



U.S. Department of Justice  
Immigration and Naturalization Service

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



**PUBLIC COPY**

File:  Office: California Service Center Date: FEB 5 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:



identification data deleted to  
prevent clearly unwarranted  
disclosure 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

According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that she is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that she has established. The alleged new commercial enterprise at issue here is [REDACTED] which the petitioner incorporated on December 3, 1997.

The petitioner submitted the articles of incorporation and the stock certificate issued to her on December 8, 1997, for 510,000 shares (or 501,000 shares, both numbers are indicated on the certificate). The documents confirm that the petitioner did establish [REDACTED].

It is the job-creating business, however, 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.

According to the original business plan submitted with the petition, [REDACTED] is the holding company for another corporation, [REDACTED] Inc. a/k/a [REDACTED]. However, the business plan also indicates the petitioner is the 100% owner of [REDACTED] Inc. The regulations define commercial enterprise to include a holding company and its wholly owned subsidiaries. 8 C.F.R. 204.6(e). If the petitioner is the 100% owner of [REDACTED] Inc., however, not only is it not a wholly owned subsidiary of [REDACTED] it is not a subsidiary at all, but a separate corporation owned by the petitioner. The 1997 Quarterly Wage and Withholding Report indicates that [REDACTED] Inc. was responsible for the salaries of the petitioner's claimed employees at the time of filing. It is not clear how the petitioner obtained a seller's permit for [REDACTED], [REDACTED] in July 1997, several months before it was incorporated, or even why she did so as she also obtained a seller's permit for [REDACTED], Inc. on the same date. If one were the subsidiary for the other, it is not clear that she would need a seller's permit for both.

The record contains a certificate of incorporation from the State of Virginia indicating [REDACTED] was incorporated on December 17, 1996, a "Statement and Designation by Foreign Corporation" signed by [REDACTED] as "agent, incorporator, and president" of [REDACTED] Inc. filed with the State of California on April 30, 1997, and a "Statement by Foreign Corporation" dated August 19, 1997, listing the petitioner as the president of [REDACTED] Inc. The latter document is not signed and is not stamped as "filed" by the State of California. These documents do not indicate the ownership of that corporation. The record does not contain any stock certificates issued to either the petitioner or [REDACTED], or the tax returns for [REDACTED] Inc. complete with schedule K-1 indicating the ownership of that corporation. As [REDACTED] Inc. was incorporated before [REDACTED] in order for

[REDACTED] Inc. to be a wholly-owned subsidiary, [REDACTED] would have had to purchase any outstanding stock from the previous shareholder. The record contains no evidence of such a transaction.

Due to the absence of the documents discussed above, the petitioner has not fully demonstrated that she has established a new commercial enterprise which includes [REDACTED] Inc.

**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.

The full amount of the requisite investment must be made available to the business most closely responsible for creating the employment upon which the petition is based. Matter of Izumii, supra.

The petitioner initially submitted [redacted] agreement to issue stock worth \$510,000 and her stock certificate for 510,000 shares of that corporation. The petitioner, however, failed to show financial documentation to support her purchase of those shares for \$510,000. The wire transfer receipts contained in the record, which will be discussed in detail in the following section, do not document the transfer of \$510,000 [redacted]

The petitioner also submitted the November 21, 1996, purchase agreement for the [redacted] franchise between the petitioner as "a corporation to be formed" and the [redacted] Corporation. Finally, the petitioner submitted a "Fixture and Equipment Promissory Lease Agreement" indicating the petitioner had paid the franchise purchase price in full by April 28, 1997. The director concluded that as the purchase price was only \$360,000, the petitioner had not demonstrated an investment of \$500,000.

On appeal, counsel asserts that the petitioner has invested over \$536,000; \$310,000 for the purchase of the franchise and an additional \$226,000 for running the business. Counsel purports to document the additional \$226,000 through evidence of \$209,200 paid by the petitioner to [redacted] Enterprises (a/k/a [redacted] Inc.) and

the [redacted] franchise's landlord, and an additional \$167,160 paid by the petitioner to [redacted].

In support of the petitioner's payment of the franchise purchase price, counsel submits checks issued by [redacted] to [redacted] Corporation totalling \$150,000 and bank checks issued to [redacted] Corporation totalling \$160,000, \$150,000 of which the petitioner borrowed using two promissory notes. Both promissory notes mature within one year and are secured by the petitioner's own assets (a savings account at the lending bank with sufficient funds to pay off the loans).

