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**U.S. Citizenship  
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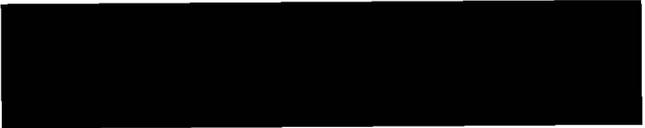
Petitioner:



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:

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

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed the immigrant visa petition to classify the beneficiary 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 petitioner is a branch office of Banco Español de Credito, S.A., a publicly-traded Spanish bank, authorized to transact business in the State of New York. It seeks to employ the beneficiary in the position of Senior Vice President, Head of Operations and IT Division. The record indicates that beneficiary has been employed by the petitioner in the United States in E-2 nonimmigrant status since 1994 and his last overseas assignment was at the foreign entity's Belgian branch, which was subsequently closed. The beneficiary has been continuously employed by Banco Español de Credito S.A., in Spain, Belgium, and the United States, since 1979.

The director denied the petition, concluding that the petitioner had failed to establish that there is a qualifying relationship between the U.S. petitioner and the beneficiary's previous foreign employer. In denying the petitioner, the director observed that the Brussels, Belgium branch of Banco Español de Credito, S.A., closed in 1997. The director therefore determined that the beneficiary's foreign employer and the U.S. employer do not currently have a qualifying relationship because the office in Belgium no longer exists. The director emphasized that the qualifying relationship must exist at the time the immigrant petition is filed. The director noted that if a previous connection to the beneficiary's foreign employer has been severed, the petitioner cannot submit evidence that it is the same employer or an affiliate or subsidiary of the beneficiary's foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that closure of the bank's Belgium branch does not affect the qualifying relationship as the petitioner continues to do business as a multinational corporation, with its main office in Spain, a New York branch office, and other international affiliates and subsidiaries. Counsel further asserts that the beneficiary remained an employee of the main bank in Spain while assigned as head of the Brussels branch in Belgium from 1987 until 1994. Counsel submits a brief and additional evidence in support of the appeal.

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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and 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.

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year

The issue in this proceeding is whether the petitioner established that a qualifying relationship exists between the U.S. company and the beneficiary's previous foreign employer. 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); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

Although the statute refers to an alien that seeks to enter the United States temporarily in order to render his or her services "to enter the United States in order to continue to render services to the same employer or to a

subsidiary or affiliate thereof," the phrase "same employer" refers to a "branch office" of a foreign entity that is authorized to do business in United States.

The regulations governing this immigrant visa classification do not provide a definition for "branch." However, the term "branch" is defined at 8 C.F.R. § 214.2(l)(1)(ii)(J) as "an operating division or office of the same organization housed in a different location." Given the overall similarities in eligibility requirements between the L-1A nonimmigrant classification and the first-preference immigrant visa classification for multinational managers and executives, this definition provides a useful analogy.

The petitioner has provided evidence that it is a branch office of Banco Español de Credito, S.A., a corporation organized and operating under the laws of the Kingdom of Spain. The record shows that the beneficiary has been employed by Banco Español de Credito, S.A. continuously since 1979. From 1979 until 1987, he worked at the bank's main office in Madrid, Spain. In 1987, he was assigned to participate in the opening of a new branch of the bank in Brussels, Belgium. In 1994, he was re-assigned to the New York, New York branch of the bank, where he has been employed in E-2 status through the present time. The petitioner has revealed that the Brussels, Belgium branch of Banco Español de Credito, S.A. closed in 1997.

The director denied the petition on July 4, 2007, concluding that the petitioner does not have qualifying relationship with the beneficiary's foreign employer. In denying the petition, the director stated:

In the three-year period prior to his transfer the beneficiary was employed as the "fonde de pouvoirs principal" of Banco Espanol de Credito Brussels branch in Belgium. The submitted evidence indicates that in 1994 the foreign employer . . . was acquired by Banco de Santander.<sup>1</sup> In 1997 the branch was closed. Given the above, the evidence establishes that the beneficiary's foreign employer and the US employer do not currently have a qualifying relationship as the Brussels office no longer exists. In the employment-based immigrant petition context, the petitioner is required to submit evidence that it has a qualifying relationship with the beneficiary's foreign employer at the time the petition is filed. If a previous connection to the beneficiary's foreign employer has been severed, the petitioner cannot submit evidence that it is the same employer or an affiliate or subsidiary of the beneficiary's foreign employer. For this reason the petition may not be approved.

On appeal, counsel for the petitioner alleges that the basis for denial of the petition is "absurd," and contends that "it is well settled that if the petitioner is currently actively doing business in at least one foreign country, the closure of petitioner's Belgian branch does not warrant a denial of the petition." Counsel emphasizes that the petitioner's latest annual report lists multiple international branches, subsidiaries and affiliates, thus evidencing that the multinational status of the corporation.

Counsel asserts that it is clear that there are numerous entities operating abroad within the petitioner's group "to which [the beneficiary] could have been transferred at the end of his United States assignment." Counsel notes that the definition of "qualifying organization," only requires that the U.S. employer continue to have a

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<sup>1</sup> According to the 2006 annual report for Banco Español de Credito, S.A., Banco Santander Central Hispano is the petitioner's majority shareholder.

related entity doing business abroad. Therefore, counsel avers that "[t]here is nothing in the definition to prevent the dissolution or sale or closure of the former employer so long as another affiliate continues to do business abroad." Counsel further emphasizes that the Brussels, Belgium branch which closed subsequent to the beneficiary's assignment to the United States "was not an affiliate, nor a subsidiary, but a direct branch of the main bank headquarters in Madrid."

