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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy



File: [Redacted]

Office: Texas Service Center

Date: APR 9 2001

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:



Identifying data...
prevent clearly...
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

The director determined that the petitioner had failed to demonstrate the petitioner had invested the required amount of lawfully obtained funds in a targeted employment area or that he had or would create the necessary employment.

On appeal, counsel asserts the director erred in his conclusions but fails to support those assertions with substantive arguments. Counsel submits some new documentation which will be considered below.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) which the alien has established,
- (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The petitioner claims to have established a new commercial enterprise through the restructuring or reorganization of an existing business. The petitioner indicates the alleged new commercial enterprise is Downtown Warehouse, Inc., previously named G.T. Warehouse, Inc. which the petitioner owns in its entirety.

MINIMUM INVESTMENT AMOUNT

The petitioner indicates that the petition is based on an investment in a business located in a targeted employment area for which the required amount of capital invested has been adjusted downward to \$500,000.

8 C.F.R. 204.6(e) states, in pertinent part, that:

Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. 204.6(j)(6) states that:

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. 204.6(i).

While counsel asserts the director erred in his determination that the petitioner had not established that Brooklyn was a targeted employment area, the record at the time the director issued his decision reflected that New York City did not have an unemployment rate 150 percent of the national average. On appeal, the petitioner provides evidence that Kings County, which includes Brooklyn, has a higher unemployment rate which was, in fact, 150 percent of the national average at the time of filing. As such, the petitioner has overcome the director's finding and the minimum investment amount in this case is \$500,000.

INVESTMENT OF CAPITAL

8 C.F.R. 204.6(e) states, in pertinent part, that:

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;

(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On the Form I-526, the petitioner indicated that he had invested \$282,000. On the back of the Form I-526 the petitioner wrote, "the additional \$218,000 needed will be invested in the business as the banks provide additional lines of credit and business loans." The petitioner submitted credit advices documenting the transfer of funds from [REDACTED] to [REDACTED] Inc., \$233,990.74 on September 7, 1999 and \$47,877.73 on September 10, 1999; a certificate of directors' action indicating [REDACTED] Inc. (which subsequently changed its name to [REDACTED] Inc.) resolved to issue the petitioner 10 shares for \$1,000 but that the shares would be considered to have a par value of only \$50 and that the extra consideration would be allocated to "surplus."

On November 16, 1999, the director requested additional evidence that the petitioner had placed the required capital at risk. In response, the petitioner submitted bank statements for [REDACTED] Inc. reflecting the deposits of \$233,990.74 and \$47,877.73.

The director concluded the petitioner had not established that the funds deposited with [REDACTED] were his personal funds or that he had placed \$1,000,000 or even \$500,000 at risk.

On appeal, counsel simply asserts without discussion that the director erred in determining the petitioner had not contributed sufficient capital or placed sufficient capital at risk. The petitioner submits a business plan indicating the funds transferred to [REDACTED] were loaned to the petitioner by the petitioner's mother; the petitioner's birth certificate reflecting that his mother's name is [REDACTED] Newton Fund Managers statements for [REDACTED] investment account with that company; and statements for an investment fund with SODITIC purporting to show the petitioner has set aside an additional \$220,000 to invest but which fail to identify the account holder.

The business plan states:

It is estimated that \$500K is needed in total start-up capital. Approximately \$282 came from family funds in Venezuela controlled by [REDACTED] the owner's mother, as a private loan to [the petitioner]. This money was used for fixtures and initial inventory. Another \$220K will be invested in additional inventory before 2002.

The \$500K in startup [sic] capital has been committed to the enterprise by [the petitioner], the owner and sole shareholder, through his personal funds. At present, outside financing through banks or private investors is not being sought.

In order to determine whether a petitioner who has borrowed his investment funds has placed his personal assets at risk, we must examine the terms of the loan. The assets securing the note must be specifically identified as securing the note, the assets must belong to the petitioner personally, the security interests must be perfected to the extent provided for by the jurisdiction in which the assets are located, the assets must be fully amenable to seizure by the note holder, the assets must have an adequate fair market value, and the costs of pursuing the assets must be taken into account. Matter of Hsiung, I.D. 3361 (Assoc. Comm., Ex., July 31, 1998). Otherwise, the note is meaningless. Without the promissory note or other loan agreement between the petitioner and his mother, we cannot determine the terms of that loan. Therefore, the petitioner has not established that he has placed any of his personal assets or net worth at risk.

Moreover, the petitioner has not demonstrated that the funds transferred to Downtown Warehouse were "invested" as defined in the regulations. The certificate of director's action indicates the petitioner only contributed \$1,000 in exchange for his shares in the company. Without audited balance sheets or tax returns certified as filed with the Internal Revenue Service, including Schedule L, we cannot conclude that any additional funds contributed by the petitioner were invested. Any debt arrangement whereby the investor lends money to the commercial enterprise is not considered an investment. 8 C.F.R. 204.6(e) (definition of invest.)

