



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JUL 24 2015

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

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)

ON BEHALF OF PETITIONER:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration.

The petitioner is a California corporation that has 30 employees and a gross annual income that exceeds \$4 million. The petitioner operates as a television broadcast and digital media company and seeks to employ the beneficiary as its vice president of television operations. 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.

In a decision dated August 22, 2014, the director denied the petition based on two independent adverse conclusions. The director found that the petitioner failed to establish that (1) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (2) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The decision was based primarily on the director's assessment of the beneficiary's foreign and proposed job duties. Namely, the director determined that the petitioner provided job descriptions that lacked sufficient detail and thus deemed the submitted information to be "of limited evidentiary value."

We find that the director placed emphasis on the beneficiary's job duties to the exclusion of other relevant factors. While the beneficiary's job description is often the first element to be reviewed when determining the managerial or executive nature of the beneficiary's proposed and/or foreign employment, the beneficiary's job duties should not be the sole determining factor. Rather, the director should give due consideration to both entities' organizational hierarchies, the beneficiary's respective positions therein, and evidence of both entities' overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. Therefore, while the director was correct in considering the beneficiary's job duties, this element must be assessed in light of a comprehensive analysis of these other relevant factors.

In the present matter, the record indicates that the director's analysis was deficient in that it failed to consider that both the U.S. and foreign entities are equipped with sufficiently complex organizational structures with managerial tiers and lower level employees. The record also shows that the beneficiary's positions with respect to others within both entities were indicative of someone operating at a high management level. Consideration of the entire record strongly indicates that both entities are adequately staffed such as to relieve the beneficiary from having to primarily perform non-qualifying operational tasks. In light of our analysis of the record, we find that the director's grounds for denial must be withdrawn.

Notwithstanding our decision to withdraw the director's decision, we are unable to sustain the appeal as a result of certain unexplained anomalies that were observed during the course of our review of the record. Namely, the petitioner's 2010, 2011, and 2013 tax returns, Schedule G, indicate that the petitioner is majority owned by [REDACTED], and that [REDACTED] was organized in the United States. All three tax returns provide an Employer Identification Number (EIN) assigned to the parent entity, despite the fact that the petitioner's original supporting statement, dated May 20, 2013, indicates that [REDACTED] is a foreign corporation that was incorporated in [REDACTED] China. We further note that the petitioner provided the same responses in Schedule K, Item 7 of the tax returns, indicating that no foreign person owned, directly or indirectly, at least 25% of the petitioning entity. Although the petitioner was consistent in provided the same information within the tax returns, the information provided therein is entirely inconsistent with information that the petitioner's original claim regarding the parent entity's country of origin. In other words, while the petitioner's tax

returns identify [REDACTED] as a domestic U.S. corporation with majority ownership interest in the petitioning entity, the petitioner's original supporting statement indicates that the petitioner is a multinational entity by virtue of having a foreign parent entity. See 8 C.F.R. § 204.5(j)(2) (for definition of *multinational*). As indicated, the petitioner's original claim is inconsistent with the information provided in the petitioner'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).

In addition, Schedule G of the petitioner's 2013 tax return shows [REDACTED] as owning 100% of the petitioner's stock. This information is consistent with Schedule L Item 22(b) of the same tax return, which shows a considerable increase in the petitioner's shareholder's equity when comparing the amount shown at the beginning of the tax year with the amount shown at the end of the year. However, Schedule G of the petitioner's prior tax returns for 2010 and 2011 both show [REDACTED] as owing 91% of the petitioner's stock. The petitioner has not provided corroborating evidence in the form of additional stock certificates or additional transactions in the petitioner's stock transfer ledger to explain [REDACTED] increased ownership from 91% to 100% of the petitioner's stock. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 the present matter, the record as presently constituted lacks evidence to explain and resolve the inconsistencies and anomalies with regard to the petitioner's ownership and ownership of the petitioner's parent entity. In order to determine whether a qualifying relationship exists, additional evidence is required. Accordingly, the instant matter must be remanded to the director for the purpose of allowing the petitioner the opportunity to supplement the record with evidence that may address the deficiencies described above.

ORDER: The decision of the director dated August 22, 2014 is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse, shall be certified to the AAO for review.