



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

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

In Re: 5608851

Date: OCT. 14, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software services company, seeks to permanently employ the Beneficiary as its “President & Chief Executive Officer” 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 that the record did not establish the existence of an employer-employee relationship between the Beneficiary and the U.S. entity for which he would work. Specifically, the Director concluded that the Beneficiary’s ownership interest as the sole owner of the U.S. entity, the lack of oversight from someone who would assign projects and could terminate the Beneficiary’s employment, and the Beneficiary’s complete control over the U.S. entity, precluded a true employer-employee relationship. The Petitioner then filed a timely appeal.

While this appeal was pending, the U.S. District Court for the District of Columbia issued a decision in *ITServe Alliance, Inc. v. Cissna*, 443 F. Supp. 3d 14 (D.D.C. 2020). Subsequently, U.S. Citizenship and Immigration Services (USCIS) rescinded previously issued policy guidance and directed its officers to apply the existing regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii) to assess whether a petitioner and a beneficiary have an employer-employee relationship. USCIS Policy Memorandum PM-602-0114, *Rescission of Policy Memoranda* at 2 (June 17, 2020), <http://www.uscis.gov/legal-resources/policy-memoranda>.

While this immigrant visa petition does not rely on any interpretation of the specific regulation that was subject to review in *ITServe*, nevertheless there is a broader similarity between that case and this proceeding. In *ITServe*, the Court cited the lack of a regulatory justification for imposing what the court believed were new restrictions on the employer-employee relationship. The present case raises a similar general issue: the denial of a petition for the lack of an employer-employee relationship when the applicable regulations contain no specific standards to govern the question. We also recognize that USCIS has rescinded the policy memoranda that addressed the common law principles that the Director applied to the present matter.

Accordingly, we will remand the matter for the Director to consider the petition anew and to adjudicate in the first instance any additional issues as may be necessary and appropriate.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.