Finally, counsel advises that the beneficiary, during his employment in Belgium remained an officer of the petitioner's main office in Spain and continued to receive his salary from company headquarters, while the Brussels branch office paid his incidental expenses. Counsel asserts that the beneficiary's employment in Belgium was thus "actually by the head office in Madrid as opposed to the Belgian branch." In support of this claim, the petitioner submits a notarized letter from the beneficiary in which he states that during the period from 1987 until 1994, while on assignment in Belgium, he remained a full employee of Banco Espanol de Credito Spain, received his salary and pension benefits from the headquarters office in Spain, and received only cost of living and medical insurance benefits from the Brussels branch.

Upon review, the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer. The director's decision will be withdrawn and the petition will be approved.

Although the AAO will sustain the appeal, it must be noted that counsel's claims are, in part, unpersuasive. In support of his primary argument, counsel relies on the definition of "qualifying organization" provided at 8 C.F.R. § 214.2(l)(1)(ii)(G), a term that is not found in the statute or regulations governing this immigrant visa petition.

The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of "subsidiary" and "affiliate." *Cf.* 8 C.F.R. §§ 214.2(l)(1)(ii)(K) and (L); 8 C.F.R. § 204.5(j)(2). However, there are situations in which changes in corporate relationships will have different consequences in the nonimmigrant and immigrant contexts.

With respect to maintenance of a qualifying relationship, the L-1 nonimmigrant classification only requires that the petitioning organization continue to operate outside the U.S. *See* 8 C.F.R. § 214.2(l)(ii)(G)(2) (defining "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which is or will be doing business in at least one other country for the duration of the alien's stay in the United States as an intracompany transferee.) While a qualifying relationship with the beneficiary's foreign employer must exist at the time of the beneficiary's transfer to the United States in L-1 status, a subsequent sale or dissolution of the foreign entity that employed the beneficiary will not necessarily render the beneficiary ineligible to maintain L-1 status, so long as the petitioner continues to do business in at least one other country through a qualifying branch, parent, affiliate or subsidiary.

In contrast, in order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). A multinational executive or manager is one 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." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

Therefore, the director's decision was not absurd. The fact that the foreign entity continues to maintain international subsidiaries and affiliates outside the United States to which the beneficiary could be transferred is not the decisive factor in this matter. The critical issue is whether the specific foreign entity that employed the beneficiary during the three-year period preceding his assignment to the United States continues to exist and have a qualifying relationship with the petitioner.

As a branch office, the petitioner's form of business directly impacts the question of the claimed qualifying relationship. The statute limits this visa classification to aliens who seek to enter the United States to continue rendering services to the "same employer" or to a subsidiary or affiliate of the foreign employer. Section 203(b)(1)(C) of the Act.

Only a United States employer may file this petition. 8 C.F.R. § 204.5(j)(1). In employment-based immigrant visa petition proceedings, a petitioner with no location in the United States is not an employer and, therefore, cannot offer permanent employment in the United States to an alien. Only a United States-based branch office, affiliate, or subsidiary of a foreign organization may file such a petition. *Matter of A. Dow Steam Specialties, Ltd.*, 19 I&N Dec. 389 (Comm. 1986).

The immigrant visa regulations do not define the term "branch." *Black's Law Dictionary* defines a branch as "an offshoot, lateral extension, or division of an institution." *Black's* at 199 (8th Ed. 2004). Additionally, the nonimmigrant regulations define a branch office as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(1)(1)(ii)(J). Accordingly, it is reasonable to interpret a branch office as the "same employer," as long as that branch office is lawfully registered and authorized to conduct business.<sup>2</sup>

Here, the foreign entity that employed the beneficiary was a branch of Banco Español de Credito, S.A. of Spain. As a branch office, the Brussels, Belgium bank must be considered the "same employer" or "same organization" and was not a distinct legal entity separate and apart from Banco Español de Credito, S.A. When examining the effect of the closure of the foreign office that previously employed the beneficiary, the closure of a branch office does not preclude the petitioner from establishing that it currently maintains a qualifying relationship with the foreign entity. The beneficiary's foreign employer from 1979 until 1994, based on the definition of "branch," was always the "same employer," and the record demonstrates that that employer, a Spanish corporation, continues to do business abroad and in the United States.

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<sup>2</sup> Simply claiming to function as a branch would not be sufficient. Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity. In the present matter, the petitioner has submitted sufficient evidence of its branch operations.

By contrast, if the record showed that the Belgian office for which the beneficiary had worked had been incorporated in Belgium as an affiliate or subsidiary of Banco Español de Credito, S.A., then that entity would not be considered as "an . . . office of the same organization housed in a different location." Such a corporation would be a distinct legal entity separate and apart from the foreign organization. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Had the beneficiary worked for an affiliate or subsidiary of the foreign entity that had been subsequently sold to an unrelated company or closed, then the qualifying relationship would be severed, and the beneficiary would be ineligible for classification as a multinational manager or executive. However, as applied to a branch office, the director's reasoning was incorrect.

Based on the foregoing discussion, the petitioner has established that petitioner and the beneficiary's foreign employer maintain a qualifying relationship. Accordingly, the director's decision will be withdrawn and the appeal will be sustained.

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 been met.

**ORDER:** The appeal is sustained.