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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



APR 30 2001

File: WAC-98-055-51813 Office: Vermont Service Center Date:

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)

Public Copy

IN BEHALF OF PETITIONER:



Identification data deleted to prevent clearly unwarranted 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, Vermont 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 that he had made a qualifying investment of the required amount, that he had established the lawful source of his funds, or that he would meet the employment-creation requirement.

On appeal, counsel argues the petitioner has invested \$790,364.25 of lawfully obtained funds, plans to invest an additional \$210,000, and that he will meet the employment-creation requirement by opening a new store.

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 record indicates that the petition is based on an investment in a business, [REDACTED] doing business as [REDACTED] Golf and Tennis, which is not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$1,000,000.

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.

In support of the petition, the petitioner submitted credit advices documenting the transfer of \$282,964 to the petitioner's personal account and \$393,500 into the corporate account over three years. The petitioner also submitted a stock certificate issued to him on September 13, 1994 for 100 shares; the notes from a Unanimous Consent of Directors In Lieu of Meeting resolving to issue the petitioner 100 shares for \$10,000 consideration; and a balance sheet for [REDACTED] dated May 31, 1997 reflecting \$10,000 in stock, \$317,742 in paid-in capital, and \$116,459.47 in shareholder loans.

On March 10, 1998, the director requested additional documentation. In response, the petitioner submitted wire transfer receipts and applications for wire transfers supporting the credit advices submitted previously.

On March 2, 1999, the director issued a notice of intent to deny. In response, the petitioner submitted cancelled checks documenting that he personally paid \$189,460 of the corporation's expenses. The petitioner also submitted a personal letter in which he asserts that since some funds in his personal account were used for corporate expenses, all the funds in that account were available to the corporation. Thus, the petitioner concludes that he has invested \$880,611.35: \$318,000 previously documented as wired to his personal account, \$445,740 previously documented as wired to the corporate account, \$14,988 subsequently wired to the corporate account and \$50,000 to the petitioner's personal account. The petitioner submitted fund transfer advices documenting the \$14,988 transferred by the petitioner to the corporation on February 16, 1999 and \$50,000 wired from [REDACTED] (the petitioner's father) to the petitioner on December 29, 1997, as well as a \$200,000 letter of credit issued to him by the Bank of Kyoto on October 5, 1994. Finally, the petitioner submitted invoices documenting the start-up costs of the business.

The director concluded the petitioner had only documented deposits of \$758,411 of which \$249,965 were deposited into the petitioner's personal account. The director further concluded that the petitioner had not established that he ever utilized the letter of credit. Finally, the director concluded that the petitioner could only count the company's start-up costs as infused capital,

determining those costs were only \$288,201. Thus, the director determined the petitioner had not demonstrated an investment of more than \$288,201.

On appeal, counsel asserts that the petitioner has invested a total of \$790,364.25 and is planning to invest an additional \$210,000. Counsel asserts that in addition to the \$333,458 in start-up costs, the petitioner subsequently invested an additional \$456,906.25 as follows: additional paid-in capital of \$246,840.44 between June 9, 1997 and February 16, 1999, store equipment purchased in 1997 for \$1,927.81, and stockholder loans of \$208,138.

The appropriate inquiry is how much capital the petitioner actually invested into the corporation, whether used for start-up costs or other capital expenditures.

Total Funds Transferred to Corporation or Used for Corporate Expenses

The record shows the following transfers from the petitioner to the corporation: \$20,000 on November 2, 1994, \$30,000 on November 8, 1994, \$40,000 on November 21, 1994, \$31,000 on November 25, 1994, \$45,000 on November 25, 1994, \$30,000 on November 30, 1994, \$30,000 on February 10, 1995, \$35,000 on April 12, 1995, \$32,500 on May 16, 1997, and \$100,000 on June 6, 1997. These transfers total \$393,500.

