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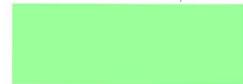


U.S. Citizenship
and Immigration
Services

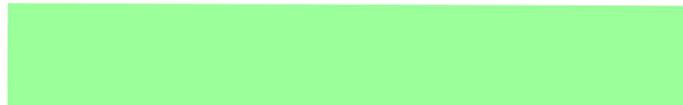


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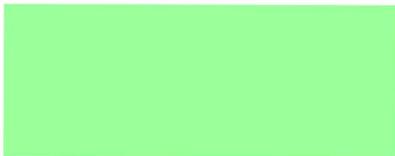


IN RE: Petitioner:
Beneficiary:



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 preference visa petition was denied by the Director, Nebraska Service Center. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The AAO dismissed the appeal and the matter is now before the AAO on a motion to reopen. Although the AAO will grant the petitioner's motion, the decision dismissing the appeal will be affirmed.

The petitioner was incorporated in the U.S. territory of Guam and operates as an insurance underwriting company. It seeks to employ the beneficiary as its life operations manager. 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, concluding that the petitioner failed to establish that it maintains a qualifying relationship with the beneficiary's former employer located in the Commonwealth of the Northern Mariana Islands (CNMI). The director's decision was based on a finding that the petitioner and the CNMI are both U.S. entities for immigration purposes, despite the fact that CNMI was not part of the United States during the beneficiary's period of employment abroad from 2005 to 2007.

The AAO dismissed the petitioner's subsequent appeal on August 28, 2013. Although the AAO affirmed the director's conclusion that the petitioner failed to establish a qualifying relationship with the beneficiary's former employer in CNMI, it found that the director erred in focusing on the company's nationality at the time of filing. However, the AAO determined that the evidence of record failed to corroborate the claimed affiliate relationship between the petitioner and the CNMI employer.

On motion the petitioner asserts that the petitioner and the CNMI entity have a qualifying relationship based on common ownership and control and submits additional evidence in support of its assertions.

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.

The issue being contemplated in the present discussion is whether the petitioner provided sufficient evidence to establish that it has a qualifying relationship with the beneficiary's former CNMI employer. To establish the existence of 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. Procedural History

In a decision dated April 17, 2013, the director denied the petition, determining that the petitioner and the beneficiary's former CNMI employer do not have a qualifying relationship based on the U.S. nationality of the CNMI employer at the time the Form I-140 was filed. *See* 8 C.F.R. § 215.1(e)(for definition of the term U.S.).

The petitioner subsequently filed an appeal, asserting that it has an affiliate relationship with the beneficiary's former employer and that the affiliate relationship satisfies the regulatory criteria at 8 C.F.R. § 204.5(j)(3)(i)(C). In an appellate brief, counsel asserted that both entities are majority owned by the same husband and wife, thus supporting the claim that the two entities are affiliates under the definition provided above. Additionally, the petitioner contended that the director should not focus on the former employer's status as a U.S. entity at the time of filing but should instead focus on the foreign employer's nationality at the time of the beneficiary's employment from 2005 to 2007, during which time CNMI was not considered a U.S. entity.

In a decision dated August 28, 2013, the AAO contemplated the director's decision and the evidence offered by the petitioner in support of the appeal. Although the AAO affirmed the director's conclusion, it found that the director erred in focusing on the CNMI entity's nationality at the time of filing. The AAO determined that the former employer's nationality at the time of employment should have been considered and thus found the director's analysis to be incorrect. Notwithstanding the director's error, the AAO concluded that the evidence failed to establish that the beneficiary's former and current U.S. employers are commonly owned and controlled and dismissed the appeal on the basis of this finding. The AAO found that while the submitted evidence shows the U.S. employer as being majority owned by [REDACTED] the evidence shows that the former CNMI employer is majority owned by [REDACTED] spouse, thus indicating that the two entities are not similarly owned.

The petitioner has since filed a motion to reopen in support of which new evidence has been provided to address the deficiencies regarding common ownership between the petitioner and the beneficiary's former employer. In a supplemental brief counsel asserts that the petitioner acquired ownership of the CNMI entity and that as a result of such acquisition the petitioner and the CNMI entity have a parent-subsidiary relationship.

III. Discussion

Upon review, the petitioner has not provided consistent and reliable evidence establishing that it has either an affiliate or a parent-subsidiary relationship with the beneficiary's former employer.

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 (BIA 1988); *see also*

Matter of Siemens Medical Systems, Inc., 19 I&N Dec. 362 (Assoc. Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 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.

In reviewing the information provided previously in counsel's appellate brief, which claimed an affiliate relationship based on the understanding that the husband and wife are common majority owners of both entities, the AAO contemplated "de jure" control - by reason of ownership of 51 percent of outstanding stocks of the other entity - and "de facto" control - by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). The AAO properly assessed the evidence of ownership, which establishes that Ms. [REDACTED] has de jure control of the petitioner, while Mr. [REDACTED] has de jure control of the CNMI entity. The AAO further determined that the record lacks evidence to show that either individual has de facto control of the entity in which he or she does not have majority ownership. The AAO rejected counsel's assertion that the two entities' stock is part of the couple's marital property and is thereby community property by operation of Guam's laws on community property. The AAO pointed out that a spousal or familial relationship does not constitute a qualifying relationship 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").

On motion, the petitioner appears to have abandoned its earlier claim that it has an affiliate relationship with the CNMI company and now asserts that it owns 100% of the CNMI entity's stock, thus establishing a parent-subsidiary relationship rather than an affiliate relationship. Although the petitioner provided transfer certificates dated August 16, 2006 to establish that all prior shareholders of the CNMI entity transferred their respective ownership interests to the petitioner, the AAO cannot ignore the claims made on appeal, which indicate that another change in the petitioner's ownership may have taken place since 2006. In other words, even if the 2006 transfer documents were to be deemed valid, the fact remains that the CNMI annual reports for 2006, 2008, 2011, and 2012 as well as counsel's supporting appellate brief all indicate that Mr. [REDACTED] owned 509 shares, Ms. [REDACTED] owned 300 shares, a Guam corporation owned 190 shares, and [REDACTED] owned 1 share of the CNMI entity. While it is possible for the CNMI entity's ownership to have changed again from being owned by the petitioner, as claimed in the August 16, 2006 transfer documents, back to the ownership distribution reflected in the CNMI entity's annual reports, there is no evidence that such a transfer took place. Moreover, the very information that is provided in the transfer of shares/waiver and consent document with regard to consideration for the transferred shares is not consistent with the corporate attorney's letter dated August 15, 2006. Namely, while the attorney expressly indicated that the transfers were being made with no consideration, the transfer of shares/waiver and consent document dated August 16, 2006 indicates that the transfers by each transferring part were being made "for valuable consideration."

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). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

IV. Conclusion

In summary, the petitioner has made inconsistent claims regarding who owns and controls the CNMI entity. Although some documentation has been provided to establish that a change in ownership took place in August 2006, those documents contained a considerable anomaly regarding the issue of consideration for the shares that were purportedly transferred. The petitioner made yet another alteration on appeal when it returned to the original ownership breakdown, which showed Mr. [REDACTED] as the CNMI entity's majority owner. Given these numerous inconsistencies and lack of sufficient supporting evidence, the petitioner has not established that it has a qualifying relationship with the beneficiary's former CNMI employer. Accordingly, the AAO will affirm its prior decision dismissing the appeal.

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. The petitioner in the instant case has not sustained that burden.

ORDER: The AAO's decision dated August 28, 2013 is affirmed.