

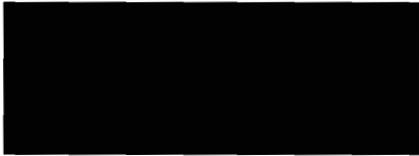


B7

U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

MAY 21 2001

File: [Redacted]

Office: Texas 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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

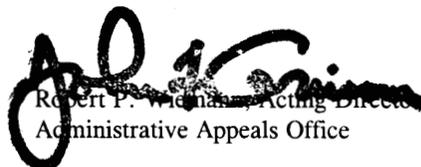
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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. Wideman, 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 made a qualifying investment in a new commercial enterprise or that he would create the necessary employment.

On appeal, counsel argues that the petitioner made a qualifying investment, established a new commercial enterprise by expanding an existing business by 40 percent, and would create the necessary employment.

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 three furniture stores, not 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 \$1,000,000.

ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise . . . *which the alien has established*" (Emphasis added.)

8 C.F.R. 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

- (1) The creation of an original business;
- (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
- (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that he has established. The alleged new commercial enterprise at issue here is [REDACTED] Inc., (UF Holding) which the petitioner incorporated November 6, 1997.

The record contains two agreements whereby the petitioner and his wife agreed to transfer their interest in real estate and two furniture stores to [REDACTED]. The transfer, however, is contingent upon the approval of the instant petition. Thus, as of the date of filing, [REDACTED] was a shell company with no subsidiaries. Moreover, it is the job-creating business that must be examined in determining whether a new commercial enterprise has been created. Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998) at 10. Therefore, the proper question is whether the two furniture stores operated by the petitioner and his wife constitute a new commercial enterprise.

On April 5, 1991, the petitioner and his wife purchased [REDACTED] Inc. (UF), a business continuously in operation since November 1990. As the petitioner purchased a preexisting business, he cannot be considered to have created an original business, as claimed on the Form I-526.

The petitioner subsequently claimed to have expanded an existing business by 40 percent. In order to determine whether such is the case, it is necessary to examine the remaining chronology.

In June 1996, the petitioner purchased [REDACTED] which appears to be a passive, non employment-generating real estate investment unrelated to the petitioner's furniture business. On February 19, 1996, the petitioner incorporated [REDACTED] of Casselberry (UFC) and subsequently purchased a second store in Casselberry to be operated by UFC.

The director concluded that the petitioner had not created an original business or expanded an existing business by incorporating UF Holding. Rather, the director concluded that the petitioner had merely consolidated preexisting businesses.

On appeal, counsel cites a 1995 General Counsel memo for the proposition that multiple investors can jointly increase the net worth of an existing business by 40 percent and argues the director incorrectly valued the petitioner's contribution to [REDACTED]

The law provides benefits for a petitioner who invests in a business which he has established. Thus, where a petitioner seeks eligibility based on having established a new commercial enterprise by expanding an existing business, that expansion must have already occurred at the time of filing.

As stated above, UF Holding had not yet acquired any interest in either UF or UFC at the time of filing. Therefore, the petitioner had not yet "contributed" anything, regardless of value, to that corporation.

Regardless, as stated by the director, the incorporation of UF Holding and the agreement to consolidate the ownership of both [REDACTED] stores as well as a passive real estate investment into that corporation created nothing new, but was a consolidation of existing businesses. Therefore, even if the transaction had been completed, it could not be considered the creation of an original business. Nor could the transaction be considered the "expansion" of an existing business because it did not involve the infusion of new capital into any of the three stores (the employment-generating entities), but, rather, the transfer of the assets of the three stores into the shell company. Such a transfer is a paper transaction which in no way makes additional funds available to the employment-generating entities.

We must also consider, however, whether the petitioner has contributed sufficient capital to the two stores since November 29, 1990 which resulted in a 40 percent increase in net worth for the stores considered as a single business.

The earliest tax return submitted for UF is for 1993. Schedule L for that year reflects a net worth (owner's equity) of \$211,789 at the beginning of the year. The net worth includes \$1,000 stock and \$103,579 paid-in-capital. The 1997 tax return for UF, schedule L, reflects a net worth of \$172,607 at the end of the year, when the petition was filed. Thus, the net worth of UF actually decreased between 1993 and 1997.

