

USCIS Clarifies that in the Event of a Merger, Multinational Executives or Managers Seeking Permanent Residence under the EB-1 Category May Establish the Qualifying Foreign Employer Relationship Through a Successor Entity

by Ieva Aubin and Michelle B. Micetic

The United States Citizenship and Immigration Service (“USCIS”) announced that it has adopted a May 5, 2020 Administrative Appeals Office (“AAO”) decision Matter of F-M-Co., which concerns immigrant petitions in the EB-1 preference category for multinational executives or managers as formal policy. This policy will guide all future determinations by the USCIS of immigrant petitions filed for individuals of this preference category.

Specifically, the AAO decision confirms that a petitioner for an EB-1 multinational executive or manager must have a qualifying relationship with the beneficiary’s foreign employer at the time the petition is filed, and that the relationship must be maintained until the petition is adjudicated. A qualifying relationship between the foreign employer and the proposed U.S. employer may be established through a parent/subsidiary relationship, an affiliation via a shared corporate ownership structure, or through a foreign branch office relationship.

In a helpful and important nod towards the realities of business lifecycles and growth opportunities, the AAO also clarified that in the event the foreign employer undergoes corporate restructuring before the immigrant petition is filed, the qualifying relationship between the proposed U.S. employer and the foreign employer may still be established via a valid successor entity to the foreign employer. This is good news for businesses which may be more likely to undergo corporate restructuring due to the rapidly changing economic conditions wrought by the current pandemic. Generally, the USCIS will examine such factors as to what extent the successor entity retains the rights, duties and obligations of the prior entity when determining whether a valid successor relationship for the purposes of an EB-1 multinational executive or manager immigrant petition exists.

If you have any questions about how your company may transfer a multinational executive or manager to the U.S., on either a permanent or temporary basis, please reach out to a Dorsey Immigration Team, and visit our [immigration practice group website](#).

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