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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: WAC-99-210-51155 Office: California Service Center Date: MAY 17 2001

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:

[redacted]

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, California 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 she had made a qualifying investment of lawfully acquired funds.

On appeal, counsel argues that the petitioner was actively in the process of investing property. While counsel asserted an additional brief regarding the lawful source of the petitioner's funds would follow, no additional information has been received. Thus, a determination will be made on the record as it now stands.

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,
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> (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
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> (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, [redacted] Commerce Park II, LLC ([redacted] II), 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.

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:
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> (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
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> (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;
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> (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;
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> (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

> (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

In support of the petition, the petitioner submitted evidence that she had transferred $500,000 to [redacted] Group, Inc., the coordinating member manager of [redacted], on December 24, 1997; an agreement with a prior Limited Partnership in which the petitioner had invested whereby the partnership would provide property in lieu of refunding the petitioner's $500,000 investment in that business; and real estate transactional documents. On August 11, 1999, the director requested an explanation of the investment as the petitioner claimed to be investing in [redacted] which was not formed until July 1999, one and a half years after the petitioner transferred her funds to the coordinating member manager.

In response, counsel asserted:

> Petitioner originally invested $500,000.00 USD into [redacted] International Group Limited Partnership #1 in 1997. . . . Petitioner terminated her investment in [redacted] International Group Limited Partnership #1 on June 18, 1999 and received a real property distribution with fair market value of $500,000.00. On July 8, 1999, Petitioner invested said real estate having a fair market value of $500,000.00 into [redacted] Commerce Park II LLC (d.b.a. Global Infrastructure & Export).

The "Asset Distribution Agreement" reflects that the petitioner desired a refund of her investment in [redacted] Port International Group Limited Partnership #1 "with the intent of reinvesting said funds." The agreement further indicates "the Limited Partnership by and through the General Partner, [redacted] Group, or one [sic] its affiliate subsidiaries, shall quitclaim, transfer and convey" to the petitioner property appraised at $500,000.

Finally, the agreement provides:

> Upon approval of the appraised value and final parcel boundaries, [redacted] Group shall cause the parcel to be legally separated or platted from the larger parcel of which it is currently part. The investor acknowledges and agrees that the segregation will be pursued by ASPI Group in a time prudent manner provided, however, that the ultimate approval and timing of said segregation is solely dependent upon the government of Grant County. No unusual problems are anticipated in the process. If in the event Grant County denies the segregation or places

> difficult or economically prohibitive conditions on the segregation the parties agree to reasonably amend the parcel boundaries or location to minimize any segregation difficulties. Once the property has been segregated, the Investor(s) shall receive the property "as-is" and without warranty except for title.

The petitioner also submitted a quitclaim deed indicating North American Foreign Trade Zone Industries conveyed its interest in Lot C of [redacted] Commerce Park II to the petitioner. The notarized deed was signed on July 8, 1999 by the Executive Vice President and CFO of "Managing Member, [redacted] Group, Inc." There is no indication the deed has been filed with the State of Washington. Finally, the petitioner submitted an escrow letter regarding a transaction between "NAFTA" and the petitioner and an appraisal of [redacted] Commerce Park II, Parcel C, defined as including 11.5 acres.

In her denial notice, the director stated:

> This kind of investment scenario appears to be a passive investment as opposed to an active, at-risk investment, thus, hardly qualifies as investment capital for the purpose of the EB-5 program. Since the said property has attached pre-conditions and encumbrances, it can not meet the at-risk requirement.

The director further concluded the petitioner had not demonstrated that her investment had been made available to the employment-creating entity and that the agreement merely reflected the petitioner's intent to invest.

On appeal, counsel argues that the arrangement was necessary in order to return the petitioner's investment in the Limited Partnership, which had already been used to purchase the property. Counsel further argues that the petitioner is contractually obligated to sell the property to [redacted] II once the platting process is complete and that the deed from the petitioner to [redacted] II is in escrow. In addition, counsel asserts that the investment is not passive because development of the property is ongoing and "strategic alliances" have been developed with the businesses necessary for the success of the project.