In support of the business operating expenses, counsel submits bank statements and wire transfer receipts showing [redacted] Ltd. transferred to [redacted] Enterprises \$40,000 on April 7, 1997, an additional \$20,000 on August 8, 1997, and an additional \$20,000 on September 9, 1997; an April 1997 [redacted] Enterprises bank statement showing the following wire transfer deposits: \$39,985 from an unknown source, \$35,000 from the petitioner's account overseas, and \$10,000 from Sino Success International, Inc.; a \$1,000 check from the petitioner used to start [redacted] Enterprises' checking account on December 19, 1996; a February 28, 1997 check issued by the petitioner to the landlord for the [redacted] franchise on Maple Avenue for \$3,200; the petitioner's March 1997 bank statement showing several automatic withdrawals not clearly related to either [redacted] Group or [redacted] Inc.; and a wire transfer receipt documenting the petitioner's May 15, 1997 transfer of \$40,000 to [redacted] Enterprises. Finally, the petitioner submitted [redacted] bank statements for December 1997, January 1999, and May 1999, and the petitioner's bank statements for January 1998 and May 1999.<sup>1</sup>

Counsel also asserts the petitioner will invest another \$400,000 so that [redacted] can operate a used car lot. Counsel submits a lease for the property for the dealership and completed applications for the necessary permits to operate a used car dealership.

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

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<sup>1</sup> The petitioner also submitted a bank letter increasing [redacted] credit to \$40,000. As the record contains no evidence this credit line is secured by the assets of the petitioner, it is not evidence of her investment.

commercial enterprise. This petitioner's de minimus action of signing a lease agreement, without more, is not enough. Id. at 5-6.

As the petitioner claims to be the sole owner of both [REDACTED] Group and [REDACTED], Inc., the petitioner must demonstrate more than the mere deposit of funds in the accounts of these corporations for the money to be truly at risk. The record reveals that, at the time of filing, [REDACTED] International Company, Ltd. had transferred \$80,000 to [REDACTED] Enterprises and the petitioner had transferred an additional \$76,000. As will be discussed below, the petitioner has not demonstrated that the funds contributed by [REDACTED] International Company are her personal assets. The record also reveals the petitioner personally paid the franchise landlord \$3,200 and [REDACTED] Corporation an additional \$160,000.

While [REDACTED] Enterprises contributed an additional \$150,000 to [REDACTED] Corporation between April 8, 1997 and April 28, 1997, the petitioner has not demonstrated that this money can be traced back to herself above and beyond the \$36,000 she transferred to [REDACTED] Enterprises during that time. In addition, even if the petitioner had demonstrated the funds transferred by [REDACTED] International Company were traceable to her, she cannot count those funds both when transferred to [REDACTED] Enterprises and again when transferred from [REDACTED] Enterprises to [REDACTED] International Company transferred \$40,000 to [REDACTED] Enterprises on April 7, 1997. If the funds are considered to be invested when transferred to [REDACTED] Enterprises, those funds cannot be included in the "investment" funds transferred from [REDACTED] Enterprises to [REDACTED]. As such, [REDACTED] Enterprises only transferred \$84,000 above and beyond the \$36,000 contributed by the petitioner and the \$40,000 contributed by [REDACTED] International Company.

Regardless, 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). As such, the reinvestment of proceeds cannot be considered an infusion of capital. Johannes De Jong v. INS, Case No. 6:94 CV 850 (E.D. Texas January 17, 1997). The petitioner has not demonstrated that the funds transferred by T&A Enterprises constitute the petitioner's capital investment.<sup>2</sup>

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<sup>2</sup> As stated earlier, the petitioner has also failed to demonstrate that [REDACTED] Enterprises is a wholly-owned subsidiary of the new commercial enterprise identified on the petition. If it is not, any capital contribution to [REDACTED] Enterprises cannot be considered a capital contribution to the new commercial enterprise.