The petitioner has documented another \$332,964¹ transferred to his personal account in the United States; however, the petitioner has only documented that he spent \$189,460 of those funds on corporate expenses. We reject counsel's argument that all the funds in the petitioner's account were "available" to the corporation because the petitioner spent some of the funds in the account on corporate expenses. A corporation is a separate and distinct legal entity from its owners or stockholders. See Matter of Tessel, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); Matter of Aphrodite Investments Limited, 17 I&N Dec. 530 (Comm. 1980); Matter of M-, 8 I&N Dec. 24 (BIA 1958; A.G. 1958). Therefore, any funds in a shareholder's account cannot be said to be the corporation's funds even if the shareholder has previously spent some of those funds on corporate expenses. Thus, the petitioner may only include the \$189,460 actually spent on corporate expenses. Therefore, the record only documents that the petitioner had made \$582,960 of his personal

¹ The \$282,964 documented initially and the \$50,000 wired from the petitioner's father in December 1997.

funds available to the corporation by the time of filing the petition, well under the required \$1,000,000.²

Investment Versus Shareholder Loans

The regulations exclude debt arrangements with the business from the definition of "invest." Therefore, any money loaned by the petitioner to the corporation cannot be considered capital.

The record is inconsistent regarding how much the petitioner invested and how much the petitioner loaned to the corporation. The petitioner initially submitted a balance sheet dated May 31, 1997 reflecting \$10,000 stock, \$317,742 paid-in capital, and \$116,459 in shareholder loans. A stock certificate and corporate minutes confirm the petitioner was issued 100 shares on September 13, 1994 in exchange for \$10,000. On appeal, the petitioner submitted a new stock certificate for 40,000 shares issued on June 14, 1996 and corporate tax returns for 1994, 1995, 1996, and 1997.

The tax returns reflect \$10,000 stock each year and paid-in capital of \$317,743 in 1994 and 1995. The 1996 and 1997 tax returns, schedules L, reflect the following information:

	<u>Year Beginning</u>	<u>Year End</u>
1996 (June 1, 1996 - May 31, 1997)		
Paid-in capital	\$317,743	\$317,743
Shareholder loans	\$0	\$116,459
1997 (June 1, 1997 - May 31, 1998)		
Paid-in capital	\$232,104	\$232,104
Shareholder loans	\$0	\$208,138

First, the year-end numbers for 1996 should be the same as the beginning numbers for 1997. As they differ dramatically, the credibility of the tax returns is suspect. Furthermore, it is not known if the petitioner loaned \$208,138 in addition to the \$116,459 after that loan was repaid, or if he only loaned \$208,138 total. Regardless, the tax returns do not support the purchase of an

² The record also contains evidence of wire transfers of \$2,000 on May 27, 1994 and \$5,000 June 4, 1997. The destination of these funds, however, is not specified on the wire transfer documentation. Finally, the petitioner claims a \$23,000 investment brought into the United States in cash by his parents and a \$52,240 investment documented solely by a deposit slip which fails to identify the source of the funds. These claimed investments are insufficiently documented and cannot be considered.

additional 40,000 shares of stock in 1996.³ Therefore, the tax returns are inconsistent with the 1996 stock certificate. Finally, at most, the tax returns reflect a capital contribution of \$327,743, outstanding stock plus paid-in capital. This amount is less in 1997 when the paid-in capital was reduced.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved the inconsistencies between the various tax returns and the stock certificate.

Future \$210,000 Investment

While the petitioner asserts he is committed to investing an additional \$210,000, the record does not support this assertion. The \$200,000 letter of credit issued to the petitioner expired September 30, 1995 and the record does not contain an extension of that date.⁴ In addition, counsel asserts that the letter of credit will only pay for \$151,716 of the \$210,000. The remaining funds will come from the petitioner's sale of \$40,000 worth of stock already owned by the petitioner and the reinvestment of proceeds. The sale of stock owned by the petitioner to another individual is not a capital investment by the petitioner. Rather, it is a capital investment by whoever buys the shares. Regardless, as stated above, there is no evidence the petitioner ever purchased those shares. Regarding the reinvestment of proceeds, such reinvestment is not an infusion of capital, but a failure to remove capital and cannot be considered an "investment" as defined by the regulations. In order for proceeds to be considered an investment, they must be paid to the shareholder, taxed, and reinvested as defined in the regulations.

Moreover, while these funds are allegedly to open a new store, there is no evidence the petitioner is committed to purchasing and operating the new store. The record contains no irrevocable sales agreement or other binding commitment. Therefore, any additional funds to be spent on the new store were not fully committed to the corporation prior to the date of filing.

³ As the petitioner purchased 100 shares for \$10,000, it can be assumed he would need to spend \$4,000,000 for 40,000 shares. There is no evidence the petitioner paid this sum or that the value of the shares decreased to less than \$100 per share.

