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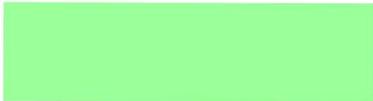
U.S. Citizenship
and Immigration
Services



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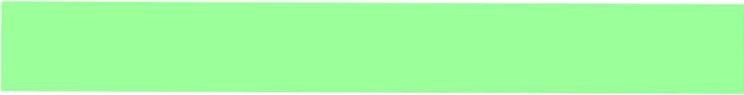
OFFICE: NEBRASKA SERVICE CENTER



IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an insurance underwriting company incorporated in the U.S territory of Guam which seeks to employ the beneficiary as its Life Operations Manager. The petitioner states that it is an affiliate of Moylan's Insurance Underwriters, (International), Inc. (hereinafter the "CNMI employer") located in the Commonwealth of the Northern Mariana Islands (CNMI). Accordingly, the petitioner endeavors to classify 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.

The director denied the petition, finding that the petitioner had not established that a qualifying relationship existed between the petitioner and the CNMI employer.

On appeal, counsel asserts that the director erred in concluding that there is no qualifying relationship between the petitioner and the foreign employer.

I. The Law

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

At issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with the beneficiary's 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").

The regulation at 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.

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.

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.

II. The Issue on Appeal

The sole issue on appeal is whether the petitioner has established that it has a qualifying relationship with the beneficiary's former CNMI employer.

A. Facts

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on October 4, 2012. In a letter dated September 19, 2012, the petitioner indicated that it was established in the U.S. Territory of Guam in 1971 and that "[redacted] own 99% of the corporation's shares.

[REDACTED]

The petitioner stated that it has employed the beneficiary, an L-1A nonimmigrant visa holder, in Guam since March 2007. Previously, the beneficiary worked for [REDACTED] company, from July 2005 until March 2007. The petitioner emphasized that, according to USCIS guidelines "employment in the [REDACTED] prior to November 28, 2009 will continue to be considered employment abroad for a qualifying foreign organization for all purpose under the INA." The petitioner stated that the [REDACTED] employer is "80% owned directly by the individuals [REDACTED] with an additional 19% owned by [the petitioner]." The petitioner stated that it maintains international affiliates located in the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands and the Philippines.

The petitioner provided a copy of its 2012 Guam Annual Report filed with the Department of Revenue and Taxation in July 2012. The petitioner indicated that it has 348 shares of common stock issued and outstanding which are distributed as follows:

[REDACTED]	47 shares
[REDACTED]	299 shares
[REDACTED]	1 share
[REDACTED]	1 share

The petitioner submitted a copy of its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for 2011. At Schedule K, the petitioner indicated that [REDACTED] owns 99.9% of its voting stock. On the accompanying Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, the petitioner reported that Judith Moylan owns, directly or indirectly 85.43% of the voting stock.

Regarding the CNMI company, the petitioner submitted a copy of its certificate of registration filed with the CNMI Office of the Registrar of Corporations on July 16, 1979, as well as copies of its Annual Corporation Reports filed with the CNMI Treasurer for 2005 and 2009.

In the 2005 Annual Report, the ownership of the company's 1,000 authorized shares was reported as follows:

[REDACTED]	499 shares
[REDACTED]	300 shares
[REDACTED]	190 shares
[REDACTED]	10 shares
[REDACTED]	1 share

In 2009, the CNMI employer reported that [REDACTED] was no longer listed as a shareholder.

In order to establish that it remains a multinational corporation with at least one affiliate outside the United States, the petitioner submitted evidence establishing the ownership and ongoing operation of [REDACTED]

owns 60% of its shares, the petitioner owns 36% and [REDACTED] owns the remaining 4%.

On February 4, 2013, the director issued a notice of intent to deny. The director noted that the definition of the term "United States" at 8 C.F.R. § 215.1(e) includes the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009). The director stated that the petitioner must establish eligibility at the time of filing and emphasized that the petitioner and the CNMI entity that previously employed the beneficiary are both located in the United States. The director concluded that "the qualifying relationship of conducting business in two or more countries did not exist at the time the petition was filed."

In response, counsel for the petitioner asserted that the regulations only require that a petitioner be doing business internationally, not that the petitioner be doing business internationally through the same subsidiary with which the beneficiary's qualifying employment was acquired. Counsel reasserted the ownership structure of the petitioner adding the following explanation:

[REDACTED] are husband and wife, and therefore [REDACTED] shares are community property under the laws of Guam Thus, [REDACTED] holds an undivided ½ interest in each of her 86% shares of [the petitioner], in addition to the 13% of shares he directly owns.

Counsel emphasized that [REDACTED] and therefore established that it has a qualifying affiliate relationship with a foreign entity and meets the definition of "multinational."

Finally, counsel emphasized that the beneficiary's gained more than one year of qualifying employment with the CNMI employer in the three years preceding November 28, 2009, and that this employment should be considered employment abroad for a qualifying organization for the purposes of the requested classification. Counsel cited the Memorandum of [REDACTED] Acting Assoc. Director, USCIS, *Effect of the CNRA, Title VII of Public Law 110-229, Classification of Aliens under Section 101(a)(15)(L) and 203(b)(1)(C)*, (November 23, 2009) ("Neufeld Memo.")

The director denied the petition on April 17, 2013, concluding that the petitioner failed to establish that the petitioner and the CNMI employer maintained a qualifying relationship at the time the petition was filed. The director agreed with the petitioner that "the beneficiary's experience [with the CNMI employer] is considered qualifying per the [REDACTED] memo." However, the director found that in order to establish eligibility for the requested immigrant classification, the petitioner must establish that the foreign entity that employed the beneficiary continues to exist and to have a qualifying relationship with the petitioner at the time the petition is filed.

