



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

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

In Re: 18353061

Date: SEPT. 24, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Multinational Managers or Executives

The Petitioner is a warehouse and distribution center for electronic equipment manufactured in China by its majority shareholder [REDACTED], and related companies. It seeks to permanently employ the Beneficiary as a business analytics director, at a salary of \$91,000 per year, under the first preference immigrant classification for multinational managers or executives. 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 that the record did not establish, as required, that: (1) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; (2) the Petitioner will employ the Beneficiary in the United States in a managerial or executive capacity; and (3) the Beneficiary has been employed abroad in a managerial or executive capacity.

The Petitioner appealed the decision to us, and we dismissed the appeal. In the decision, we adopted and affirmed the Director's decision, directly addressing only one ground for denial, specifically the qualifying relationship between the two employers. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will grant the Petitioner's motion to reconsider; dismiss the motion to reopen as moot; and dismiss the appeal.

I. LAW

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.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding

the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

II. QUALIFYING RELATIONSHIP

In our appellate decision, we adopted and affirmed the Director’s denial decision in full. But, while the Director’s decision rested on three different grounds, our appellate decision only discussed one of those grounds. Specifically, we agreed with the Director’s determination that the Petitioner did not establish that it has a qualifying relationship with the Beneficiary’s foreign employer.

To establish a “qualifying relationship” under the Act and the regulations, a petitioner must show that the beneficiary’s foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a “parent and subsidiary” or as “affiliates.” *See generally* section 203(b)(1)(C) of the Act; 8 C.F.R. § 204.5(j)(3)(i)(C).

The regulations and case law confirm that ownership and control are the factors that determine whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification.¹ 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.² Minority ownership of a company does not necessarily preclude control over that company. *See* the definition of “subsidiary” at 8 C.F.R. § 204.5(j)(2).

Before entering the United States to work for the Petitioner, the Beneficiary worked for [redacted] [redacted] later renamed [redacted]. The Petitioner asserts that it has a qualifying relationship with that company through the following chain of ownership:

- [redacted] owns 34.32% of [redacted]
 - [redacted], which owns 77.9% of [redacted]
 - [redacted], which owns 70% of [redacted]
 - The Petitioning U.S. employer.

The Director concluded, and we agreed, that the Petitioner had not established [redacted] control over [redacted]

On motion, the Petitioner establishes that relevant authorities recognize [redacted] as [redacted] “controlling shareholder.” We need not discuss all the technical information submitted on motion, but as an

¹ *See Matter of Church Scientology Int’l*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm’r 1982).

² *Matter of Church Scientology Int’l*, 19 I&N Dec. at 595.

example, the Petitioner quotes the China Securities Regulatory Commission, which states: “In case that there is a relatively dispersed ownership of shares in an issuer, but a single shareholder controls 30% of its shares, the shareholder shall in principle be determined as a controlling shareholder or actual controller, absent evidence to the contrary.” In this case, [] owns more than 30% of [] a considerably higher percentage than what any other shareholder owns. The submitted materials also indicate that [] has wielded a disproportionate influence over [] in matters such as election of members of the board of directors.

By a preponderance of evidence, the Petitioner has established []’s *de facto* control over [] and, as a result, a qualifying relationship between [] and the petitioning entity. Because this information overcomes the only specified ground for dismissal of the appeal, we will grant the motion to reconsider.

As noted above, our appellate decision did not address all the grounds for denial of the petition. As a result, reconsideration of that decision does not fully reverse the underlying denial or result in approval of the petition. Rather, granting the motion to reconsider effectively reinstates the underlying appeal. As such, we will dismiss the motion to reopen as moot.

III. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The Director determined that the Petitioner did not establish that it seeks to employ the Beneficiary in a managerial capacity. We agree, for the reasons explained below.

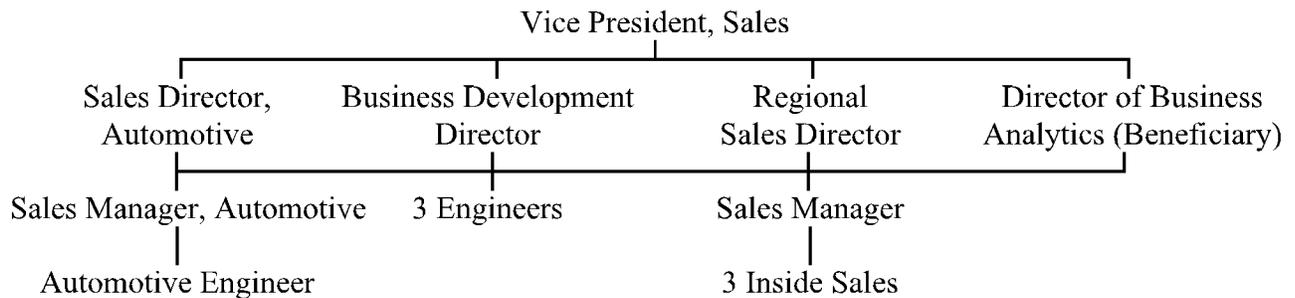
“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