The record does not establish the entire path of the petitioner's funds from its initial investment in the Limited Partnership to the alleged investment of real estate in [redacted] II. While the petitioner transferred $500,000 to [redacted] Group, Inc. in 1997, there is no evidence those funds were used to purchase the property in question.

In fact, the record contains no definitive evidence regarding the ownership of [redacted] Commerce Park. The appraiser concedes that he

did not examine any title reports in his appraisal. North American Foreign Trade Zone Industries only quitclaimed the property to the petitioner. A quitclaim deed includes no warranty of title, and transfers only the grantor's interest, whatever that interest may be. A quitclaim deed does not "profess" that the grantor has any valid title in the conveyed property. See Black's Law Dictionary 424 (7th ed. 2000). As the petitioner has not established North American Foreign Trade Zone Industries' interest in the property deeded to the petitioner, she cannot establish that she will acquire a fee simple interest (the interest appraised at $500,000) in the property, or even any interest at all. Thus, the true value of the petitioner's "investment" is unknown and may be zero. Even if the property is owned by North American Foreign Trade Zone Industry as indicated on the quitclaim deed and the appraisal, the record contains no evidence of the relationship between that company and [redacted] Group, Inc.

In addition, the appraiser did not adequately explain his conclusion that the 11.5 acres to be conveyed to the petitioner is worth $500,000. The report indicates the property was purchased by [redacted] Zone Industries in 1998 for $3,000 an acre. The report suggests the property is now worth over $43,000 an acre. While the appraiser provides several examples of unimproved property in the area being sold for comparable amounts in 1999, some explanation must be offered for this 1,400 percent increase in value.

Despite counsel's assertion that the petitioner is contractually bound to contribute the property to [redacted] and that a deed from her to [redacted] is in escrow, the record does not reflect those facts. The agreement between the Limited Partnership and the petitioner only indicates that she "intends" to reinvest "into a newly created EB-5 Program." The "program" is not identified and the use of the word "intends" in no way implies a contractual obligation to do so. In addition, the record contains no evidence of a deed from the petitioner to [redacted] having been executed or placed in escrow. The record contains only the quitclaim deed from [redacted] Zone Industries to the petitioner, which is not filed with the State.

Even if the transaction occurs as proposed, it is not clear that the petitioner will be contributing anything new to [redacted] II was formed for the purpose of developing property allegedly already owned by [redacted] Group II. Regardless of any refund claim the petitioner may have against [redacted] Group, Inc. arising out of her investment in the Limited Partnership, her serving as bailee for property already owned by [redacted] Group, Inc., and acquired for considerably less than $500,000, to be returned to [redacted] Group, Inc. hardly constitutes a contribution of previously unavailable capital to [redacted] II. While the forgiveness of a debt owed to the petitioner by [redacted] II might conceivably be considered an investment of capital

(as when a shareholder loan is converted to stock), such is not the case in the instant petition. Even if [redacted] Group, Inc. owes the petitioner a $500,000 refund, the financial obligations of a member manager are not the financial obligations of the company.

In light of the above, the petitioner has not established a qualifying 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:
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> (i) Foreign business registration records;
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> (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;
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> (iii) Evidence identifying any other source(s) of capital; or
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> (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).

In support of the petition, the petitioner submitted the wire transfer receipt showing she transferred $500,000 from her account number [redacted] at Seattle First National Bank to [redacted] Group, Inc.; a bank statement reflecting a balance of NTD 11,173,433 ($340,445.85) as of December 1, 1997 at the Chang Hwa Commercial Bank, account number [redacted] real estate certificates reflecting the petitioner's ownership of property valued at NTD 62,190,900 ($1,894,908.59) and NTD 5,046,720 ($153,769.65); the petitioner's Accounting and Statistic's degree dated July 1978; and the petitioner's resume reflecting employment for Sun Tai Chemical Industrial Company since 1985.