On appeal, the petitioner asserts that the petitioner and the previous employer are affiliates, that this relationship satisfies the requirements of 8 C.F.R. § 204.5(j)(3)(i)(C), and establishes eligibility for the

requested classification. The petitioner further asserts that a "qualifying relationship" for purposes of section 203(b)(1)(C) of the Act and 8 CFR 204.5(j)(3)(i)(C) does not require a beneficiary's previous employer to be a foreign entity at the time of filing.

In a supplemental brief counsel emphasizes that the petitioner and the CNMI employer "are owned and controlled by the [REDACTED] family, and are affiliated companies." Counsel asserts that the CNMI employer changed from a foreign employer to a U.S. employer on November 28, 2009 when CNMI became part of the United States for immigration purposes, but that no other aspect of the relationship between the two companies has changed.

Counsel states that the petitioner is owned "99% by [REDACTED] and that the CNMI employer is owned "80% by [REDACTED] with an additional 19% owned by Petitioner." Counsel contends that the two companies are affiliates and that the [REDACTED] memo "makes clear USCIS' intention that multinational managers whose qualifying employment was acquired with CNMI employers remain eligible for immigrant visas under 203(b)(1)(C)." Finally, counsel asserts that based on the director's interpretation of the Neufeld memo, no immigrant petition filed under section 203(b)(1)(C) could ever be approved if the beneficiary's foreign employment was obtained with a CNMI employer. Counsel asserts that such an interpretation would render the inclusion of section 203(b)(1)(C) of the Act in the memo "meaningless and absurd."

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the petitioner and the CNMI employer have a qualifying relationship.

While the director's ultimate conclusion that the petitioner failed to establish a qualifying relationship will be affirmed, the director failed to analyze the ownership and control of the two companies and erroneously focused on the current nationality of the CNMI employer in determining that the petitioner failed to establish eligibility. The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The primary issue is whether the petitioner supported its claim that the petitioner and the CNMI entity that employed the beneficiary for one year in the three years preceding her admission to the United States as a nonimmigrant are affiliates. The petitioner has not submitted sufficient evidence to establish that claimed affiliate relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect

legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Therefore, to establish eligibility in this case, it must be shown that the CNMI employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

Counsel asserts that the petitioner and the foreign employer are affiliates based on common majority ownership by [REDACTED] who collectively own 99 percent of the petitioner's shares and over 80% of the CNMI entity's shares. However, the evidence presented demonstrates that a majority of the shares in the petitioner are owned by Judith Moylan (299 shares or an approximately 86% interest), and the majority of the shares in the CNMI employer (509 shares or a 50.9% interest) are owned by [REDACTED]. Based on the petitioner's description of each company's ownership, Ms. Moylan has de jure control of the petitioner and Mr. [REDACTED] has de jure control of the CNMI entity.

Therefore, the two entities, not owned or controlled by the same individual or group of individuals and there is no affiliate relationship in the absence of voting agreements or other documentation that would give the same individual control over both companies or both individuals joint control over both entities. In order to establish "de facto" control of both entities by an individual or group of individuals, the petitioner must provide agreements relating to the control of a majority of the shares' voting rights through proxy agreements. *Matter of Hughes*, 18 I&N Dec. 289, 293 (Comm'r 1982). A proxy agreement is a legal contract that allows one individual to act as a substitute and vote the shares of another shareholder. *See Black's Law Dictionary* 1241 (7th Ed. 1999). The agreement of two individuals to vote shares in concert does not rise to the level of a proxy agreement that would give one individual control over the voting rights of a majority of the issued shares.

Counsel states that marital property is considered community property in Guam, and therefore by law, the ownership interests of [REDACTED] can be combined, such that they collectively own a majority interest in each company. Marital property is considered community property to be divided between spouses upon the dissolution of the marriage in many states in the United States. However, this law has no impact on the ownership and control of shares during the marriage and the determination of ownership and control for the purposes of the Act. Spousal and familial relationships do not constitute qualifying relationships under the regulations. *See Ore v. Clinton*, 675 F.Supp.2d 217, 226 (D.C. Mass. 2009) (finding that the petitioner and the foreign company did not qualify as "affiliates" within the precise definition set out in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L)(1), despite petitioner's claims that the two companies "are owned and controlled by the same individuals, specifically the Ore family").

Furthermore, the AAO notes that the petitioner identified [REDACTED] as the owner of 99.9% of its voting shares in its 2011 IRS Form 1120 at Schedule K. This entity is not mentioned elsewhere

in the record and the petitioner has provided no explanation as to why it is reported as the majority shareholder in the company's tax return. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the petitioner has provided no primary evidence of its ownership or primary evidence of the ownership of the CNMI employer. To determine whether a qualifying relationship exists between United States and foreign entities, USCIS must examine the elements of "ownership and control," whether by *de jure* or *de facto* control, by reviewing corporate stock certificates, a stock certificate registry or ledger, corporate bylaws, the minutes of relevant annual shareholder meetings, proxy agreements, and any other relevant documentation. *See Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). The petitioner's evidence of ownership is limited to annual reports and one tax return which contains unexplained and apparently contradictory information. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the reasons discussed above, the petitioner has not supported its claim that the petitioner and the beneficiary's former CNMI employer have a qualifying relationship. For this reason, the appeal will be dismissed.

III. Conclusion:

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.