



B7

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

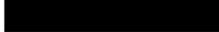


PUBLIC COPY

File: WAC-98-131-50569

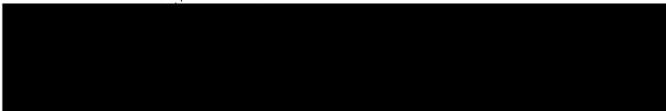
Office: Vermont Service Center

Date: AUG 28 2001

IN RE: Petitioner: 

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 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 established a new commercial enterprise in a targeted employment area or that he would create the necessary employment.

On appeal, counsel argues the petitioner created an original business in a targeted area and that the petitioner will create approximately 12 jobs.

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).

MINIMUM INVESTMENT AMOUNT

The petitioner indicates that the petition is based on an investment in a business, [REDACTED] Investment Group, Ltd., 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).

The petitioner indicates that [REDACTED] is located at [REDACTED] Avenue in Rosemead, California. In response to a request for additional documentation, the petitioner submitted a list of cities in the Los Angeles area with unemployment rates of more than 150 per cent of the national average. The director asserted that Rosemead was not on the list of qualifying cities. The director also noted that the checks issued by Universal Grant list the address of Universal Grant's main supplier, Great China, which is not in Rosemead.

On appeal, counsel asserts that [REDACTED] permitted [REDACTED] to use its address and phone number, but that [REDACTED] is a separate company with an office in Rosemead. Counsel reasserts that Rosemead is a targeted employment area.

A review of the record reveals that Rosemead is listed as a qualifying city on the materials submitted by the petitioner. Those materials, however, are based on 1995 unemployment rates. A petitioner must demonstrate that the location of the business was in a targeted employment area *at the time of filing*. Matter of Soffici, I.D. 3359, 2-3 (Assoc. Comm., Examinations, June 30, 1998) cited with approval in Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 23-24, (E.D. Calif. 2001).

The petitioner filed his petition on April 6, 1998. Thus, the petitioner must demonstrate that Rosemead remained a targeted employment area at that time. A review of California's website,

www.calmis.ca.gov, reveals that the unemployment rate for Rosemead in 1998 was 7.5 per cent. The national average that year was 4.5 per cent. As 150 percent of 4.5 is 6.75, Rosemead did qualify as a targeted employment area at the time of filing.

On appeal, the petitioner submitted a lease for [REDACTED] Avenue, invoices for inventory allegedly shipped from [REDACTED] to [REDACTED] at that address and utility bills for that address. The lease indicates that [REDACTED] Avenue is to be used only as office space. Some of the inventory allegedly shipped by [REDACTED] to that address is large furniture including a sofa bed, lounge chairs, desks, armoires and king sized mattresses and bed frames. The personnel structure submitted by the petitioner includes a Department of Warehousing and Shipping, which is to eventually employ four individuals. The phone bill for August 1999 includes only one long distance call, a call to Saratoga, California lasting two minutes. While not determinative, it is curious that a company allegedly involved in exporting goods to China would incur only one brief long distance phone call during an entire month and include no foreign phone calls. The record simply does not resolve these inconsistencies. Thus, the petitioner has not established that all employees are and will be working at the Rosemead address.

As stated in Matter of Izumii, I.D. 3360, 6 (Assoc. Comm., Examinations, July 13, 1998), in order to qualify for the reduced investment amount, all of the employment must be created within a targeted employment area. As the office space in Rosemead simply cannot account for the business activities claimed by the petitioner, he has not established that all of the employment is being created in Rosemead. Therefore, the minimum investment amount in this case is \$1,000,000.

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).

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 Universal Grant, which the petitioner incorporated on March 3, 1997.

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. The director noted that the address on the checks issued by [REDACTED] matched the address and phone number of [REDACTED], as listed on their invoices. The director included that [REDACTED] was simply assuming some of Great [REDACTED] business activities and, thus, was not an original business. The director noted that the record contained no evidence that the petitioner had expanded or reorganized Great [REDACTED]

On appeal, counsel argues that Great [REDACTED] is merely one of Universal [REDACTED] suppliers, and that the company simply allowed Universal Grant to use its address and phone number.

