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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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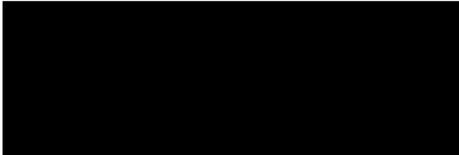
JUL - 6 2001

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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

The director determined that the petitioner had failed to demonstrate that he had established a new commercial enterprise, that he had made a qualifying investment of lawfully obtained funds, or that he would create the necessary employment.

On appeal, counsel argues the director misunderstood the facts and misapplied the law.

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 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 \$500,000.

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 listed on the petition is [REDACTED] (HDP). The petitioner claims to have reorganized or restructured HDP. HDP is now a wholly-owned subsidiary of Pequeño [REDACTED] (PGH), of which the petitioner is a shareholder.

HDP was incorporated on November 26, 1985. On October 31, 1996 HDP issued the petitioner a stock certificate for 500 shares and on November 8, 1995, HDP issued the petitioner an additional 2,000 shares. On October 30, 1998 [REDACTED] transferred all of its 6,475 shares in HDP to the petitioner.

The petitioner does not claim, and the record does not reflect, that the petitioner participated in the creation of HDP. Therefore, the petitioner must demonstrate that he reorganized, restructured, or expanded HDP. On May 10, 1996, PGH was incorporated and the stock in HDP was converted to stock in PGH. The record contains an undated stock certificate issued by PGH to the petitioner for 8,975 shares. According to the board meeting minutes and letters from [REDACTED] president of HDP, PGH was incorporated as a holding company for HDP and other hotels to be built in Puerto Rico. In addition, the petitioner was allegedly responsible for the construction of Casa Escondida, eight deluxe guest suites at the original [REDACTED]. A series of villas adjacent to the Rincón hotel to be built by a third party and eventually managed by HDP was also contemplated. The cost of the latter project is projected as \$9,200,000. The record does not indicate who is financing this project.

In response to a request for additional documentation, the petitioner submitted a subsequent letter from [REDACTED] in which he asserts that the alleged restructuring or reorganization which took place consisted of the creation of PGH and the hiring of the petitioner to manage HDP. As manager, the petitioner created a new employee structure and suggested the closing of the New York office and moving its operations to San Juan. The petitioner also "reorganized" the hotel at

Rincón by hiring an assistant manager, concierge, a wine steward, and additional kitchen personnel.

The director concluded that the petitioner had not demonstrated a restructuring as HDP operated as a hotel before the petitioner's investment and continues to operate as such. The director also noted that the record did not reflect a 40 percent increase in employment or net worth.

On appeal, counsel argues that the petitioner's investment enabled the substantial change of an existing business and that the petitioner increased employment at HDP by 40 percent.

Much of the evidence regarding this and other issues comes from letters and affidavits. The record, however, does not contain any evidence that PGH is operating any other wholly-owned subsidiary other than HDP. As noted by the director, the definition of commercial enterprise includes a holding company and its wholly-owned subsidiaries. See 8 C.F.R. 204.6(e)(definition of commercial enterprise.). Thus, the activity of any partially-owned subsidiary is irrelevant to the petition. The record does not contain a deed or construction contract for the other proposed hotels in San Juan and Culebra. Finally, the record does not contain the management agreement for the Rincón villas to be constructed apparently by Manuel De Lemos, A.L.A.¹ and financed by an unknown source.

In addition, the record does not contain any of the invoices regarding the construction of Casa Escondida. The financial statements reflect only that HDP incurred construction costs of \$390,377 in 1994 and \$1,099,638 in 1995, but also that HDP had long term debt of \$1,642,819 in 1994 and \$2,160,625 in 1995. Note 4 to the financial statement provides:

On January 19, 1995, the Company entered into a term loan agreement with the Government Development Bank. This agreement made available to the Company a \$2,200,000 loan to refinance obligations up to \$1,226,657 *plus \$900,000 for the construction and furnishing of a new wing consisting of eight hotel rooms.*

(Emphasis added.) Similarly, the minutes of the annual HDP board meeting on October 31, 1996 contain [REDACTED] reference to "the consolidated mortgage that was put into place by the GDB to finance the building of Casa Escondida." Therefore, without additional evidence regarding the construction of the Casa Escondida, the record demonstrates only that the construction may have begun as early as 1994, prior to the petitioner's investment, and was financed through loans acquired prior to the petitioner's investment. The petitioner does not claim and the record does not suggest that the petitioner will be financing the construction of the villas in Rincón.

The remaining corporate changes, the formation of a holding corporation and the hiring of additional staff, is not such a reorganization that a new business results. Such changes do not

¹ The record contains a letter from [REDACTED] estimating that the construction of the villas will require 70 employees for a year. The letterhead suggests, however, that [REDACTED] is an architect, not a developer. The record contains no contract or other evidence of a developer.

reflect a substantial change in mission or significant expansion of services. In light of the above, it cannot be concluded that the petitioner restructured or reorganized a preexisting business.

