

## § 204.7

alien entrepreneur classification under section 203(b)(5) of the Act.

[56 FR 60910, Nov. 29, 1991, as amended at 57 FR 1860, Jan. 16, 1992; 58 FR 44608, 44609, Aug. 24, 1993]

### **§ 204.7 Preservation of benefits contained in savings clause of Immigration and Nationality Act Amendments of 1976.**

In order to be considered eligible for the benefits of the savings clause contained in section 9 of the Immigration and Nationality Act Amendments of 1976, an alien must show that the facts established prior to January 1, 1977 upon which the entitlement to such benefits was based continue to exist.

[41 FR 55849, Dec. 23, 1976]

### **§ 204.8 Petitions for employees of certain United States businesses operating in Hong Kong.**

(a) *General.* A petition to accord an alien status as an employee of a United States business operating in Hong Kong pursuant to section 124 of the Immigration Act of 1990 shall be filed by the employer on Form I-140, Immigrant Petition for Alien Worker. Since section 124 provides for up to 12,000 additional visa numbers only in each of fiscal years 1991 through 1993, petitions for these employees will not be accepted after September 30, 1993.

(b) *Definitions.* As used in this section:

*Affiliate* means one of two subsidiaries both of which are owned and controlled by the same parent or individual or 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. Effective October 1, 1991, in the case of a partnership that is organized in the United States to provide accounting services along with managerial and consulting services and that 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

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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.

*Executive capacity* means an assignment within an organization in which the employee primarily:

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

*Managerial capacity* means an assignment within an organization in which the employee primarily:

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised, or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

*Officer* means, with respect to a business entity, the chairman or vice-chairman of the board of directors of the entity, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice-president, any assistant vice-president, any senior trust officer, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any