In response to the director's request for additional documentation, the petitioner submitted the business registration for Sun Tai Chemical Industrial Company reflecting the petitioner as the controller and a shareholder; a list of the board of directors for Taisyou International Business Company, Ltd., reflecting the petitioner as the controller and a shareholder of that company as well; a brochure for Sun Tai; the petitioner's tax returns for 1994 through 1998 reflecting annual income ranging from $21,705 to $69,138; and an ownership conveyance agreement reflecting the sale of property by the petitioner for $702,638.46 in 1994.

The director noted that some of the translations were not individually certified and concluded that the petitioner had not adequately demonstrated the path of the funds from a lawful source.

On appeal, counsel asserts that he will submit additional evidence regarding the lawful source of the petitioner's funds. The AAO has received nothing further. As such, the decision will be based on the record as it now stands.

The petitioner's income cannot clearly account for the accumulation of $500,000 beyond living expenses. The record does not reflect that the proceeds of the sale of property remained in the petitioner's possession between 1994 (when the property was sold) and 1997 (when the petitioner transferred funds to [redacted] Group, Inc.)

Furthermore, the source of the petitioner's investment in [redacted] II is property quitclaimed by North American Foreign Trade Zone Industry. As the petitioner has not established the existence of that company or how it acquired the property, the petitioner has not clearly established that the property is a lawful source of capital. In fact, as the petitioner has not even established that North American Foreign Trade Zone Industries has any interest in the property quitclaimed to the petitioner, the issue of the lawful source of that property may be moot.

REGIONAL CENTER ACTIVITIES

8 C.F.R. 204.6(m)(7) states, in pertinent part:

> An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.
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> (i) *Exports*. For purposes of paragraph (m) of this section, the term "exports" means services or goods which are produced directly or indirectly through revenues generated from a new commercial enterprise and which are transported out of the United States;

8 C.F.R. 204.6(m)(4) provides that regional centers must submit proposals to the Service in order to obtain approval to participate in the pilot program.

Beyond the decision of the director,[1] the petitioner has not established that [redacted] will be engaging in regional center activities. In support of the petition, counsel asserted that the coordinating managing member, [redacted] Inc., was a designated regional center. The petitioner submitted the 1994 letter issued to [redacted] Group, Inc., designating the corporation as a regional center. The record does not, however, include the proposal submitted to the Service including the proposed regional center activities upon which the designation was based.

It is not the intention of the Service to encourage entities to obtain regional-center status based on a few qualifying projects, only to have these entities treat their status as a license to engage in a variety of unrelated activities. Such new activities, had they been mentioned in the original application for regional-center status, may or may not have had an adverse impact on the determination to grant regional-center status. If the Service were to accept a regional center's expansion into any and all new projects, petitioners would effectively be able to bypass the requirements of 8 C.F.R. 204.6(j)(4) regarding the submission of

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[1] A petition under this program which does not comply with the specific technical requirements of the law may be denied even when 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).

evidence to prove the direct creation of employment; petitioners could apply the easier standard of proof contained in the provisions relating to the indirect creation of employment without having to demonstrate the connection between the new projects and the requisite increased regional productivity.

As the record does not contain the proposal which resulted in the approval of regional center status, it is not known whether the project upon which the instant petition is based was part of that proposal submitted back in 1994. Therefore, we cannot conclude that the alleged commercial enterprise will be engaging in regional center activities.

EMPLOYMENT CREATION

8 C.F.R. 204.6(j)(4)(iii) states:

> To show that the new commercial enterprise located within a regional center approved for participation in the Immigrant Investor Pilot Program meets the statutory employment creation requirement, the petition must be accompanied by evidence that the investment will create full-time positions for not fewer than 10 persons either directly or indirectly through revenues generated from increased exports resulting from the Pilot Program. Such evidence may be demonstrated by reasonable methodologies including those set forth in paragraph (m)(3) of this section.