⁴ The letter indicates that extensions are permissible but that the letter is not to be extended past September 30, 1999.

Conclusion

In light of the above, the record reflects the petitioner spent approximately \$582,960 on the corporation, \$327,743 of which was invested as defined in the regulations. As such, the petitioner has not demonstrated an investment or commitment of \$1,000,000.

PERSONAL ASSETS/NET WORTH AT RISK

The regulations require that the petitioner place his own assets at risk. See 8 C.F.R. 204.6(j)(2) quoted above. Approximately \$260,000 of the petitioner's claimed \$790,000 investment are the proceeds of a loan from his parents. A loan does not increase a petitioner's net worth. While the petitioner receives money, he also has an obligation to repay that money. Thus, investing the proceeds of a loan is a contribution of indebtedness, which must be secured according to 8 C.F.R. 204.6(e) (definition of capital). See Matter of Soffici, I.D. 3359 (Assoc. Comm. Examinations, June 30, 1998) at 6; Matter of Hsiung, I.D. 3361 (Assoc. Comm., Ex., July 31, 1998). While the petitioner submits letters from his parents confirming that they have loaned him funds, they do not indicate the amount loaned or the terms of repayment. The petitioner has not submitted the loan agreement. As such, the petitioner has not documented that he placed personal funds at risk by "investing" money borrowed from his parents.

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 no evidence of the lawful source of his funds. In response to a request for additional information, the petitioner submitted numerous Japanese documents purporting to document the source of 18 transfers to the petitioner's United States account and the corporate account. While the petitioner provided certified summaries of the documents, the summaries are extremely basic and often confusing. The petitioner failed to provide complete translations as required by 8 C.F.R. 103.2(b)(3).

In response to the director's intent to deny the petition, the petitioner submitted his family registration, Japanese bank statements allegedly documenting the petitioner's income since 1983, purported tax returns with no translation and a summary of the tax payment amounts only, the registry of the petitioner's family business, an abstract of sale for real property, his father's tax returns, and the family's business tax returns.

The director concluded the evidence purporting to document the source of the petitioner's funds was incomplete. On appeal, the petitioner resubmitted the same explanations and documentation submitted previously as well as a summary of his mother's wages.

The petitioner asserts that he obtained his funds from accounts established for him by his parents when he was a child, the sale of stock, the sale of real estate, rental income, loans from his parents, and an inheritance from his grandmother. Each source will be discussed below. While the petitioner failed to submit complete translations as required, every effort has been made to comprehend the petitioner's evidence from the summaries and any English appearing on some of the Japanese documents.

Childhood Accounts

The petitioner claims to have closed three "postal" savings accounts on August 23, 1994, resulting in ¥4,365,000, the source of a \$40,000 wire transfer to his United States account on August 23, 1994 from an unknown account. The petitioner further claims to have closed three additional accounts on September 6, 1994 for a total of ¥5,479,603, the source of two wire transfers to the petitioner's United States account, one for \$30,000 and another for \$20,000. The \$20,000 was wired from account number 9,995,100 and the source of the \$30,000 is unknown. The petitioner further claims to have closed three additional accounts on November 21, 1994 for ¥5,088,283, the source of \$45,000 wired to the corporate account on November 25, 1994 from account number [REDACTED]. Finally, the petitioner claims to have closed two other accounts on June 3, 1997 for a total of ¥888,273, the source of \$5,000 wired from account number [REDACTED] to an unknown account.

While the petitioner claims these accounts were opened for him by his parents when he was a child, a second date from the year previous to the withdrawal, appears on some of the Japanese receipts. Without complete translations, it is not known whether these dates reflect when the accounts were opened. If so, the petitioner's claim that these are childhood accounts is not supported by the record. Regardless, the non-notarized letters purportedly from the petitioner's parents merely assert they donated and loaned funds to the petitioner. They do not indicate when they opened these accounts for the petitioner or even that they contributed the funds in these alleged childhood accounts.

Sale of Stock, Real Estate, and Rental Property

The petitioner claims to have sold stock worth ¥2,389,527, the source of a \$30,000 transfer to the corporation on November 30, 1994. It is not clear, however, when the petitioner sold these stocks. The summary indicates "5/27/1993 6/3/95" as the date of the transaction. Moreover, the Exhibit, purportedly only dealing with the sale of stock, includes a receipt for the closing of an account on November 30, 1994 for ¥3,000,000. No explanation is provided for the source of the funds in this account. This Exhibit simply fails to clearly identify the source of the \$30,000 wired to the corporation.