All of the additional wire transfers documenting money transfers to the petitioner and her spouse do not document any investment into the new commercial enterprise as the petitioner has not demonstrated this money was subsequently transferred to [REDACTED] Enterprises or [REDACTED] Food, Inc. beyond the amounts discussed above. The money from [REDACTED] International, [REDACTED] International, Ltd., and [REDACTED] Corporation was transferred to [REDACTED] Enterprises and [REDACTED] Inc. after the filing of the petition and cannot establish the petitioner's investment at the time of filing. Moreover, as will be discussed below, the petitioner has not explained how these funds are traceable to her. Finally, the bank statements for [REDACTED] Enterprises and [REDACTED] Group cannot establish the transfer of any money from one to the other in the absence of canceled checks. Therefore, at best, the record does not establish a capital contribution of more than \$240,200 (the \$76,000 transferred to [REDACTED] Enterprises from the petitioner assuming [REDACTED] is a wholly-owned subsidiary, the \$3,200 rent deposit, the \$1,000 paid by the petitioner to open [REDACTED] Enterprises' account, and the \$160,000 paid to [REDACTED] Corporation by the petitioner).

In addition, the balance sheets submitted do not agree with the transactional documentation provided. The balance sheets for [REDACTED] Enterprises indicate that the stock in that corporation increased from \$13,000 on July 31, 1997, to \$23,000 on August 31, 1997, to \$32,600 on September 30, 1997, to \$37,400 on October 3, 1997, and finally to \$50,700 on November 30, 1997. The only documented deposits with [REDACTED] Enterprises during that period are the \$20,000 contributed by [REDACTED] International Company, Ltd. on August 8, 1997 and again on September 9, 1997. Finally, the balance sheets for [REDACTED] indicate stock of \$402,827 in March 1999 increasing to \$501,027 by May 31, 1999. Nothing in the record shows any deposits of that amount into [REDACTED] account at any time.

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).

Counsel also asserts that the petitioner has had to delay opening the two additional franchises purchased due to the "fraudulent actions of others"<sup>3</sup> and that [REDACTED] will be operating a

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<sup>3</sup> As will be discussed in the Employment Creation section of this decision, counsel's assertion that the actions of two [REDACTED] Corporation employees caused the petitioner hardship is somewhat dubious. The letter from [REDACTED] Corporation indicates one of these employees was [REDACTED]. According to the business plan, however, Mr. [REDACTED] will be hired to manage the car dealership.

used car dealership. As the original purchase price included the two additional franchises, their delay cannot establish that the petitioner will be investing additional capital when they are finally opened. Further, review of the record reveals that the petition was not initially supported with any documentation of business activity regarding the used car dealership. Even on appeal, the only evidence regarding the proposed car lot is a lease and completed permit applications. There is no evidence the permits were granted and that the dealership is now ready to conduct business. A mere commercial lease was deemed insufficient in Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998).

Finally, 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 was committed to the establishment of a used car lot, and, thus, at risk. Furthermore, the business plan, page 7, indicates only that "the appropriate financial guarantees have been secured" for the dealership. The petitioner has not established that the \$400,000 to be "invested" into the used car dealership will be her personal funds, as opposed to a business loan secured by the assets of the dealership or the reinvestment of [REDACTED] undistributed proceeds. Therefore, we cannot consider any potential investment into the used car dealership in reviewing the instant petition.

In light of the discussion above, the petitioner has not established that she has invested the full \$1,000,000, or even \$500,000.

**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

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He is also the emergency contact person for [REDACTED] Inc. and provided a letter of reference for the petitioner long after he supposedly committed his fraudulent actions and left the employ of [REDACTED] Corporation in May 1997.

through lawful means, the petitioner 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, supra, at 6; Matter of Izumii, supra, 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. Matter of Izumii, supra, at 26. 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).

The petitioner initially claimed that her funds derived from a loan of \$350,000 from ██████████ International Company, Ltd. (the petitioner's spouse's business) and an additional loan of \$180,000 from the petitioner's cousin. The petitioner submitted ██████████ International Company, Ltd.'s 1994 Resolution of Director's Meeting agreeing to lend \$350,000 to ██████████ a shareholder; the notarial certificate of the petitioner's marriage to Mr. ██████████; a letter from ██████████ attesting to his loan of \$180,000 to his cousin, the petitioner; wire transfer receipts documenting ██████████ International Company, Ltd.'s transfer of \$60,000 to the petitioner's account number ██████████ in 1994, \$150,000 to Mr. ██████████ account number ██████████ in 1996, and \$80,000 to ██████████ Enterprises in 1997; and wire transfer receipts documenting Mr. ██████████ transfer of \$180,000 to the petitioner's account number ██████████ in 1995 and 1996.