8 C.F.R. 204.6(m)(7) states, in pertinent part:

> An alien seeking an immigrant visa as an alien entrepreneur under the Immigrant Investor Pilot Program must demonstrate that his or her qualifying investment is within a regional center approved pursuant to paragraph (m)(4) of this section and that such investment will create jobs indirectly through revenues generated from increased exports resulting from the new commercial enterprise.

Regarding indirect job creation, 8 C.F.R. 204.6(m)(7)(ii) further states:

> To show that 10 or more jobs are actually created indirectly by the business, reasonable methodologies may be used. Such methodologies may include multiplier tables, feasibility studies, analyses of foreign and domestic markets for the goods or services to be exported, and other economically or statistically valid

> forecasting devices which indicate the likelihood that the business will result in increased employment.

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).

While not discussed by the director, the record does not establish that [redacted] will directly or even indirectly create at least 10 jobs to be allocated to the petitioner. The business plan states that [redacted] will specialize in "developing industrial properties in Grant County and sell the developed land to industrials & manufacturers that do business involving exports." The business plan further estimates that the company will sell the property for $2 - $3 per square foot. Relying on the building code which permits one employee for every 500 square feet of warehouse, the plan concludes a 25,000 square foot industrial building will create at least 50 indirect jobs. The business plan further estimates that the development costs by 2003 will amount to $3,031,500 while sales will total $6,300,000 during the same period.

In support of the business plan, the petitioner submitted an estimate of $1,116,655 for the development of the property and the 1991 Uniform Business Code requiring 500 square feet per employee (but cautioning that the table should not be used to determine working space requirements per person). The petitioner also submitted a June 10, 1999 letter from the Seattle Research Institute regarding a proposal to:

> Conduct micro economic research to specifically identify at least 50 direct and indirect positions that have been created in Grant County from July 1999 to June 2001

> resulting from the [redacted] Commerce Park II 70 acre industrial park.[2]

Finally, the petitioner submitted an environmental report, several letters of support from various corporations, government authorities and legislators as well as several articles regarding the Moses Lake area in general and the proposal submitted to NASA for the building of a "spaceport" for its future VentureStar vehicle, planned for 2005.

As discussed below, the regulations require that a petitioner invest in a commercial enterprise, defined as an ongoing for-profit activity. Section 610 of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1993 (which created the pilot program) provides that a petitioner must still meet the remaining requirements under 203(b)(5) of the Act and that the indirect jobs must result through revenues generated from increased exports.[3] The legislative history provides:

> The Committee intends that in implementing this provision, the Immigration and Naturalization Service will allow immigrants participating in the pilot program to credit not only those jobs which they create directly, but also those which may be created indirectly such as through contract, subcontract, or export revenues benefiting the general economy.

S. Rep. No. 102-331 , 102nd Cong., 2nd Sess. (1992). It is clear that indirect job creation means jobs which result from the ongoing productivity of the new commercial enterprise. For example, a manufacturer of widgets will necessitate truckers to move the widgets and perhaps retailers to sell the widgets. A new conference center may give rise to nearby hotels.[4] Indirect job

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[2] The credibility of the proposed report is reduced as the proposal requires that the research institute "identify" the necessary number of jobs as opposed to researching the job creation potential and developing an independent conclusion.

[3] The law was recently amended to include revenues generated from increased exports, improved regional productivity, job creation, or increased domestic capital investment." Regardless, the law was amended after the petition was filed and still requires that the indirect jobs result from revenues resulting from the pilot program.

[4] These examples are used to demonstrate possible ongoing indirect job creation. They are not inclusive and in no way imply that every manufacturer of widgets or conference center would be

creation does not include the development of industrial property to be passively sold to an entirely unrelated company which may hire new employees but which will be unaffected by the future activities and revenues of the new commercial enterprise. The petitioner's financial risk must be tied to the creation of any indirect jobs, encouraging the maintenance of those jobs by the petitioner. In this case, [redacted] will merely develop property as a passive, non employment-generating real estate investment, sell the property to another business over which [redacted] II will have no influence, economic or otherwise. In fact, according to the certificate of formation, [redacted] will cease to exist once it has sold the property.