To establish that a beneficiary is eligible for immigrant classification as a multinational manager, a petitioner must show that the beneficiary will perform all four of the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A) of the Act. If a petitioner establishes that the offered position meets all four elements set forth in the statutory definition, the petitioner must then prove that the beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner’s other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006). In determining whether the beneficiary’s duties will be primarily managerial, we consider the description of the job duties, the company’s organizational structure, the duties of the beneficiary’s subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding the beneficiary’s actual duties and role in the business.

In our initial appellate decision, we adopted and affirmed the Director’s denial decision in its entirety. Nevertheless, when we did so, we did not address all the grounds for denial of the petition, and therefore the other grounds remain ripe for appellate review.

In the denial notice, the Director stated that the Petitioner had provided only a vague and general description of the Beneficiary’s duties, and had not shown that she would primarily manage a department, subdivision, function, or component of the organization. As discussed below, we agree with this conclusion.

The Beneficiary entered the United States in December 2018 to work for the Petitioner in L-1 nonimmigrant status. On the petition form, the Petitioner states that the Beneficiary “[s]upervises business operations such as customer service, purchasing, logistics, finance and administration (Please see Company Petition Letter for details).” In that letter, the Petitioner makes essentially the same assertion, stating that the Beneficiary “supervises directly and indirectly a team of supervisory and professional employees engaged in different aspects of business operation such as customer service, purchasing, logistics, finance and administration.” But the Petitioner’s accompanying organizational chart does not corroborate this claim. That chart indicates that employees engaged in customer service, purchasing, logistics, finance, and administration report to the vice president of operation. The Beneficiary’s position appears on a different portion of the chart, as shown below:

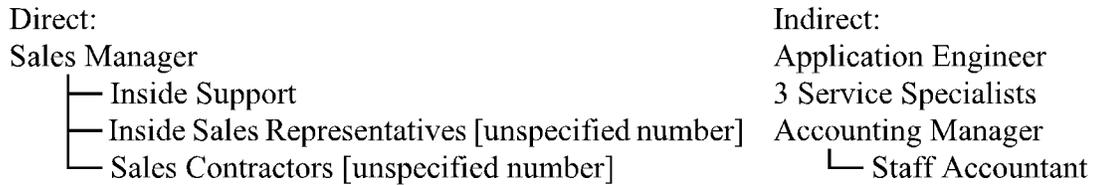


This chart does not show any direct subordinates under the Beneficiary’s authority. We note that the complete chart identifies 30 U.S. positions, but tax documents from early 2019 identify only 19 employees – 15 in California, and one each in Illinois, Michigan, North Carolina, and Texas. A payroll report from February 2020 shows payments to only 10 employees.

These conflicting claims regarding the Beneficiary’s authority raise questions of credibility that the Petitioner must resolve with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the Petitioner states that the Beneficiary had already served in this same position for six months at the time of filing (and therefore her duties, responsibilities, and authority would already have been established), the conflicting assertions raise questions as to the actual duties that the Beneficiary has been performing since 2018.

In a request for evidence, the Director asked the Petitioner to identify the individuals under the Beneficiary’s authority. In response, the Petitioner stated that the Beneficiary “is responsible for directly and indirectly overseeing eight (8) subordinate employees in the U.S. including the following positions: Sales Manager, Inside Support, Service Specialist, Application Engineer, Accounting

Manager, and Staff Accountant. She also oversees various Sales Representatives that work for our company on a contract basis.” The Petitioner submits a revised organizational chart that lists the following positions under the Beneficiary’s direct or indirect oversight:



The positions of “Inside Support,” “Accounting Manager,” and “Service Specialist” do not appear on the first version of the Petitioner’s organizational chart. The “Staff Accountant” is on the chart, but not in the same chain of authority as the Beneficiary. Instead, the chart shows the “Staff Accountant” reporting to the “Admin. Mgr. / Financial Accounting,” under the “VP Operation.” The Petitioner does not explain why the two organizational charts are so different from one another, in terms of structure, the names of the positions, and the size of the staff.