It is acknowledged that the petitioner also ran another furniture store in Casselberry. The 1997 tax return for that business indicates that it had a net worth of \$71,714 at the end of 1997. Thus, the total net worth for the petitioner's furniture business was \$211,789 in the beginning of 1993 and \$244,321 at the end of 1997, an increase of \$32,532, or 15.4 percent of the initial net worth in 1993. Therefore, the record does not demonstrate a 40 percent increase in net worth.

The property at [REDACTED] is a purely passive real estate investment, and the "contribution" of that property to the shell corporation does not increase the net worth of the employment-generating entities.

Counsel also asserts on appeal that the petitioner increased employment by 40 percent. The regulations require that the petitioner expand a preexisting business as a result of his investment. The record does not establish the number of employees prior to the petitioner's purchase of [REDACTED]. Therefore, we cannot determine whether his investment in that store increased employment. The record reflects that the new store in Casselberry hired three employees in the first quarter of 1997, at which time [REDACTED] had seven employees. By the second quarter of 1998, however, [REDACTED] had only one employee. It appears, therefore, that at the time of filing, the petitioner had only created one new, permanent position due to his investment in [REDACTED]. As a 40 percent increase in the employment of seven employees would require the employment of three new permanent employees, the petitioner had not established a new commercial enterprise at the time of filing. As discussed below, the purchase of [REDACTED] was not an employment-generating investment and thus, caused no increase in employment.

Finally, the petitioner purchased a furniture store in 1991 and continues to operate a furniture store. There is no evidence the petitioner reorganized or restructured the business such that a new business resulted.

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.

The petitioner indicated on the Form I-526 that he had invested a total of \$947,617.85. The brief accompanying the petition asserted the following investment in UF Holding:

1. Equitable interest in the shopping center located at [REDACTED] in Orlando, Florida, in the amount of \$600,000 (retail value \$1.3 million less mortgage of \$680,000 equals \$620,000 equity). . . .
2. [REDACTED] store inventory and equipment in the amount of \$41,500.00
3. [REDACTED] store inventory and equipment in the amount of \$95,515.48.
4. [REDACTED] store inventory, equipment and leasehold interest in the amount of \$210,402.37.
5. [REDACTED] in the amount of \$1.5 million. [To replace the leased store on [REDACTED].]

In support of the petition, the petitioner submitted:

1. A sales contract for the purchase of Universal Furniture reflecting a total purchase price of \$189,981 including inventory. While the sales contract lists the petitioner, his wife, and Dr. [REDACTED] as the purchasers, the final closing documents reflect only the petitioner and his wife.
2. A stock certificate issued on December 1, 1997 by [REDACTED] to [REDACTED] for 1,000 shares, par value \$1.00.
3. A lease for [REDACTED] in Casselberry; a stock certificate issued by [REDACTED] to [REDACTED] on December 1, 1997 for 1,000 shares, par value \$1.00.

4. Sales and tax documentation for property located at [REDACTED] purchased for \$790,831 with a mortgage of \$684,000.

5. An "assignment" whereby the petitioner agreed to transfer UF, [REDACTED] and [REDACTED] to [REDACTED] Holding in exchange for 100,000 \$10 par value shares in [REDACTED]. A second "assignment" whereby the petitioner's wife agreed to transfer her interest in [REDACTED] to [REDACTED] for no specified consideration. Both agreements are conditioned on the approval of the petitioner's Form I-526.

6. A contract for the purchase of unidentified property in Orange County for \$1,500,000, \$1,350,000 to be mortgaged.

7. Financial statements and tax returns for UF and UFC reflecting stock of \$1,000 in both companies, paid-in-capital of \$103,579 for all years for UF and paid-in-capital of \$43,404.02 for UFC.

On August 27, 1998, the director noted that the petitioner's investment was mostly in the form of indebtedness and requested evidence that the petitioner was "personally and primarily" liable for the indebtedness and an explanation of the relationship between the petitioner and Dr. [REDACTED].

In response, counsel asserted that the petitioner had already provided evidence of capital contributions in excess of \$1,000,000, that the petitioner is not precluded from borrowing funds in excess of \$1,000,000, that the petitioner is personally liable for any indebtedness anyway, and that Dr. [REDACTED] is the mother-in-law of the petitioner.

The director noted that the property and assets "contributed" to UF Holding were the assets of the petitioner's corporations and, thus, could not be credited to the petitioner. The director also concluded that the proper valuation of [REDACTED] was what the petitioner paid for the property, and not the fair market value, which must be further reduced as the petitioner owned the property jointly with his wife. The director further noted that the petitioner had submitted no evidence of the value of the inventory at [REDACTED] that the financial statements were not audited, and that the mortgages are all secured by the business property.

On appeal, counsel argues the director erroneously applied the acquisition value as opposed to the fair market value and that the director should have accepted the inventory as a contribution by the petitioner personally because his stock is "equal to the value

of the corporation" including inventory. Counsel also claims generally that the director misapplied Matter of M. 8 I&N 24, 50 (BIA 1958), but does not specify a particular error. Finally, counsel notes that the director failed to provide the full citation for Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998) and Matter of Ho, I.D. 3662 (Assoc. Comm., Examinations, July 31, 1998).

The petitioner submitted voluminous documentation in support of his appeal. The vast majority of the documentation, however, is either already contained in the record or consists of regulations and precedent decisions issued by this office which are already known by and available to this office. The new documentation submitted has little bearing on the petitioner's investment at the time of filing. Specifically, the petitioner submitted evidence of repairs made to [REDACTED] after the date of filing, 1998 Intangible Tax Returns, recent corporate bank statements, and a letter from the petitioner's wife requesting the petitioner be given credit for her interest in the corporations.

While we do not reach the exact investment amount calculated by the director, we concur that the petitioner has not demonstrated a qualifying investment.

An investment is a contribution of capital, which includes cash and other assets. The capital, however, must be new capital previously unavailable to the business. A petitioner cannot get around this requirement by creating a shell company, which is to perform no new business, to which he contributes a fully operational and previously funded business. In such a situation, as stated by the director, the corporation, and not the petitioner, is contributing the assets. As correctly stated by the director, 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); in addition to Matter of M-, supra, cited by the director.

Counsel is correct that, as stated in Matter of Izumii, supra, any contribution of capital must be valued at fair market value. The petitioner in this case, however, is not contributing a single asset such as a piece of equipment or an undeveloped piece of property on which to build a business. Rather, the petitioner is contributing an entire business to a holding company. Thus, evaluating a single piece of the business without considering the liabilities of the company, is inaccurate.

Any increase in the value of the corporations due to the reinvestment of proceeds cannot be credited to the petitioner. In order for proceeds to be considered an investment by the petitioner, it is necessary that the petitioner be able to show

that the proceeds were allocated to him, taxed, and then reinvested. The regulations specifically state that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations does not include the reinvestment of proceeds. In addition, 8 C.F.R. 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. See generally, Johannes De Jong v. INS, Case No. 6:94 CV 850 (E.D. Texas January 17, 1997); Matter of Izumii, supra, for the propositions that the reinvestment of proceeds cannot be considered capital and that a petitioner's corporate earnings cannot be considered the earnings of the petitioner.

As stated by the director, the creation of UF Holding was simply a paper transaction to consolidate two existing furniture stores and a passive real estate investment. The real question is how much did the petitioner contribute to the underlying stores.

Investment in 9420 Orange Blossom Trail Store

The record reflects that the petitioner purchased [REDACTED], Inc. for \$189,981. As stated by the director, the record contains no financial documents such as wire transfers or cancelled checks regarding the purchase, and, thus, does not reflect whether any of the purchase price was paid by Dr. [REDACTED]. The record also fails to establish the relationship between Dr. [REDACTED] and the petitioner. While counsel asserts Dr. [REDACTED] is the petitioner's mother-in-law, the assertions of counsel do not constitute evidence. Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Even if Dr. [REDACTED] is the petitioner's mother-in-law, any funds contributed by her would not necessarily be the personal funds of the petitioner. The record does not contain an affidavit from Dr. [REDACTED] indicating whether she contributed any funds, and, if so, whether they were gifted to the petitioner or his wife. While the director questioned whether any funds contributed by the petitioner's wife can be attributed to the petitioner, Matter of Ho, supra, clearly implied that the contribution of joint spousal funds may be considered the petitioner's personal investment. Therefore, any funds contributed by the petitioner's wife may be included in his investment.

The record contains no additional evidence of capital expenses for the store initially purchased with UF. The financial statements and tax returns all reflect stock of \$1,000 and paid-in-capital of \$103,579. Even accepting these unaudited, uncertified records, the petitioner has not demonstrated an investment of more than \$104,579. The financial statements certainly do not demonstrate an investment of more than the \$198,981 purchase price. As stated

above, the reinvestment of proceeds cannot be considered part of the petitioner's investment.

The petitioner purchased this property for \$790,831; \$684,000 was obtained through a mortgage secured by the property. While counsel consistently refers to this property as a "store," the appraisal reflects that the property is a shopping center occupied by several businesses, none of which are a [REDACTED] store. Counsel's claim that the petitioner contributed "inventory" worth \$41,500 from this location is completely undocumented. While the director specifically noted the lack of support for the inventory claim, the petitioner fails to submit any evidence of the claim on appeal.

Counsel asserts the appraised value of the property should be considered the petitioner's investment as he is contributing the property to [REDACTED] and should be credited with the fair market value of the property. The director concluded that the petitioner could only be credited with his personal investment to acquire the property.

Regardless, the property is a purely passive real estate investment which will not create any employment for UF Holding. 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. A petitioner cannot create 10 jobs with an investment of less than \$1,000,000 and use the remaining money to fund a passive real estate deal. Thus, any funds relating to 6100 West Colonial Drive cannot be considered to have been made available to the employment-generating business, the furniture stores, and are not part of a qualifying investment.

The record contains absolutely no evidence that the petitioner personally infused any funds into UFC. The corporation is merely leasing the property on which the store is located and there is simply no evidence of where the start-up funds derived. If the petitioner used funds from UF, without first distributing the funds to himself, to start-up UFC, he cannot be credited with those funds. The tax returns and financial statements reflect stock of \$1,000 and paid-in-capital of \$43,404. Even if we accepted these documents, they establish no more than an investment of \$44,404.

The record includes a sales contract for the purchase of property in Orange County. Counsel asserts the petitioner is purchasing

this property and will move the store located at [REDACTED] to this location.

Assuming that the petitioner truly intends to move the store from the leased property at [REDACTED] to the new location, the property was purchased for \$1,500,000, \$1,350,000 of which was financed by a mortgage secured by the property. Thus, the petitioner can only be credited with \$150,000.

Conclusion

The record is absent any transactional documentation reflecting the transfer of money from the petitioner to any of his businesses. The financial statements and tax returns do not reflect significant cash investments. In light of the above, the petitioner has only established an investment of, at most, \$384,385.

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 may be construed to mean 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).

On the Form I-526, the petitioner indicated he had 15 employees and would hire an additional 20. In support of the petition, the petitioner submitted a business plan for the store at 9420 South Orange Blossom Trail indicating the store had six employees and would hire an additional four. The petitioner also submitted Forms 941 for UF and UFC reflecting seven and three employees respectively as well as Forms W-3 for corporations indicating 16 statements were issued by UF in 1996 and 15 were issued by UFC in 1996.

In response to the director's request for evidence that any positions created were full-time, the petitioner submitted Forms W-9 and additional Forms 941.

The director noted that two of the 15 Forms W-9 submitted were duplicates and that many included out of state addresses. The director further noted that the forms did not establish that all of the employees were working full-time. Finally, the director concluded the petitioner's business plan amounted to mere speculation.

On appeal, counsel cites the law and the precedent decisions and then simply states the petitioner has already created 10 full-time jobs. Counsel fails to address any of the concerns raised by the director, especially the out of state addresses on the Forms W-9.

941 and quarterly returns reflect that UF had four employees by the second quarter of 1993 (the oldest return submitted) as many as nine in the first quarter of 1998, but back to four in the third quarter of 1998, and finally six in the fourth quarter of 1998, the most recent submitted. The quarterly returns reflect that UFC had three employees as of the final quarter of 1998. UF's payroll records for 1998 reflect 16 total employees, only six of whom appear to have earned any income in the final quarter. Of those six employees who worked in the final quarter, it is not clear from the wages that all six worked full-time. UFC's payroll records for 1998 reflect seven employees, three of whom worked during the final quarter. As with UF, it is not clear from the wages listed that all three worked full-time.

Moreover, the petitioner must create 10 jobs in addition to any jobs which existed prior to his investment. The record does not reflect the number of employees at UF prior to the petitioner's purchase of that business. In light of the problems raised above, the petitioner has not established the creation of 10 new full-time jobs.

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 business plan does not call for the creation of 10 new jobs in addition to any jobs in existence at the time of the petitioner's claimed investment. Therefore, the petitioner has not established that he will create 10 new jobs.

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.