Furthermore, the petitioner has not demonstrated that the remaining \$220,000 is irrevocably committed to the enterprise or that those funds will be invested as capital according to the regulations. The record does not contain a legally enforceable commitment from the petitioner to Downtown Warehouse, Inc. or evidence that the funds allegedly "set aside" are in an irrevocable escrow account. In addition, the business plan indicates those funds will be used to replace inventory as it is sold. The replacement of inventory is a normal operating cost generally paid from the profits generated

from the sale of previous inventory. Thus, the purchase of replacement inventory is not a capital investment. Furthermore, the petitioner indicated on the Form I-526 that the additional funding would come from business loans. A business loan secured by the assets of the business cannot be considered a contribution of capital. See 8 C.F.R. 204.6(e) (definition of capital.)

Finally, the regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. A mere deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998) at 5.

Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998), states:

Before it can be said that capital made available to a commercial enterprise has been placed at risk, a petitioner must present some evidence of the actual undertaking of business activity; otherwise, no assurance exists that the funds will in fact be used to carry out the business of the commercial enterprise. This petitioner's de minimus action of signing a lease agreement, without more, is not enough.

Review of the record reveals that it does not contain any documentation of business activity other than employment records and photographs of a business operating as Downtown Warehouse. Without a lease or deed, we cannot determine how the petitioner acquired the property where the business is allegedly located. Nor has the petitioner provided any invoices for capital expenses as evidence of how his alleged investment funds were spent. As the petitioner claims to have reorganized an existing business which may have had its own location, fixtures, equipment, supplies and inventory, the petitioner must demonstrate what capital expenditures were required and how his initial claimed investment was spent.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), at 7. At the time of filing, the petitioner had not established that any money contributed to the proposed business was at risk.

SOURCE OF FUNDS

8 C.F.R. 204.6(j) states, in pertinent part, that:

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations July 31, 1998) at 6; Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations July 31, 1998) at 26. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Id. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In support of the petition, the petitioner submitted credit advices documenting the transfer of funds from [REDACTED] to [REDACTED] nc. The advices, however, did not identify the account holder of the [REDACTED] account.

On November 16, 1999, the director requested additional documentation; specifically, foreign business registration records, relevant tax documentation, copies of bank statements of all

accounts owned, and any other evidence which demonstrates the source of the funds.

In response, the petitioner submitted bank statements for [REDACTED] Inc. documenting the deposits reflected on the credit advices.

In his decision, the director noted that the petitioner failed to submit tax returns or other evidence of how he obtained his funds and concluded the petitioner had not established the lawful source of his funds.

On appeal, counsel asserts the director's conclusion was in error. The petitioner submits his birth certificate reflecting that his mother's name is [REDACTED] statements for personal and business investment accounts with [REDACTED] Managers held by Ms. [REDACTED] a business plan indicating the funds allegedly invested in [REDACTED] Inc. were loaned to the petitioner by his mother; and statements for an investment fund with SODITIC where the account holder is not identified.

As stated previously, the petitioner has failed to submit a promissory note regarding the alleged loan from his mother. In fact, the petitioner has not submitted even an affidavit from his mother confirming that she did indeed loan him the money. While the statements indicate that the petitioner's mother did have an investment fund with [REDACTED] and Managers, the petitioner did not submit a statement from the time when the funds were transferred to [REDACTED] Inc. As the credit advices do not identify the account holder or the account number, without the statement from the time the transfer was made, the petitioner cannot establish that the transferred funds originated from his mother's account.

In addition, the statements from the SODITIC account do not identify the account holder. Therefore, the petitioner has not established the owner of those funds. Even assuming these are the petitioner's funds, the petitioner has not established his income level for the past five years. As such, he has not established that any funds in his name originated from a lawful source.

Finally, the petitioner failed to submit tax returns or other evidence of his personal assets as requested by the director.¹ As such, he has not documented that he will repay the loan with lawfully obtained funds or, in fact, that he even has the assets to repay the loan.

¹ While counsel requested additional time to obtain the petitioner's tax returns, the final submission of evidence did not include the petitioner's tax returns.

In light of the above, we concur with the director that the petitioner failed to document the source of the funds allegedly invested and set aside to be invested in Downtown Warehouse, Inc.

EMPLOYMENT CREATION

8 C.F.R. 204.6(j)(4)(i) states:

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. 204.6(e) states, in pertinent part:

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

On the Form I-526, the petitioner indicated that Downtown Warehouse, Inc. had 15 employees when he made his investment and that he would create an additional 10 to 12 jobs. The petitioner failed to submit any documentation regarding his current employees.

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new

commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. Matter of Ho, supra. Elaborating on the contents of an acceptable business plan, Matter of Ho states the following:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

The petitioner also failed to initially submit a business plan. In response to the director's request for additional documentation, counsel asserted:

It is expected, due to the growing nature of the retail business, that the company will continue to hire new cashiers, clerks, assistants and managers within the next two years. The company now has 28 people in various sales positions but anticipates employing over forty people in those jobs by 2002.

The petitioner submitted payroll records which show 19 employees as of November 23, 1999, the latest date provided, 12 of whom worked full-time. Contrary to counsel's assertion, the records merely indicate that there are 28 employees "on file." They do not indicate all 28 were currently employed. Rather, as stated above,

the records show no more than 19 employees working during a given pay period.