The director concluded that the petitioner had not established the lawful source of her funds because the record did not contain the terms of the alleged loans and not all of the funds wired to the United States were wired to the petitioner.

On appeal, counsel does not specifically address the director's concerns and merely asserts that the funds were transferred from the accounts of the petitioner and her husband and were derived from their business in China. Counsel submits the wire transfer receipts submitted previously as well as receipts documenting the petitioner's transfer of \$70,000 from her overseas account to [REDACTED] Enterprises in 1997, [REDACTED] International's transfer of \$10,000 to [REDACTED] Enterprises in 1999, [REDACTED] International's transfer of \$10,000 to [REDACTED] in 1999, [REDACTED] Corp's transfer of \$17,132 to [REDACTED] in 1998, [REDACTED] transfer of \$10,000 to the petitioner's account number [REDACTED] in 1999 and [REDACTED] transfer of \$10,000 to the same account in 1999. The petitioner also submitted her resume, diploma, letter of employment for [REDACTED] Import and Export Corporation, and real estate license and certificates. Finally, the petitioner submitted a deed of trust granting the petitioner and her spouse a revolving line of credit of \$48,000 secured [REDACTED]

As correctly noted by the director, the petitioner has not demonstrated that all of the funds wired to the United States were committed to the new commercial enterprise. The \$60,000 wired from [REDACTED] International to the petitioner were wired to the account from which she paid the \$1,000 to start the [REDACTED] Enterprises account and the \$180,000 wired from the cousin to the petitioner were wired to the account used to collateralize the loans used to pay the purchase price to [REDACTED]

The remaining \$59,000 wired from [REDACTED] International to the petitioner in 1994, however, has not been documented as transferred to the new commercial enterprise. In addition, the petitioner has not provided any evidence that the funds transferred to her spouse were eventually committed to the new enterprise. Further, the petitioner has not documented the source of the \$75,000 which she transferred from her own account abroad. In the absence of five years of tax returns documenting her salary, required "as applicable" by 8 C.F.R. 204.6(j)(3)(iii), the petitioner's resume and employment letter cannot establish that the petitioner's \$75,000 derived from a lawful source.

Moreover, while the petitioner indicated on the petition that she had never worked in the United States without authorization, she also indicated that she had no immigration status. On appeal, she submits evidence that she has been working as a real estate agent. Any income derived from unauthorized employment cannot be considered lawfully obtained.

Finally, as noted by the director, without the terms of the loan agreements with [REDACTED] International Company, Inc. and the petitioner's cousin, we cannot determine the legitimacy of those loans. It is significant that the wire transfer receipt for [REDACTED] International Company, Ltd.'s August 8, 1997 transfer of \$20,000 to [REDACTED] enterprises is notated "payment for goods." This notation raises serious concerns regarding the petitioner's claim that the payments from [REDACTED] International Company, Ltd. to [REDACTED] Enterprises constitute a loan. The petitioner has not documented that her spouse is a shareholder of [REDACTED] International Company, Ltd.<sup>4</sup> and has not provided any explanation for the payments to [REDACTED] Enterprises and [REDACTED] from [REDACTED] International, Creation One Corporation, and [REDACTED] Corporation.

Finally, regarding the deed of trust, the petitioner has not demonstrated that she owns the property at [REDACTED] that she actually utilized the \$48,000 credit secured by that property, and that any funds borrowed under that agreement were transferred to the new commercial enterprise.

In light of the above, the petitioner has not overcome the director's determination that the petitioner had not established the lawful source of her 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.

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<sup>4</sup> An unsupported letter indicating the number and value of shares of capital stock held by the petitioner in a foreign business is insufficient documentation of source of funds. Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations July 31, 1998) at 6.

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.

The petitioner has also failed to demonstrate that her investment will create the required number of jobs. In support of the initial petition, the petitioner submitted a 1997 third quarter Quarterly Wage and Withholding Report for [REDACTED] Inc. indicating nine employees for each month of that quarter. Without I-9's and payroll records, however, it is not possible to determine whether these are qualifying full-time employees. In addition, as discussed above, the petitioner has not documented that Tan Foods, Inc. is a wholly owned subsidiary of the claimed new commercial enterprise, [REDACTED].