The petitioner claims to have acquired ¥1,200,000 from the sale of property by his mother, in which he had an interest. The abstract of real property sales agreement is a five line summary of a four page document indicating the petitioner owned the property with two other individuals and appears to indicate the property was sold on December 2, 1996 for ¥30,000,000. An August 18, 1994 letter to the petitioner's father indicates the petitioner owned 4/10 of the property, valued in 1994 at ¥180,824,800. Thus, his interest in

the sale price was ¥12,000,000. The petitioner also submitted a passbook documenting a deposit of ¥12,000,000 on December 6, 1996 and a withdrawal of ¥12,021,542 on June 6, 1997. The petitioner also submitted a wire transfer receipt documenting the transfer of \$100,000 to the corporation on June 6, 1997. While the path of funds for the \$100,000 is fairly well documented, the petitioner has not documented where he obtained the funds to purchase his share of the property or whether it was a gift from his parents.

The petitioner claims to have closed two accounts on February 10, 1995 containing funds derived from rental properties owned by the petitioner. The accounts, totaling ¥2,700,205, are claimed to be the source of the \$30,000 wired to the corporation from account number [REDACTED] on February 10, 1995. The petitioner also claims to have closed three additional rental accounts totaling ¥7,064,046. The summaries for these receipts do not include dates, but the accounts appear to have been closed September 26, 1996, October 15, 1996, and July 17, 1996.⁵ These funds are alleged to be part of the source of \$140,000 wired to the petitioner's United States account on July 16, 1996 and July 18, 1996. If two of these accounts were closed after the wire transfers, however, they cannot be the source of those wire transfers.

In addition, it is not clear from which property the rental funds derived. The only property ownership documented by the petitioner is the joint property sold in December 1996. Yet, on appeal, the petitioner submits a passbook statement and summary purporting to document ¥87,181 in rental income between September 30, 1982 and March 29, 1999. The petitioner has not demonstrated he owned any property for that entire period. Further, the passbook statements do not demonstrate the source of the deposits. Finally, the deposits cannot account for the entire amount withdrawn as discussed in the preceding paragraph.

Loans from the Petitioner's Parents

The petitioner claims to have received the following loans from his father:

1. ¥100,000 on November 1, 1994 from a loan payment made to the petitioner's father. These funds are alleged to be the source of \$20,000 wired to the corporation on November 2, 1994. While the petitioner's passbook account shows a deposit of ¥1,000,000 on November 1,

⁵ The receipts also include earlier dates, but it is assumed the later dates are the dates the accounts were closed. As the petitioner failed to provide complete translations as required, he has not met his burden of establishing the dates when these accounts were closed.

1994, the father's account shows a withdrawal of ¥1,010,000 on September 20, 1995. Therefore, the path of these funds is not clear.

2. ¥3,540,432 on November 2, 1994 from the closure of a savings account. These funds are alleged to be the source of \$30,000 wired to the corporation on November 8, 1994. The record contains a receipt which appears, from the Japanese characters, to be a withdrawal receipt from the petitioner's account. Therefore, the petitioner has not documented that he received these funds from his father.

3. ¥3,698,975 on an unspecified date from a trust account. These funds are alleged to be the source of a \$12,000 transfer from account number [REDACTED] to the petitioner. The petitioner submits a statement reflecting the balance in his father's trust account as of November 21, 1994, but no evidence that the account was closed or that the money was transferred to the petitioner's account number [REDACTED]. Therefore, the petitioner has failed to document that he received these funds from his father.

4. ¥2,512,251 on an unspecified date from his cancelled life insurance policy. These funds are alleged to be the source of a \$35,000 transfer to the corporation on April 12, 1995 from account number [REDACTED]. The petitioner submits what appears to be simply a statement of the policy. There is no evidence the petitioner's father cancelled the policy or transferred the funds to the petitioner's account number [REDACTED].