The director noted that since the petitioner claimed to have reorganized an existing business, he must show an increase of 10 full-time jobs. The director further noted that 12 full-time positions were fewer than the 15 positions claimed at the time of the petitioner's investment and that the petitioner had failed to submit a business plan. Thus, the director determined the petitioner had not met the employment-creation requirement.

On appeal, counsel asserts the director's conclusion was in error and submits quarterly wage and withholding reports reflecting 15 employees in October 1999 and 17 employees in March 2000, with a maximum of 21 employees in December 1999. The petitioner also submitted a business plan.

As will be discussed in more detail below, the record indicates that the petitioner incorporated [REDACTED] Warehouse on November 20, 1998 and changed the name of the business to [REDACTED] on June 28, 1999. As neither counsel nor the petitioner have provided a detailed brief explaining the petitioner's claim of eligibility, it is not known whether the petitioner is claiming to have reorganized [REDACTED] Warehouse by changing the name to [REDACTED] or whether the petitioner's corporation purchased an existing business with employees. As stated above, the petitioner has not provided a lease or deed or any evidence of how he obtained his equipment and inventory. Thus, it is not possible to determine whether the petitioner can take credit for all 17 employees either as employees of [REDACTED] or whether he purchased a business from another business owner which already employed workers at the time of purchase.

As the petitioner claims the business already employed 15 employees at the time of his investment, however, without additional information we must conclude that the petitioner must demonstrate 10 jobs beyond the 15 preexisting jobs.

The business plan submitted on appeal reiterates that the store currently employs 28 people and will eventually employ 40. The plan provides, "the additional twelve jobs will be added in conjunction with expansion of the sales floor to include currently underutilized space, gradually through the year 2002." As stated above, the payroll and tax records indicate the store has 17, not 28 employees. Thus, the plan's credibility is diminished. Moreover, the plan fails to provide detail regarding how the "underutilized" space will be converted to retail space, the size of this space, and how the additional space will lead to 12 new full-time jobs.

In light of the above, the petitioner has not established that he has or can be reasonably be expected to create 10 new jobs.

ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise . . . which the alien has established" (Emphasis added.)

8 C.F.R. 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

- (1) The creation of an original business;
- (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
- (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

Beyond the decision of the director, the petitioner has not demonstrated that he has established a new commercial enterprise. According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that he has established. The alleged new commercial enterprise at issue here is [REDACTED] Inc., of which the petitioner claims to be the sole shareholder. On the Form I-526, the petitioner claimed to have established a new commercial enterprise by reorganizing or restructuring an existing business.

The record contains evidence that the petitioner incorporated [REDACTED] Inc. on November 20, 1998, and that he changed the name

of the corporation to [REDACTED] Inc. on June 28, 1998. The petitioner owned 10 shares of [REDACTED] Inc. and now owns 10 shares of [REDACTED]. The record does not indicate whether [REDACTED] Inc. was an operating business or how [REDACTED] acquired its location, equipment, fixtures, or inventory.

As stated above, neither counsel nor the petitioner have provided a detailed explanation of how the petitioner reorganized an existing business. It is not even clear what the petitioner considers the "existing business."

If the petitioner is arguing that he restructured [REDACTED] Inc. by changing the name to [REDACTED] the mere change of a business' name does not amount to the type of restructuring or reorganization contemplated by the regulations. In addition, as it is not clear that the petitioner contributed the cash "invested," or whether it was loaned to the business, we cannot conclude that the petitioner increased the net worth of [REDACTED] through the transfer of the \$282,000. As stated above, the petitioner's number of shares did not increase with that transaction.

As the petitioner established [REDACTED] Inc., however, the mere change of that corporation's name did not alter the fact that the petitioner created an original business when he incorporated G.T. Warehouse.

However, it is the job-creating business that must be examined in determining whether a new commercial enterprise has been created. Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998) at 10. As discussed above, the petitioner has not established how he acquired his location, equipment, fixtures, or inventory. Thus, the petitioner has not established whether either G.T. Warehouse, Inc. or Downtown Warehouse, Inc. merely purchased an existing retail store.

If the petitioner's corporation purchased an existing retail store, he would need to demonstrate that he either reorganized or restructured the business or that he expanded the business by 40 percent. As the record contains no evidence of the type of business or net worth of the business previously located at 81 Willoghby Street, if there was one, the petitioner has not established that he reorganized or expanded that business.

In light of the above, the record lacks sufficient evidence to establish that the petitioner created an original business according to 8 C.F.R. 204.6(h)(1), reorganized an existing business according to 8 C.F.R. 204.6(h)(2), or expanded an existing business according to 8 C.F.R. 204.6(h)(3).



SUFFICIENCY OF DOCUMENTATION

On appeal, counsel accuses the director of requesting additional evidence beyond the requirements of the statute or regulations. Counsel fails to support his accusation with any substantive argument. It remains, however, that the director's request for additional evidence quoted the documentary requirements set forth in the regulations. Therefore, we find that counsel's accusation has no merit. Even on appeal, the petitioner has still failed to adequately document his case as discussed above.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.