

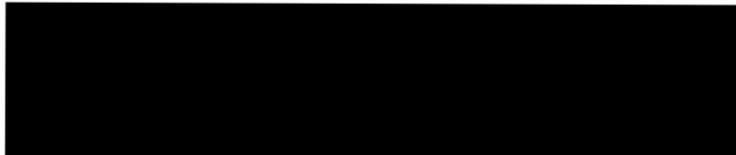
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U.S. Citizenship
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Services

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File: EAC 07 053 51005 Office: VERMONT SERVICE CENTER Date: **JUL 24 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Florida and allegedly operates a restaurant.¹

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

¹According to the organizational documents submitted by the petitioner and the public records of the State of Florida, the petitioner's correct corporate name is "A A Rahaman Associates, Inc."

The primary issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) 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;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, and counsel on appeal describes the proposed position in the United States as an "executive/managerial position." A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for

manager.

The petitioner describes the beneficiary's proposed duties as "general manager" of the petitioner's single location restaurant, the Gourmet Dippin' Bread Café, in a letter dated December 12, 2006 as follows:

[The beneficiary's] position will entail the recruitment, hiring and training of staff as necessary. He will evaluate staff performance. Also, he will negotiate contracts, develop and conduct marketing, and monitor revenues and expenses. Two subordinate supervisors will report to him. [The beneficiary] will report regularly to the President of the U.S. company. [The beneficiary] will not be a first-line supervisor.

On January 5, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties; complete position descriptions for each of the petitioner's employees; a breakdown of the number of hours each employee, including the beneficiary, devotes to each ascribed duty on a weekly basis; and an organizational chart.

In response, the petitioner submitted the following description of the beneficiary's proposed duties as "general manager" of the Gourmet Dippin' Bread Café:

- Development and execution of marketing plans and programs, both short and long range, to ensure the profit growth and expansion of the restaurant products and/or services.
- Research, and monitoring of financial, technological, and demographic factors so that market opportunities may be seized;
- Planning advertising campaigns in print, electronic, and direct mail media;
- Coordination with outside advertisers [sic] on ongoing campaigns;
- Overseeing design, layout, paste-up, and production of promotional materials;
- Develop and recommendation of pricing strategy;
- Review of performance in relation to general and specific trends within the South Orlando area;
- Implementation of effective control of marketing results and adherence to budgets;
- Evaluation of market reactions to advertising programs, merchandising policy, and product packaging and presentation;
- Making necessary changes to provide the flexibility to move swiftly in relation to marketing problems and opportunities; and
- Preparation of marketing activity reports for President of company.

The petitioner also submitted an organizational chart for the restaurant operation. The chart shows the beneficiary reporting to the "chief executive" and directly supervising a "store manager" and a "purchasing manager," who, in turn, are both portrayed as supervising subordinate sales assistants. The petitioner describes the duties of the "store manager" as follows:

Supervises a staff to prepare and serve customers with food. The Store Manager sets priorities, and prepares schedules to ensure the completion of the work. The Store Manager

also assigns and distributes workload to subordinates based on priorities, selective consideration of the difficulty and requirements of assignments. The Store Manager reports to the General Manager, who in turn reports to the CEO. The Store Manager also coordinates with the Purchasing Manager to make sure that quality food and other supplies are obtained in a timely way. Devotes 36 hours a week.

The petitioner describes the duties of the "purchasing manager" as follows:

Plans, directs and coordinates the necessary purchasing activities of the restaurant. The tasks include maintaining records of goods ordered and received, locating vendors of materials, equipment or supplies and interviewing them in order to determine product availability and terms of sale. The Purchasing Manager prepares and processes requisitions and purchases [sic] orders for supplies and equipment. Two assistants report to the Purchasing Manager. Contributes 40 hours a week.

On May 18, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, counsel asserts that the beneficiary's duties are primarily those of an executive or a manager.

Upon review, counsel's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will develop and execute "marketing plans and programs" and train staff. However, the petitioner fails to specifically describe these marketing plans or programs or to describe what, exactly, the beneficiary will do in developing and executing the marketing of the restaurant. The petitioner also fails to explain what the beneficiary will do to supervise and train the restaurant's staff when virtually all of his ascribed duties pertain to marketing. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, most of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. It appears that virtually all of the beneficiary's proposed duties will be non-qualifying tasks related to marketing the restaurant. For example, the petitioner asserts that the beneficiary will execute marketing plans and programs, research factors which influence marketing, plan advertising campaigns, work with the media, oversee production of marketing materials, evaluate marketing results, and prepare reports for the petitioner's president. However, these duties are non-qualifying tasks necessary to the production of a product or the provision of a service, and the record does not establish that the beneficiary will be relieved from the need to perform these tasks by a subordinate marketing staff. Accordingly, it has not been established that he will be "primarily" employed as a manager or an executive. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