The Petitioner’s RFE response indicates that the Beneficiary has “two subordinate managers under her supervision (Sales Manager and Accounting Manager).” The initial organizational chart did not show the title of accounting manager, and the revised chart submitted in response to the RFE shows that the accounting manager reports directly to the vice president of operation, and only indirectly to the Beneficiary.

The Petitioner asserts that the Beneficiary has authority over “sales contractors,” but the Petitioner does not submit evidence (such as contracts and IRS Forms 1099-MISC, Miscellaneous Income Statements) to show the engagement of these contractors.

There are other questions about the Beneficiary’s job description apart from the staffing issues. The Petitioner states that the Beneficiary performs the following “major job duties,” shown with the approximate percentage of time devoted to each:

- Directing the service team and material planner, use customers’ demands data and statistical methods to provide insight into business performance and production volume, inventory levels; making suggestions on methods on improving operations; (20%)
- Implementing analytical approaches and methodologies and assisting in the interpretation of results; collecting and analyzing external market data to provide benchmarks for comparison purposes; (10%)
- Presenting reports to management for use in decision making and strategic planning; (10%)
- Providing input to strategic decisions that affect the functional area of responsibility; offering input into developing the budget; (10%)
- Resolving escalated issues arising from operations and undertaking coordination with other departments; (10%)

- Directing the development and execution of analytical and/or research activities to provide senior leadership with information and tools for strategic decision making and planning; (10%)
- Developing and preparing departmental scorecards & dashboards showing high level results and trends; (10%)
- Collaborating with business units to advance the company's reporting capabilities and improve accuracy of data; (10%) [and]
- Maintaining relationships with and providing reporting & analytical support to business units and support cross-functional projects. (10%)

In the RFE, the Director stated that the initial job description did not specify the Beneficiary's "day-to-day tasks." The Petitioner's response included the same job description shown above, and a "Typical Day Summary" showing activities such as reviewing emails and sales reports; discussing sales performance with the vice president of sales; formulating financial models, and meeting with staff. The tasks described have only a partial and general relation to the initial assertion that the Beneficiary has authority over "customer service, purchasing, logistics, finance and administration."

On appeal, the Petitioner asserts that the Beneficiary's position is "managerial in nature" because it "require[s] the exercises of discretionary authority over key personnel matters and decisions [regarding] essential functions." The Petitioner quotes from its RFE response, but as discussed above, that response does not resolve the issues. The Petitioner notes that it "provided an organizational chart," but it actually provided two conflicting charts.

The Petitioner asserts that the Beneficiary primarily manages the essential function of "the company's business analytics," and that the Beneficiary "is critical in ensuring that business data from various departments . . . is analyzed and synthesized." The record does not show who performs the analytics function, if not the Beneficiary herself. Job descriptions for the positions said to be directly or indirectly subordinate to the Beneficiary do not include analysis and synthesis of business data.

The Petitioner asserts that the Director addressed only one item in the Beneficiary's job description, but there are several issues with the description. Several of the described responsibilities are worded vaguely and do not show the actual tasks that the Beneficiary performs to carry out those responsibilities. For example, the sixth item does not show who performs "the analytical and/or research activities" that the Beneficiary is said to oversee. The reference to "production volume" in the first item raises questions because the Petitioner produces no products of its own; it acts as a sales and distribution center for its foreign parent company and other entities. The first item also indicates that the Beneficiary directs "the service team and the material planner," but neither version of the Petitioner's organizational chart shows a "material planner." In the second item, it is difficult to interpret the phrase "[i]mplementing analytical approaches and methodologies and assisting in the interpretation of results," and it is not evident whom she would be assisting in this way.

The Petitioner has not provided consistent information and evidence to establish the true nature of the Beneficiary's role with the company in the United States. Therefore, the Petitioner has not established that the Beneficiary will work in a primarily managerial capacity as required.

The Director also determined that the Petitioner had not established that the Beneficiary worked in a primarily managerial capacity abroad. Because the issues regarding her proposed U.S. employment determine the outcome of this decision, we reserve the separate issue of her past employment abroad.³

IV. CONCLUSION

The Petitioner has established error in our prior determination regarding its qualifying relationship with the Beneficiary's foreign employer, but the Petitioner has not overcome a separate ground for denial of the petition. Therefore, we will grant the motion to reopen for the limited purpose of reinstating the appeal; dismiss as moot the motion to reopen; and dismiss the appeal.

ORDER: The motion to reconsider is granted.

FURTHER ORDER: The motion to reopen is dismissed as moot.

FURTHER ORDER: The appeal is dismissed.

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).