The petitioner does not claim to have increased the net worth of HDP by 40 percent. The remaining issue, then, is whether the petitioner increased employment by 40 percent. Once again, the only evidence of the claimed increase in employment is a letter which claims full-time employment increased from 42 to 61. The petitioner submitted 61 Forms I-9 in support of the petition. Forms I-9, however, are not evidence that the employees are actually working for the business or that they are working full-time. See Matter of Ho, I.D. 3362, 8 (Assoc. Comm., Examinations, July 31, 1998). In response to a request for additional documentation, the petitioner submitted several quarterly withholding reports. The reports, however, cover only 1995 and indicate HDP had 48 employees from June to October 1995, the period during which the petitioner began investing, which increased to 56 employees by December 1995. An increase from 48 to 56 is not an increase of 40 percent. Thus, the record does not support the letter alleging an increase of 19 employees.

In light of the above, the petitioner has not demonstrated that he established a new commercial enterprise.

INVESTMENT OF CAPITAL

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

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

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

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

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

- (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
- (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
- (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

On the petition, the petitioner claimed to have invested \$100,000 initially, \$575,000 total. In his affidavit, the petitioner claimed to have purchased \$250,000 worth of stock directly from HDP and additional shares in HDP from Burrows Water Works for \$325,000, \$250,000 of which he had paid. Finally, the petitioner claimed that his personal guaranty on a \$368,000 commercial loan, a \$100,000 line of credit, and a \$75,000 commercial loan were part of his investment. In support of the petition, the petitioner submitted audited financial statements for 1994 through 1997 and 1999; a letter from Mr. Davies asserting the petitioner transferred \$250,000 to HDP between September 1995 and January 1996 as consideration for 2,500 shares of stock; HDP bank records showing deposits of \$99,985 on September 15, 1995, \$89,985 on December 12, 1995, and \$39,985 on January 4, 1996; and the petitioner's bank statements reflecting wire transfer debits of \$100,030 on September 15, 1995, \$10,030 on October 3, 1995, \$90,030 on December 12, 1995, and \$10,030 on January 4, 1996. The petitioner also submitted several stock certificates issued to Burrows Water Works Corp. all transferred to the petitioner on October 30, 1998 as well as an application for a wire transfer for \$250,000 from the petitioner to Burrows Water Works.

The director concluded that the purchase of HDP stock from Burrows Water Works was not an infusion of new capital and that the petitioner's personal guaranty on the commercial loans did not make the business loans an investment.

On appeal, counsel acknowledges that HDP should have purchased the stock from Burrows Water Works and sold it to the petitioner, but that the end result is the same. Counsel asserts that [REDACTED] was opposed to the "restructuring" and "expansion" of HDP and PGH, refused to allow his HDP stock to be converted to PGH stock, and "but for" the petitioner's purchase of his stock, the addition of the new villas and hotels would not have been able to occur.

While we concur with counsel that the petitioner's purchase of stock from another stockholder is an "investment," the fact that the petitioner merely supplanted another shareholder does not explain how the petitioner's investment will create new job opportunities. Counsel's argument that "but for" the petitioner's purchase of stock from [REDACTED] the "expansion" could not have occurred is not persuasive or supported by the record. The Casa Escondida was completed while [REDACTED] was a shareholder and the minutes of the meetings attended by [REDACTED] reflect his concerns about liability, but no opposition to the concept of managing the villas or operating other hotels in Puerto Rico. Page 6 of the October 31, 1996 board meeting minutes states, [REDACTED] says he is excited about San Juan expansion but warns of the danger of becoming involved in Culebra too soon." In fact, at that meeting, which took place after the construction of Casa Escondida and the incorporation of PGH, [REDACTED] was elected as a director of HDP. The only dissent from [REDACTED] in the record is his opposition to the development of a separate management company expressed in the June 18, 1997 minutes of a PGH special board meeting.

In addition, the record does not explain the vast differences in stock purchase price. The petitioner purchased 2,500 shares from HDP for \$250,000. Yet, the petitioner purchased 6,475 shares from [REDACTED] for \$325,000, only \$250,000 of which has been paid to Burrows Water Works. If HDP excelled and became profitable under the petitioner's management, it is not clear why the value of HDP stock decreased so drastically. On the other hand, if HDP or PGH could have acquired the stock from [REDACTED] for \$325,000 and sold those shares for \$647,500, it is not clear that the transaction which occurred has the same result as if the corporation had repurchased the shares and sold them to the petitioner. The record does not contain the financial statements for 1998 which might reflect the value of the stock that year and other information regarding the transaction. In addition, the corporate tax returns for HDP and PGH are titled "Special Partnership Informative Tax Return," which is inconsistent with the evidence in the record reflecting that both HDP and PGH are corporations.