If we accepted the petitioner's theory of indirect job creation, conceivably a petitioner could form a company in a regional center, develop some property, sell it to another company, dissolve the development company prior to having his conditions removed, but still obtain removal of conditions because someone else is employing 10 people on the property he developed two years ago.

The letters submitted all pertain to the development, research, and marketing activities of [redacted] Group, Inc. [redacted] Group, Inc., however is only the coordinating member manager of [redacted]. The record does not reflect that [redacted] II will be involved in any of these projects besides the development and sale of a single piece of property.

In light of the above, the petitioner has not established that she will indirectly create 10 jobs. The petitioner does not claim and has not documented that she will create 10 direct jobs. Thus, the petitioner has not met the employment-creation requirement.

CREATION OF COMMERCIAL ENTERPRISE

8 C.F.R. 204.6(e) provides:

> Commercial enterprise means any for-profit activity formed for the *ongoing conduct* of lawful business including but not limited to, a sole proprietorship, partnership (whether limited or general), holding company, joint venture, corporation, business trust, or other entity which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly-owned subsidiaries, provided that each subsidiary is engaged in a for-profit formed for the ongoing conduct of a lawful business.

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able to demonstrate the necessary job creation.

(Emphasis added.) Beyond the decision of the director, the business plan clearly indicates that [redacted] was formed for the purpose of developing and selling a limited amount of property. The certificate of formation indicates that once the assets are sold, the company will be dissolved. Thus, the company was not formed for the ongoing conduct of lawful business, but, rather, to conduct one passive real estate investment. Therefore, the petitioner had not demonstrated that she established a commercial enterprise as defined by the regulations.

MANAGEMENT

8 C.F.R. 204.6(j)(5) states:

> To show that the petitioner is or will be engaged in the management of the new commercial enterprise, either through the exercise of day-to-day managerial control or through policy formulation, as opposed to maintaining a purely passive role in regard to the investment, the petition must be accompanied by:
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> (i) A statement of the position title that the petitioner has or will have in the new enterprise and a complete description of the position's duties;
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> (ii) Evidence that the petitioner is a corporate officer or a member of the corporate board of directors; or
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> (iii) If the new enterprise is a partnership, either limited or general, evidence that the petitioner is engaged in either direct management or policy making activities. For purposes of this section, if the petitioner is a limited partner and the limited partnership agreement provides the petitioner with certain rights, powers, and duties normally granted to limited partners under the Uniform Limited Partnership Act, the petitioner will be considered sufficiently engaged in the management of the new commercial enterprise.

Moreover, while not discussed by the director, the petitioner will not be engaging in the management of the enterprise. Section 5.1 provides that there is one class of membership, and that the member managers shall each have voting rights. Section 5.2 provides that:

> The day-to-day ordinary and usual decisions concerning the business affairs of the Company shall be made by the Member Managers who may choose to delegate certain operational tasks to the Coordinating Member Manager.

The final paragraph of Article VI, Authority of Member Managers to Bind the Company, provides:

> The Member Manager's signature at the end of this document shall act as a ratification, resolution, and/or Limited Power of Attorney of the Member Manager and in favor of the Coordinating Member Manager's authority to act in the manner described above.

Despite the superficial language in sections 5.1 and 5.2, it is clear that the petitioner here does not in fact have any managing rights. As such, the petitioner is a purely passive investor.

SOURCE OF OTHER FUNDS

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 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...**provided that the source(s) of all capital invested is identified and all invested capital has been derived by lawful means.** (Emphasis added.)

While the petitioner has provided the resumes of her fellow investors, she has not provided supporting documentation regarding the lawful source of their funds.

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.