The petitioner claims to have received the following loans from his mother:

1. ¥6,468,436 on September 27, 1994 from the sale of stock. These funds are alleged to be the source of \$40,000 wired to the corporation on November 21, 1994 and \$31,000 wired to the corporation November 25, 1994. First, the yen amounts cannot account for the dollar amounts. Second, the petitioner submits several Japanese language documents in support of this transaction with only a simple summary of the sale of stock. Therefore, it is not clear that the documents reflect that the petitioner's mother transferred the funds to the petitioner.

2. ¥3,867,485 on an unspecified date from the sale of stock. These funds are alleged to be the source of \$32,500 to the corporation on May 16, 1997. Once again,

the summary does not reflect that the submitted documentation shows the transfer of funds from the petitioner's mother to the petitioner.

3. ¥6,000,048⁶ on January 20, 1997. These funds are alleged to be the source of the \$52,240 deposited in the corporation's account. As stated above, the deposit slip for the \$52,240 does not reflect the source of those funds. In addition, while the petitioner submits documentation showing his mother closed her account, there is no evidence she transferred the funds to the petitioner.

As discussed specifically with each item, the petitioner has failed to document that he received the funds allegedly loaned to him from his parents.⁶ In addition, the letters from his parents do not indicate the terms of the loan, such as the amount of the loans, payments and final due dates. Nor has the petitioner demonstrated that he has the funds to repay these loans, totaling approximately ¥26,000,000, or \$260,000. Therefore, the petitioner has not demonstrated that he will repay these loans with lawfully obtained funds.

Regarding the source of his parents' funds, the petitioner submitted tax returns and earning documentation for the petitioner's parents. Counsel asserts that between 1977 and 1990 his parents earned nearly \$1,000,000 and were, thus, capable of loaning \$252,760 to the petitioner. Review of the tax returns reveal the petitioner's father had wage and real estate income totaling approximately \$561,335 from 1978 to 1997 with no income in 1979, 1980 or 1981. The documentation of the petitioner's mother's wages reflect that she earned only \$177,000 between 1978 and 1990. Thus, the petitioner's parents earned only \$738,3335 between 1978 and 1997. Not only do these wages need to account for the alleged loans to the petitioner, they must also account for the childhood accounts the petitioner asserts they established for him, an additional ¥15,821,159, or approximately \$158,212. The parents' income over time cannot account for the accumulation of \$410,972, over half of their income.

Finally, the petitioner claims to have received a \$23,000 gift from his parents, but is unable to provide any documentation of the gift. As such, he has not established that he received this gift.

Inheritance

⁶ The record does contain a wire transfer receipt documenting the transfer of \$50,000 from the petitioner's father to the petitioner's personal account on December 29, 1997; however, this amount and date does not correspond with the claimed loans above.

The petitioner claims to have received ¥7,898,383 from his grandmother's insurance policy upon her death. The petitioner submitted receipts and his passbook statement reflecting the receipt of these funds on September 30, 1991. These funds are allegedly part of the source of \$140,000 wired to the petitioner on July 16, 1996 and July 18, 1996. The record contains no evidence, however, that the petitioner retained these funds between 1991 and 1996. The balance of the account into which the benefits were deposited had a balance of only ¥2,624 on November 18, 1994.

Conclusion

The petitioner submits voluminous documentation purporting to document the source of 18 wire transfers, much of it in Japanese without complete translations. We have analyzed the documentation for each transaction and cannot conclude that the documentation submitted adequately documents the source of the petitioner's funds.

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.

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

In support of the petition, the petitioner submitted a personal letter claiming the corporation had six employees and would hire another four. The petitioner also submitted a payroll register listing six employees *including* the petitioner. In response to the director's notice of intent to deny, the petitioner submitted staffing projections for a new store planned for March 2000. The plan called for an additional five employees.

The director concluded the petitioner had failed to submit sufficient evidence that an additional five employees would be hired. On appeal, counsel asserts the company has four full-time and one part-time employee. Counsel asserts the part-time employee will become full-time and the new store will require an additional five employees. The petitioner fails to submit Forms I-9 to show the employees already hired are qualifying.

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 only document which addresses employment creation is the one-page staffing projections submitted in response to the notice of intent to deny. These projections rely on the petitioner purchasing a new store, something the petitioner has failed to demonstrate he is committed to doing. The record contains no sales contract or evidence of negotiations to purchase the store. In addition, the photographs of the location reveal it is an existing store doing business, as [REDACTED]. Therefore, the petitioner would need to demonstrate the creation of five jobs in addition to any jobs already at the location.

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.