



U.S. Department of Justice
Immigration and Naturalization Service

B7

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



PUBLIC WORK

FEB 12 2001

File: [redacted] Office: Nebraska 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)

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 immigrant visa petition was denied by the Director, Nebraska Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

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), and §610 of the Appropriations Act of 1993.

The petitioner filed Form I-526, Immigrant Petition by Alien Entrepreneur, indicating that the petition was based on an investment in a new business in a targeted employment area eligible for downward adjustment of the minimum capital investment to \$500,000 and indicated that the new business was in a "regional center" eligible for participation in the Immigrant Investor Pilot Program. The petitioner contended that he is one investor, in a plan to recruit foreign investors, in [REDACTED] Limited Partnership (GRFF), a Washington limited partnership. The Partnership Agreement is not contained in the record, but the Certificate of Limited Partnership indicates the general partner of the partnership is [REDACTED], care of American Retirement, Inc., a Washington corporation. The petitioner claimed that he has invested \$500,000 into the Partnership. The investment is in the form of a \$200,000 initial payment plus a loan for the balance of \$300,000, all of which is deposited in an escrow account to be refunded after one year if the petitioner has not immigrated during that time.

The director denied the petition in a decision dated November 20, 1998, and certified that decision to the Associate Commissioner pursuant to 8 C.F.R. 103.4(a). In the denial, the director found that the petitioner failed to submit sufficient documentation to establish that he had placed his funds at risk, that he had created a new commercial enterprise, that all funds invested would be made available to the employment creating enterprise, that he would be doing business in a targeted employment area, that his investment would result in the requisite employment creation, or that his funds originated from a lawful source.

The director advised the petitioner that the decision was certified for review and afforded the petitioner thirty days in which to submit additional documentation to the reviewing authority. As of this date, no further response has been received from the petitioner.

Based on a review of the record as presently constituted, there is no error of law or fact evident in the director's decision with the following minor exception. In his discussion of whether the petitioner invested in a targeted area, the director incorrectly stated that 150% of 5.5% is 8.4%, and that Medford-Ashland's

unemployment rate in February 1996 was 8.25%. In fact, 150% of 5.5% is 8.25%; however, Medford-Ashland's unemployment rate in February 1996 was actually only 8.2%. Despite this minor miscalculation, the director's conclusion that Medford-Ashland was not a targeted employment area in February 1996 is correct. Moreover, the director also correctly concluded that the applicant had not established whether any of the areas in which he was allegedly investing were targeted employment areas at the time of filing.

Beyond the director's decision, the petition also involves multiple-investor issues which the petitioner has not resolved. 8 C.F.R. 204.6(g)(1) states, in pertinent part:

The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur by more than one investor, provided each petitioning investor has invested or is actively in the process of investing the required amount for the area in which the new commercial enterprise is principally doing business, and provided each individual investment results in the creation of at least ten full-time positions for qualifying employees.

8 C.F.R. 204.6(g)(1) continues:

The establishment of a new commercial enterprise may be used as the basis of a petition for classification as an alien entrepreneur even though there are several owners of the enterprise, including persons who are not seeking classification under section 203(b)(5) of the Act and non-natural persons, both foreign and domestic, provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.

8 C.F.R. 204.6(g)(2) sets out the employment-creation requirement 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. . . . The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

While the petitioner supplied copious documentation regarding the actual and proposed activities of GRFF, he did not identify the specific project or projects into which his money would be placed.

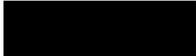
Simply making money available to a business is not the same as placing that money at risk in employment-creating activities.¹ See Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998).

The alleged new commercial enterprise, [REDACTED] Limited Partnership, may have other limited partners who, in theory, should have contributed additional funds. In addition, the projects specified are the projects identified by the General Partner for several [REDACTED] limited partnerships. The petitioner has not explained how the projects have been allocated among the various investors and partnerships, and no evidence exists that this petitioner would be able to claim the next qualifying project ahead of the other investors whose funds have not been placed in qualifying projects yet. As stated above, the Partnership Agreement is not contained in the record. Therefore, whether the agreement specifies a specific project is unknown.

That the projects have not been allocated among specific investors has an impact not only on the investment aspect of this petition but also on the employment-creation element. The petitioner has not provided any evidence as to which investors are entitled to claim which jobs. Indeed, the record indicates that GRFF's general partner, [REDACTED] Inc. has conducted all of the investment activities as general partner of the multiple GRFF funds. As the general partner has not identified which investment fund may claim which investment, the Service is unable to determine whether the general partner's investment activities are to be allocated to any one fund or used for multiple funds. The Service seeks to prevent a situation in which numerous petitioners would attempt to claim credit for the same \$500,000 or the same ten employees, or both.

Finally, the petitioner has not furnished evidence of the sources of capital contributed, or to be contributed, by the other partners of GRFF, as required by 8 C.F.R. 204.6(g)(1). The requirement to establish that all of the funds invested by all of the owners of a new commercial enterprise are lawful cannot be met if all of the

¹ If an alien establishes a new partnership with several other aliens in order to pool funds, it would be premature for him to file an I-526 petition prior to identifying an exact project or projects in which *his* money would be placed. Merely pooling funds and waiting for projects to arise at some indefinite time in the future would render it impossible for a petitioner to argue, at the time he was required to file his application to remove the conditions of his permanent resident status, that he had placed all of his funds in employment-creating activities for a full two years.



owners have not been identified at the time an alien investor files his or her petition. This requirement is entirely consistent with the discussion above concerning the establishment of a new commercial enterprise. If all of the intended owners do not establish the business together, any petitioners among them could not submit information regarding the source of funds of future, unknown owners. The petitioner has failed to document the source of his own funds, let alone the source of any other investor's funds. In addition, the petitioner has failed to demonstrate the source of the general partner's funds.

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. The director's decision therefore shall be affirmed.

ORDER: The decision dated November 20, 1998, is affirmed. The petition is denied.