



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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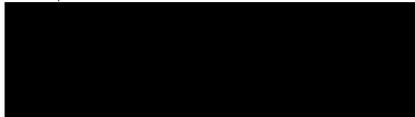
SEP 20 2000

File: [Redacted] Office: Texas Service Center Date:

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)

IN BEHALF OF PETITIONER:



Public Copy

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

Identifying data should be  
prevent clearly unwarranted  
invasion of personal privacy

Terrence M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a Texas corporation that claims to be engaged in travel and tour services. The petitioner further claims to be a subsidiary of [REDACTED]. The petitioner seeks to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), to serve as the general manager. The director determined that the petitioner had not established that a qualifying relationship exists between the petitioner and the claimed parent company, or that the beneficiary had been employed in a managerial or executive capacity.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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 first issue to be examined is whether a qualifying relationship exists between the petitioner and the claimed parent company.

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;

*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.

The visa classification that the petitioner seeks is intended for multinational executives and managers. The language of the statute specifically limits this visa classification to those executives and managers who have previously worked abroad for at least one year in the preceding three for the overseas entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary. In order to qualify for this visa classification, the petitioner must establish that there is a qualifying relationship between the United States and foreign entities, in that the petitioning company is the same employer or an affiliate or subsidiary of the overseas company.

In a statement submitted with the petition, the petitioner asserted that "[redacted] are related companies in that [redacted] is an affiliate of [redacted]

[redacted] The petitioner also submitted a "company diagram" which indicated that the beneficiary owned "100%" of both the Mexican and the United States companies. The petitioner also submitted a photocopy of its articles of incorporation which indicated that the beneficiary owned 55% of the corporation, as well as a photocopied stock certificate which indicated that the beneficiary owned 55% of the corporation.

On August 13, 1998, the director requested that the petitioner submit additional information. In response, the petitioner submitted a photocopy of its Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return, for 1997. According to Schedules E and K of this return, the beneficiary owned 50% of the organization's stock. The petitioner also submitted photocopies of several Spanish-language documents accompanied by English translations. These documents relate to the formation of the foreign corporation.

On appeal, counsel argues that "the evidence clearly shows [that] the Mexico-based joint venture is owned and controlled by four individuals; and the same group also owns and controls the same share or proportion of the U.S.-based company." Counsel submits photocopies of previously-submitted documents.

The evidence submitted does not establish that a qualifying relationship exists between [REDACTED] a [REDACTED]

Evidence submitted has been contradictory. The petitioner has submitted documents attesting that the beneficiary owns 100% of both the U.S.-based and foreign-based companies. The petitioner has also submitted documents attesting that the beneficiary owns 55% of the U.S.-based company and is in a partnership with the foreign-based company. Finally, the petitioner has submitted documents attesting that the beneficiary owns 50% of the U.S.-based company. The petitioner has not explained these discrepancies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Matter of Ho, 19 I&N Dec. 582 (BIA 1988). Accordingly, since the actual ownership of these companies has not been established, the petition may not be approved.

The next issue to be examined is whether the beneficiary has been and will be performing managerial or executive duties.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

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.

In a letter submitted with the petition, the petitioner stated that the beneficiary:

will continue to supervise the management of the day to day operations of the U.S. company. The position also requires [him] to set quality standards for the work, establish general guidelines which are followed and executed by employees, and exercise wide latitude in discretionary decision-making in regard to the financial affairs of the company.

On August 13, 1998, the director requested that the petitioner submit additional information. In response, the petitioner provided a "description of the duties" of the general manager.

On appeal, counsel states that "the duties [the beneficiary] performs are essential and controlling to the function of the business." The record is not convincing in demonstrating that the beneficiary's duties in the proposed position will be primarily managerial or executive in nature. The description of the duties to be performed and that were performed by the beneficiary does not demonstrate that the beneficiary will have managerial control and authority over a function, department, subdivision or component of the company. Further, the record does not sufficiently demonstrate that the beneficiary will manage a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing nonqualifying duties. The Service is not

compelled to deem the beneficiary to be a manager or executive simply because the beneficiary possesses a managerial or executive title. The petitioner has not established that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

Counsel refers to an unpublished administrative decision of this Service regarding the appeal of a multinational executive or manager to support his appellate statement. While it has not been shown that the facts of the cases are similar, it must be noted that the unpublished administrative decision relied on by counsel does not have binding precedential value. See 8 C.F.R. 103.3(c).

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 not sustained that burden.

**ORDER:** The appeal is dismissed.