U.S. Department of Justice

Immigration and Naturalization Service

B4

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

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 30 2001

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

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.

identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

 [redacted]

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. A subsequent appeal was summarily dismissed by the Associate Commissioner for Examinations on January 11, 2000 because counsel failed to submit a brief or otherwise identify any erroneous conclusion of law or statement of fact; however, it has been determined that the petitioner had timely submitted a brief. The matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The Associate Commissioner's decision, dated January 11, 2000 is withdrawn. The matter is again before the Associate Commissioner on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is a Texas corporation that claims to manufacture wood products. The petitioner seeks to employ the beneficiary as its director of maintenance operations and, therefore, endeavors to classify him as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that a qualifying relationship exists between the U.S. and foreign entities. On appeal, counsel submits a brief. The petitioner submits evidence that outlines the ownership of the U.S. and foreign entities.

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 issue to be examined is whether a qualifying relationship exists between the petitioner and the foreign entity, [redacted], located in Mexico. On appeal, counsel submits evidence that Ms. [redacted] owns and controls both the petitioner and the foreign entity. As an affiliate relationship between the two companies exists, the prior decision of the

director is withdrawn. Nevertheless, the petition may not be approved as evidence in the record does not support a finding that the beneficiary's proposed job duties are primarily managerial or executive, or that the beneficiary has been employed as an executive or manager for at least one year in the three years immediately preceding the filing of the I-140 petition.

This case will be remanded to the director to determine whether the petitioner has met the eligibility requirements under section 203(b)(1)(C) of the Act. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The decision of the Associate Commissioner, dated January 11, 2000, is withdrawn. The petition is remanded to the director for entry of a new decision in accordance with the foregoing.