Finally, we concur with the director that the petitioner's personal guaranty on the commercial loans does not amount to an "investment" as defined in 204.6(e) quoted above. Counsel focuses on the definition's inclusion of debts for which the petitioner is personally and primarily liable. Counsel ignores, however, that the definition goes on to state, "and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness." The other definitions of debt quoted by counsel are irrelevant as the definition which must be used in the adjudication of this petition is the one quoted above. As the record fails to demonstrate that the assets of the business were not used to secure any of the indebtedness which the petitioner guaranteed, none of those funds can be considered part of the petitioner's investment.

In light of the above, while the petitioner appears to have "invested" the full \$500,000, the record does not reflect a nexus between his investment and employment creation. Only \$250,000 of the petitioner's investment represents an infusion of previously unavailable capital.

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, supra, 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).

The petitioner submitted his Curriculum Vitae indicating he attended a hotel management school in Switzerland and another trade school in Vienna. The C.V. further indicates the petitioner worked as an assistant manager and then a manager at hotels in Bermuda from 1977 to 1996.

Finally, the [REDACTED] indicates the petitioner won several hotel awards. Very little of this information, however, is confirmed by the record. The petitioner failed to submit his diplomas or the awards. As evidence of his employment in Bermuda, the petitioner submits only sample pay slips and a letter from Horizons and Cottages which fails to confirm the dates of the petitioner's employment or his salary. The pay slips are confusing in that they do not reveal the period covered by the slip and contain a "rate" and "extension" dollar amount, which differ by a degree of 10. Nor do the slips reflect whether the currency amount is U.S. or Bermuda dollars or the exchange rate. The petitioner did submit his tax returns for 1996 through 1999, which cannot explain the source of money invested in 1995. Finally, the petitioner submitted sample pages from a passbook savings account going back to 1983. At no point does the account indicate a balance of more than a few thousand dollars.

The director concluded that the petitioner's income in the years 1996 through 1999 could not account for an investment of \$500,000 and that the petitioner had not demonstrated the liquidation of any assets.

On appeal, counsel asserts the Service should accept the petitioner's personal statements, unsupported financial statement, and "multiple supporting documents" as evidence of the lawful source of the petitioner's funds.

The fact that Bermuda does not levy income taxes does not alleviate the petitioner's burden to demonstrate his income beyond his personal assertions. Other evidence of income, such as employer letters which reference dates of employment and salary supported by unambiguous pay statements must be submitted instead. The letter and pay statements from Horizons and Cottages do not meet the petitioner's burden.

In light of the above, the petitioner has not established the lawful source of his 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.

Full-time employment means continuous, permanent employment. See [REDACTED] v. United States, supra, at 19 (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 director concluded that the petitioner had not established which of the alleged 19 new employees were full-time employees. The director further concluded that the future employment at the villas could not be credited to the petitioner as they would be employees of Horned Dorset, San Juan, which is not a wholly owned subsidiary of PGH.

On appeal, counsel asserts the petitioner included sufficient evidence of current employment by submitting a letter from the director of finance for HDP and Forms I-9. Counsel further asserts that the Confidential Information Memorandum serves as a sufficient business plan.

The record reflects that employment at HDP increased from 48 employees at the time of the petitioner's investment to 56 in December 1995. While the petitioner claims HDP employed 61 full-time employees at the time of filing, this assertion is not supported by payroll records or quarterly wage and withholding reports. Thus the record demonstrates an increase of only eight employees, and does not reflect how many of those employees are full-time employees.

A review of the record reveals that the villas will be part of the Rincón hotel, not the San Juan Hotel. If the management of the villas fell under HDP, a wholly-owned subsidiary of PGH, any employment created by the management of that hotel could be credited to the petitioner. The record contains little evidence, however, regarding the construction and eventual management of the villas. The record does not contain evidence that the estimated \$9,200,000 project has been financed or a management contract indicating that HDP will be responsible for the management and direct employment of any villa employees. Significantly, the minutes of the June 18, 1997 special board meeting for PGH discuss the establishment of a separate management company and the prospectus for the villas indicates the villas will be managed by Horned Dorset Management, Inc. The record does not indicate whether this corporation is a wholly-owned subsidiary of PGH.

Once again, the record does not establish the nexus between the petitioner's *investment* and any new employment. Counsel refers to the excellent management skills the petitioner brought to HDP. The Service does not challenge that assertion. The entrepreneur program, however, requires an investment of \$500,000 which results in the creation of 10 new jobs. As discussed above, \$250,000 of the petitioner's investment cannot be considered new funds previously unavailable to the corporation, and the remaining \$250,000 was invested after HDP had already obtained financing for the construction of the eight additional suites at the Rincón hotel. The



petitioner has not demonstrated that his \$500,000 investment resulted or will result in 10 new jobs.

CLOSING

Based on the information submitted, it is apparent that the petitioner is an experienced hotelier who is involved with a successful commercial enterprise. As noted by counsel, the director made no suggestion of fraud and found that the petitioner was involved with a legitimate business. We concur that the record does not suggest that the petitioner has engaged in any fraud. The petitioner, however, has not submitted the required documentation which might establish that he meets the minimum eligibility requirements for this visa classification.

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.