneficiary as its vice president/manager. In a letter dated April 11, 1997, the petitioner was advised that a review of the record indicates that the U.S. and foreign entities "are not owned and controlled by the same individual or group of individuals" and that there is no evidence of a qualifying relationship between the U.S. and foreign entities. The director explained that the record shows that the foreign entity is a sole proprietorship, while the U.S. entity is owned by seven stockholders. In response, the petitioner argued that the U.S. entity is a subsidiary of the foreign entity because [REDACTED] is the sole owner of the foreign entity, and owns 25 per cent of the U.S. entity's stock.

The Associate Commissioner dismissed the appeal, reasoning that the record does not establish that there is a qualifying relationship between the U.S and foreign entities.

On appeal, counsel submits a new list of subscriber's showing the owners of the U.S. entity's stock as of July 1, 1997. The petition was filed on November 19, 1996. 8 C.F.R. 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence

does not establish filing eligibility at the time the application or petition was filed."

8 C.F.R. 214.2(1)(7)(i)(C) states:

The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The information submitted on motion does not demonstrate the ownership of the U.S. entity at the time the petition was filed. Such evidence may be considered in an amended petition and not on motion. Inasmuch as the motion is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy, the motion will be dismissed in accordance with 8 C.F.R. 103.5(a)(4).

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, supra at 323 (citing INS v. Abudu, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, supra at 110.

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, that burden has not been met.

ORDER: The motion is dismissed.