It is clear that Universal [REDACTED] leases an office separate from Great [REDACTED] and currently maintains its own phone line. The record is extremely unclear, however, as to the nature of Universal [REDACTED] business and its relationship with Great [REDACTED]. The record contains little evidence that Universal [REDACTED] is purchasing furniture from any other source. That fact alone would not imply that Universal [REDACTED] is merely an extension of Great [REDACTED]. However, other factors raise serious concerns regarding this issue. As discussed above, the record contains invoices allegedly for shipments of large merchandise from Great [REDACTED] to Universal [REDACTED] specifying Universal [REDACTED] small office space as the "ship to" address. The record contains no evidence that Universal [REDACTED] operates its own warehouse or how it ships merchandise overseas as claimed. Their phone bills reflect no contact between Universal [REDACTED] and buyers in China. The record contains no invoices for goods shipped by Universal [REDACTED] to China.

Despite the fact that the director's denial put the petitioner on notice that Universal [REDACTED] did not appear to be an original business separate from Great [REDACTED] the petitioner has not submitted any information about Great [REDACTED] business prior to the petitioner's creation of Universal Grant. For example, it is not known if Great [REDACTED] was already shipping furniture to China. If so, it is not clear that Universal Grant is performing any original business activities.

The new evidence submitted on appeal does not entirely overcome the director's concerns. While the lease at [REDACTED] Avenue took effect January 1, 1998, Universal [REDACTED] filed its 1998 tax return with the Internal Revenue Service on February 8, 1999 listing Great [REDACTED] address.

In light of the above, the petitioner has simply not established that Universal Grant is an original exporting company as claimed.

In addition, beyond the decision of the director, the record is inconsistent as to whether the petitioner even has any ownership interest in Universal Grant. The petitioner submitted the notes of an organizational meeting resolving to issue the petitioner all authorized shares (1,000,000) for \$500,000 and a stock certificate issued to the petitioner for 1,000,000 shares. The company's 1998 tax return confirms that the corporation has \$500,000 in capital stock. However, other information on the tax return is problematic. Corporate tax returns, Schedule K, line 5, asks, "At the end of the tax year, did any individual, partnership, corporation, estate or trust own, directly or indirectly, 50% or more of the corporation's voting stock?" If the answer is yes, the filer is instructed to attach a statement with the name of the owner and the percentage owned. On Universal Grant's 1998 tax return, the accountant who prepared the return responded "no" to this question. The attached "statements" make no mention of any 50% or greater owner of the corporation.

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.

Full-time employment means continuous, permanent employment. See Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 19 (E.D. Calif. 2001)(finding this construction not to be an abuse of discretion).

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 submitted quarterly reports for the second, third, and fourth quarter of 1998 and incomplete Forms I-9 with identification documents attached. The fourth quarter report lists five employees, only four of whom conclusively work full-time.

The director concluded the petitioner had not demonstrated that he had created 10 new jobs and had not submitted a business plan. The director also noted that the petitioner had not demonstrated that all of the employees were new employees who had not previously worked for Great China.

On appeal, counsel asserts Universal Grant has five employees and will have more than 12 by the time the petition to remove conditions is filed. The petitioner resubmits the quarterly reports and Forms I-9 submitted previously.

The petitioner concedes that he has not yet created at least 10 new full-time jobs. While a petitioner need not have created all 10 jobs at the time the Form I-526 is filed, he must submit a business plan which demonstrates that it is reasonable that he will create the necessary jobs prior to petitioning for removal of conditions. The business plan must meet the criteria set forth in Matter of Ho, quoted above.

Contrary to the director's assertion, the petitioner did submit a business plan. The plan includes a start-up organization and hiring plan section which predicts that 10 to 12 employees will be needed. The hiring plan includes job descriptions for the president and chief executive officer, the vice president and general manager, the director of procurement and purchasing, two purchasing agents, two controllers/accountants, an export/shipping manager, a manager of information services, a computer programmer/website maintenance specialist, and two administrative assistants. The plan indicates that the petitioner is the president and CEO and will commence hiring to meet the demands of Universal Grant's business activity. Subsequently, the petitioner submitted a personnel chart which lists the following departments as having hired one employee each: Department of Procurement and Purchasing, Department of Accounting and Finance, Department of Warehousing and Shipment, and Department of Information Service. The plan projects three employees for the Department of Accounting and Finance and four employees for each remaining department.

The plan, however, is not credible and does not meet the criteria specified in Matter of Ho. The plan fails to provide a hiring schedule. In a letter dated June 9, 1999, counsel asserted the petitioner expected to hire five to seven more employees in the next few months. On appeal, not only does the petitioner fail to indicate that he has hired any new employees, he simply resubmits previously submitted quarterly reports from 1998, raising concerns that the petitioner has even maintained the employees he had in 1998.