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 original business plan submitted by the petitioner asserted that [REDACTED] Group would hire an assistant for the business department, another assistant for the accounting and financing department, and another supervisor and crew leader for the [REDACTED] Department. The director concluded the business plan included insufficient detail to enable the Service to determine whether the projections were any more reliable than hopeful speculation.

On appeal, counsel submits a lengthy business plan which discusses the one operational [REDACTED] restaurant, the two proposed [REDACTED] restaurants, and the proposed used car dealership. On page 12, the plan lists four employees and on page 16 the plan indicates [REDACTED] has three full-time employees and two part-time employees. The business plan includes the 1998 fourth quarter Quarterly Wage and Withholding Report for [REDACTED] Group documenting six employees. Two of these employees are identified on [REDACTED] Inc.'s 1997 third quarter Quarterly Wage and Withholding Report. The petitioner has not, therefore, established that she has not shifted the employees from the records of [REDACTED] Inc. to the records of [REDACTED] as opposed to adding an additional six employees. If the 1998 report indicates the total of [REDACTED] employees, the petitioner has actually decreased the number of employees from nine to six since the petition was filed.

The business plan (page 16) asserts the two additional [REDACTED] restaurants will also require approximately three full-time employees and two part-time employees, totaling between nine and twelve full-time employees. The petitioner, however, concedes that she is experiencing legal difficulty in opening the remaining two restaurants. While the record contains correspondence between the petitioner and [REDACTED] Corporation attempting to reach an agreement which would allow the second restaurant to open, there is no indication the parties reached such an agreement. The March 11, 1998 letter to the landlord for the proposed site for the second restaurant and the lease assignment dated February 20, 1998 are

signed by the president of [REDACTED], but not the petitioner. The petitioner has not established that she will be able to open a second restaurant and acknowledges that the location of the third restaurant has not even been decided.

According to counsel and the business plan, the petitioner was delayed in opening the two additional restaurants because [REDACTED] Corporation went out of business due to the actions of two employees. While the petitioner provided a letter from [REDACTED] Corporation confirming these assertions, the record contains inconsistencies.

The letter from [REDACTED] Corporation, dated December 3, 1997, indicates [REDACTED] Corporation permanently closed due to the actions of employee [REDACTED] and contractor [REDACTED], who allegedly left [REDACTED] Corporation to start similar operations with money paid to them by [REDACTED] Corporation. According to the letter, [REDACTED] left [REDACTED] Corporation in May 1997. While [REDACTED] Corporation president [REDACTED] name does appear at the bottom of the letter, it is simply typed in a formal font, and is not actually signed.

The record does reflect [REDACTED] involvement in the original purchase agreement. He signed the purchase and license agreements as a witness in 1996. It is noteworthy, however, that [REDACTED] is listed as the emergency contact for [REDACTED] on a Business License Tax Application dated June 8, 1999 and provided the petitioner with a 1999 letter of reference. More significantly, the business plan submitted on appeal, page 12, indicates that [REDACTED] Group intends to hire [REDACTED] to manage the used car dealership. If [REDACTED] had truly "fraudulently absconded" funds as claimed on page 34 of the business plan, caused [REDACTED] Corporation to fold, and put the petitioner's business at risk, it is not clear why she would then list him as an emergency contact, use him as a reference and offer him a job.

As stated previously, 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 record does not resolve the above inconsistencies.

In addition, the letter from [REDACTED] Corporation is dated over a month before the petitioner filed her petition supported by the original business plan. Therefore, it is not clear why [REDACTED] Corporation's closure should change the projections discussed in that business plan as the petitioner already knew about the closure when she filed her petition and submitted the original business plan. Regardless, as it is not clear the petitioner will be able

to open the additional two restaurants, we cannot conclude that they will create any additional employment.

Similarly, the petitioner has not demonstrated that she will be able to open the car dealership. While she has submitted the lease and applications for the necessary permits, she has not documented that she has obtained all of the necessary permits. We cannot conclude, therefore, that the car dealership will create any additional jobs. Moreover, as stated above, the car dealership was not contemplated in the initial petition. 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, supra. 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, supra, at 7.

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. Accordingly, the petition will be denied.

**ORDER:** The appeal is dismissed.