



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17580870

Date: AUG. 26, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a distributor of relays and other precision parts, seeks to permanently employ the Beneficiary as its vice president of operations under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish, as required, that the Petitioner had a qualifying relationship with the Beneficiary's foreign employer.¹ The Petitioner later filed an appeal that we dismissed. The matter is now before us again on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits additional evidence and contends this establishes that it has a qualifying relationship with the Beneficiary's foreign employer. Upon review, we will grant the motion to reopen and sustain the appeal.²

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." See § 203(b)(1)(C) of the Act; see also 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). 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. See, e.g., *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). 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 Int'l*, 19 I&N Dec. at 595.

¹ An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

² A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We may only grant a motion that meets these criteria and establishes eligibility for the requested benefit. As we are granting the motion to reopen and sustaining the appeal, we decline to adjudicate the motion to reconsider.

On motion, the Petitioner states new facts supported by documentary evidence demonstrating that it is more likely than not that the Beneficiary's foreign employer and the Petitioner qualify as affiliates. *See Matter of Hughes*, 18 I&N Dec. at 289. Therefore, we conclude that the Petitioner has established by a preponderance of the evidence that it has a qualifying relationship with the Beneficiary's foreign employer.

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. The Petitioner has met that burden.

ORDER: The motion to reopen is granted and the appeal is sustained.