In addition, the business plan is not credible that Universal Grant will be able to meet its employment goals. The personnel chart includes a department of warehousing and shipment, yet the job descriptions include no employees who will handle warehousing goods for export. As stated above, the record does not reflect that Universal Grant owns or leases a warehouse. While the invoices submitted reflect Universal Grant purchased significant inventory allegedly for

export, the record contains no evidence that Universal Grant paid Great China for the inventory or arranged the shipment to China. The record contains no contracts with buyers in China. There is simply no evidence the business is an ongoing, sustainable business separate from Great China that will generate its own employment separate from Great China.

CAPITAL AT RISK

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

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that 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. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

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)(2) states:

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.

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. Even if a petitioner transfers the requisite amount of money, he must establish that he placed his own capital at risk. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 27 (E.D. Calif. 2001)(citing Matter of Ho).

Beyond the director's decision,¹ the petitioner has not demonstrated that his money is at risk. The petitioner has documented that, by his order, \$500,000 was transferred to Universal Grant's account. The petitioner has also provided cancelled checks for rent and other start-up expenses. The bulk of the petitioner's investment, however, according to a list provided by the petitioner, is \$575,901.15 for inventory. The record contains no cancelled checks for the claimed inventory purchases. As discussed above, the invoices are somewhat suspect as they indicate large inventory is to be shipped to a small office space. While the 1998 tax returns claim \$606,945 in gross receipts, the record contains no evidence the petitioner exported or sold any of the inventory it allegedly purchased.

In addition, the inventory purchases begin in February 1998 and continue through February 1999. While the purchase of initial inventory can be considered a capital expense, the continued purchase of inventory is generally paid for with profits, and is a normal operating expense.

¹ An EB-5 application that fails to comply with the specific technical requirements of the law may be denied even if the Service Center does not identify all grounds for denial. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 29 (E.D. Calif. 2001).

Similarly, rent payments made after the business became operational, employee wages, and income taxes on profits are also normal operating expenses. The payment of normal operating expenses out of the profits of the business is not a personal investment of capital by the petitioner. Thus, not all of the \$575,901.15 for inventory, the \$49,656 for rent, the \$92,944 in wages, and the \$5,038 in taxes can be considered part of the capital investment.

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). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 22 (E.D. Calif. 2001)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Beyond the decision of the director, the petitioner has not fully documented the path of his funds. The petitioner submitted wire transfer receipts documenting that the petitioner ordered the transfer of funds from an account at █████ Commercial Bank to Universal █████ on February 4, 1998. The owner of the account at █████ Commercial Bank is unknown.

Even if the petitioner established that the account at █████ Commercial Bank was his personal account, the record does not adequately establish the source of funds in that account. The petitioner submitted letters signed by him and the financial officer of S █████ purporting to document the petitioner's ownership interest in that company and its subsidiaries. An unsupported letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business is also insufficient documentation of source of funds. Matter of Ho, supra, at 6. Regardless, the record does not establish the petitioner's income from that company or his personal assets.

Counsel initially asserted the source of the funds was a sale of real estate. The petitioner submitted a real estate contract for the sale of property in China for \$581,000. The contract, however, reveals the property was sold by █████ and not the petitioner. The contract is dated January 12, 1998. The record does not reveal how much, if any, of the sale proceeds were given to the petitioner. The second bonus agreement discussed below, which indicates the petitioner received the proceeds of the company's real estate transactions as part of his bonus, is dated well before this contract.

Finally, the record includes two bonus agreements. The first agreement, dated October 19, 1990, promises the petitioner 26 percent of the accumulated net profits of █████ for the first five years and 1.3 percent of the net profits thereafter. The translation of the second agreement is simply not clear.² While apparently dated April 26, 1997, the translated letter states:

From the total of our company in 1990, our company has approximately the net profit 20,156921.06 [sic] RMB. [A]ccording to the Bonus Agreement with [the petitioner], [he] is entitled to 26% of the net profit which is 5,240,799.47 RMB equivalent to US\$632,183.29 (US\$1= RMB8.29).

The bonus for [the petitioner] has been assigned to [the petitioner] by transfer [of] the proceeds of [a] real estate transaction located [in] Jitou, Siguan, China to [the petitioner's] personal account. The balance, the company will pay off by two installments.

The first sentence of the letter appears to indicate that the bonus was owed to the petitioner for 1990. The fact that he was owed 26 percent of the profits reflects that the letter cannot be referring to any year after 1995 (after which the petitioner was only owed 1.3 percent according to the first agreement). Thus, the second agreement appears to refer to a bonus paid to the petitioner in 1990, eight years before his investment into Universal Grant. The record contains no evidence that those funds were not used for other purposes prior to 1998.

² The translations are not certified, as required by 8 C.F.R. 103.2(a)(3).

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.