It also cannot be concluded that the beneficiary will "primarily" perform qualifying duties because, despite being requested by the director, the petitioner failed to provide a breakdown of the number of hours the beneficiary will devote to each of his ascribed duties. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Even assuming that the petitioner has established that any of the beneficiary's ascribed duties is managerial or executive in nature, it cannot be concluded that the beneficiary will spend most of his time performing such managerial or executive duties absent a breakdown specifying how much time the beneficiary will devote to each of these duties. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As asserted in the record, the beneficiary will report to the "chief executive" and will directly supervise a "store manager" and a "purchasing manager," who, in turn, will each supervise two subordinate sales assistants. The petitioner indicates in its organizational chart that its restaurant employs eight workers, including two part-time workers. Also, the petitioner specifically claims that the beneficiary will supervise two subordinate supervisors. However, this claim is not persuasive for two reasons. First, the record is not persuasive in establishing that the beneficiary will actually supervise and control any of the workers identified on the organizational chart, including the claimed subordinate supervisors. As noted above, virtually all of the beneficiary's ascribed duties are non-qualifying tasks related to marketing the restaurant. The beneficiary is not specifically described as performing any duties related to supervising the operation of the restaurant or the purchasing of supplies. It is simply not credible that the "store manager" and the "purchasing manager" would report to the beneficiary who, in turn, would report to the "chief executive" when the beneficiary does not appear to have been ascribed any duties associated with the operation or purchasing aspects of the restaurant. An employee will not be considered to be a supervisor simply because of a job title, because he or

she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)).

Second, even assuming that the petitioner established that the beneficiary will supervise the "store manager" and the "purchasing manager," the record is not persuasive in establishing that either of these workers is truly a supervisory or managerial employee. Despite being requested by the director, the petitioner failed to provide a breakdown of the number of hours these workers will devote to each of their ascribed duties. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). It cannot be concluded that the "store manager" and the "purchasing manager" are truly managerial or supervisory workers absent a breakdown specifying how much time they will devote to each of their ascribed duties. Furthermore, given that the restaurant has a single location and will employ six full-time workers and two part-time workers, it is more likely than not that the store and purchasing "managers" will primarily perform the tasks necessary to the operation of the restaurant along side the "sales assistants" and that the "managers" are not truly supervisory or managerial workers. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). The record is not persuasive in establishing that the restaurant has an organizational complexity requiring the employment of a subordinate tier of managers or supervisors who will be managed by an employee primarily performing managerial or executive duties.

In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.² Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.³

²In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

³While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will primarily perform tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive

primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii)-(iv).

The petitioner described the beneficiary's duties abroad in a letter dated December 12, 2006 as follows:

[The beneficiary] is currently the Sales Manager of Akbar Garments, the Saudi affiliate of Asif Abdul Rehman Associates. He manages eight sales staff, and coordinates the work of 25 tailoring staff. He was assigned to Saudi Arabia in the executive/managerial position after working from 2002 to 2003 as Export Manager with Asif Abdul Rehman Associates in Karachi.

While the petitioner also submitted an organizational chart for the petitioning organization, the chart fails to specifically identify the beneficiary's position or to describe the personnel structure of the beneficiary's place of employment in Saudi Arabia.

Upon review, the record is not persuasive in establishing that the beneficiary is employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary is "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Finally, it appears that the beneficiary, as the "sales manager," is more likely than not a first-line supervisor of sales and tailoring workers in Saudi Arabia. As noted above, a managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Affiliate" is defined in pertinent part as "one of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2).

The 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 for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). 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. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner asserts that it and the beneficiary's employer in Saudi Arabia, Akbar Garments, are "affiliates" having an association with Asif Abdul Rehman Associates. However, counsel to the petitioner indicates in his letter dated December 14, 2006 that Akbar Garments is actually majority owned by a Saudi Arabian and not by Asif Abdul Rehman Associates. While counsel asserts that this majority owner has a "purely passive function and is part of the structure simply to meet the Saudi legal requirements," the record is devoid of evidence supporting this claim. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Accordingly, as it appears that an unrelated third party has the legal right and authority to direct the operations of Akbar Garments, even if the owner of Asif Abdul Rehman Associates "manages" the day-to-day operation of the business, the petitioner has failed to establish that it and the foreign employer are "affiliates."

Furthermore, it is noted that the director in his decision specifically states that "no evidence of the foreign business being actively engaged in conducting business is found in the filing, or that a qualifying relationship exists between the petitioner and the foreign entity." The director further states that the petitioner must address these issues on appeal. However, the petitioner failed to submit any evidence on appeal that the Saudi Arabian employer is actively "doing business" or that Asif Abdul Rehman Associates owns and controls Akbar Garments. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews

