



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

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

In Re: 22672226

Date: JAN. 5, 2023

Appeal of Texas Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a “mobile retail and investments” operation, seeks to permanently employ the Beneficiary as its operations manager under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Texas Service Center denied the petition concluding that the Petitioner did not demonstrate, as required, the following eligibility criteria: 1) a qualifying relationship exists between the Petitioner and the Beneficiary’s foreign employer; 2) the Petitioner had been doing business for at least one year prior to filing the instant petition; 3) the Petitioner is a multinational entity that does business in the United States and at least one other country; 4) the Beneficiary’s proposed employment would be in a managerial capacity; and 5) the Beneficiary had qualifying employment abroad in a managerial or executive capacity. The Petitioner subsequently filed a motion to reconsider, which the Director dismissed. The Director listed the Petitioner’s submissions and the regulatory requirements of a motion to reconsider and concluded that the Petitioner did not meet those requirements because it did not offer new evidence or cite precedent caselaw.

The matter is now before us on appeal, where we will consider arguments that relate to the Director’s decision to deny the motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that the Director did not adequately explain the deficiencies in the evidence in conformance with 8 C.F.R. § 103.3(a)(1)(i), and therefore, the Petitioner was not afforded a meaningful opportunity to challenge the adverse findings. By concluding that no new evidence was offered, the Director incorrectly indicated that the Petitioner must submit new evidence to meet the

requirements of a motion to reconsider.¹ Further, by stating that the Petitioner cited no precedent caselaw in support of its motion, the Director did not adequately review or address the legal arguments put forth in the Petitioner's supporting brief. In light of these deficiencies, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Notwithstanding the above noted deficiencies, the Director's January 2021 decision identified a notable evidentiary deficiency pertaining to the Petitioner's claim that it is a subsidiary of [REDACTED] [REDACTED] the foreign entity where the Beneficiary is claimed to have been employed in the three years that preceded the filing of this petition. See 8 C.F.R. § 204.5(j)(2) (for definition of "subsidiary"). Namely, the Director pointed out that although the foreign entity and [REDACTED] are claimed as the respective owners of 51% and 49% of the Petitioner's issued shares, the Petitioner submitted tax returns that conflict with this ownership scheme in that they do not identify the foreign entity as having an ownership interest and instead list [REDACTED] [REDACTED] and [REDACTED] as the Petitioner's owners.

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.

In the matter at hand, the Director correctly notified the Petitioner of an evidentiary discrepancy regarding its ownership. However, despite recognizing that the qualifying relationship issue served as a basis for denial, the Petitioner did not address or resolve that discrepancy on motion. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that a petitioner must resolve any inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

Regardless, because the Director's decision did not adequately analyze the facts of the matter and apply the law, we cannot affirm that decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).