

EXHIBIT 1

July 17, 2017

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services

BIRD TECHNOLOGIES GROUP INC
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US



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RE: AUGUSTO FANTINATO FILHO
I-140, Immigrant Petition for Alien Worker

DECISION

Reference is made to this Immigrant Petition for Alien Worker, (Form I-140 petition) filed by BIRD TECHNOLOGIES GROUP INC, the petitioner, on behalf of AUGUSTO FANTINATO FILHO on March 7, 2016. This petition seeks to classify the beneficiary as an employment-based immigrant in accordance with Section 203(b)(1)(C) of the Immigration and Nationality Act (INA). After consideration, it is the decision of U.S. Citizenship and Immigration Services (USCIS) to deny this Form I-140 petition.

An alien qualifies as a multinational executive or manager 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 the alien 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.

On April 24, 2017 USCIS issued a Request For Evidence ("RFE") seeking evidence that the beneficiary was employed abroad at an employer with a qualifying relationship that was incorporated in Brazil. A request was also made for evidence regarding the beneficiary's job duties abroad and a list of his subordinates. The petitioner's response was received on May 16, 2017 and has been added to the record.

Title 8, Code of Federal Regulations, Part 204.5(j)(2) defines "affiliate" as:

- (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; or



(C) In the case of a partnership that is organized in the United States to provide accounting services, along with managerial and/or consulting services, and markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

Title 8, Code of Federal Regulations, Part 204.5(j)(2) defines "subsidiary" as:

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.

Title 8, Code of Federal Regulations, Part 204.5(j)(3)(i) states that a petition for a multinational executive or manager must be accompanied by evidence that:

(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.

These regulations, together with case law, confirm that ownership and control are the factors that must be considered in determining whether a qualifying relationship exists between the petitioner and foreign entities for purposes of this classification.

The petitioner provided no evidence that the Bird Technologies Group Inc. is incorporated in , has a subsidiary in, or has an affiliate in Brazil. In order to have a qualifying relationship as a multinational corporation doing business in the United States and abroad, the petitioner must either be incorporated in the United States and in the foreign country where the beneficiary worked or have a qualifying relationship with an affiliate or subsidiary incorporated in the foreign company. Furthermore, the petitioner states repeatedly that they are the same employer that employed the beneficiary when he worked in Brazil and have provided letters which state that Bird Technologies Group performed money transfers to directly pay the beneficiary when he was abroad.

When the regulation refers to "the same employer," the petitioner must show the existence of two entities that operate under the same corporate name; one entity must physically exist in a foreign country and the other entity must physically exist in the United States. For example, Coca-Cola France is the "same employer" as Coca-Cola United States. This regulation is consistent with *Matter of Church of Scientology International*, 19 I&N Dec. 593 (BIA 1988), in which the Board held that "case law has confirmed that ownership and control are the factors for establishing a qualifying relationship exists between United States and foreign entities."

Pursuant to Section 291 of the INA, whenever any person makes an application for an immigration benefit, he shall bear the burden of proof to establish eligibility. Accordingly, the petitioner must prove by a preponderance of the evidence, in other words, that it is more likely than not, that the beneficiary is fully qualified for the benefit sought. See *Matter of E-M-*, 20 I. & N. Dec. 77 (BIA 1989). After a careful review and analysis of all evidence in the record, USCIS finds that the



petitioner has not established eligibility for the benefit sought.

In view of the above, the petition is denied.

If you disagree with this decision, you may appeal to the Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) within **33** days of the date of this decision. Alternatively, you may use Form I-290B to submit a motion to reopen or reconsider. For the latest information on filing location, fee, and other requirements, please review the Form I-290B instructions at <http://www.uscis.gov/forms>, call our National Customer Service Center at 1-800-375-5283, or visit your local USCIS office. If USCIS does not receive a properly filed appeal, this decision will become final.

This decision does not prevent you from filing any petition or application in the future.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.ombudsman.sba.gov or phone 202-205-2417 or fax 202-481-5719.

Sincerely,



Donna Campagnolo, Acting
Director
Officer: 0454

