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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536



02 AUG 2002

File: [Redacted] Office: California Service Center Date:

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 establish that his complete investment would be in a targeted employment area, that the funds "invested" originated from a lawful source, and that the funds were placed at risk.

On appeal counsel asserted that the existence of a branch office outside the targeted area does not disqualify the investment as one in a targeted employment area. Counsel further asserted that the petitioner lawfully obtained his funds through investments in the Mexican stock market and the sale of real estate. Finally, counsel asserted that the petitioner's funds are at risk because the petitioner will use the \$250,000 in his personal account to expand the business at some future point.

The Administrative Appeals Office (AAO) on behalf of the Association Commissioner, dismissed the appeal, concurring with the director and concluding that the record also failed to demonstrate that the petitioner had established a new commercial enterprise or that the petitioner would create at least ten new jobs.

On motion, counsel argues that the petitioner has invested \$500,000 of lawfully obtained funds in a targeted employment area and that the business has created 10 jobs. Counsel fails to address the AAO's concern that the petitioner did not create an original business.

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).

MINIMUM INVESTMENT AMOUNT

The petitioner maintains 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 to \$500,000.

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

Targeted employment area means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

8 C.F.R. 204.6(j)(6) states that:

If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:

(i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or

(ii) In the case of a high unemployment area:

(A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or

(B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. 204.6(i).

The petitioner indicated on the Form I-526 that his petition was based on an investment in a targeted employment area for which the required amount of capital invested has been adjusted downward. The new commercial enterprise was listed as [REDACTED] which the petitioner claimed to have established on January 12, 1998. The petitioner provided a business address in the city of Huntington Park, California. The petitioner submitted data from the State of California documenting that the unemployment rate for Huntington Park is 11.1% and a printout from the Bureau of Labor Statistics indicating the national unemployment rate at the time the petition was filed was 4.7%.

However, as discussed by the director, the petitioner has submitted documentation indicating that the new commercial enterprise has offices in Norwalk and South Gate. While the unemployment rate in South Gate was 9.3%, over 150% of the national rate, the unemployment rate in Norwalk was only 5.7%, which is less than 150% of the national rate. The director concluded that since the new commercial enterprise had a place of business outside the targeted area, the amount of capital required to be invested could not be adjusted downward.

On appeal, counsel argued that the amount of capital to be invested should be adjusted downwards since the headquarters of the business is in the targeted area and there are 10 employees working at that office. Counsel minimized any business activity outside the targeted employment area conceding only that [REDACTED] has "a small branch office in Norwalk California." However, the petitioner must show that his funds and the required employment creation remain in the targeted area. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998).

The AAO noted that the petitioner is the president of JJJQ, LLC, whose articles of organization were filed with the State of California on January 9, 1998. On January 13, 1998, [REDACTED] registered the fictitious name Quetzalcoatl Insurance Marketing (QIM). On March 20, 1998, [REDACTED] registered the fictitious name Q.I.M. Travel. In addition, the record contains a letter from the California Commerce Bank indicating that QIM has had an account at that institution since October 19, 1994. The petitioner also submitted a 1994 insurance license issued to the petitioner doing business as QIM. As will be discussed in more detail below, it is clear that QIM existed prior to January 12, 1998. The record does not reveal how many employees were working for QIM prior to the petitioner's 1998 "investment."

The AAO concluded that as the petitioner had not established how many employees worked for QIM prior to January 1998, the petitioner had not established that he had created any new jobs in the targeted employment area. In a footnote the AAO noted that a petitioner cannot directly cause a net loss of employment or even simply maintain former levels of employment. Matter of Hsiung, I.D. 3361 (Assoc. Comm., Examinations, July 31, 1998). The AAO also concluded that the petitioner had not established that any funds invested were all contributed to only those businesses in the targeted employment area. The AAO rejected counsel's assertions that the Norwalk office was a small branch office. Specifically, the AAO noted that the record contains a February 1998 utility bill for [REDACTED] in Norwalk and a March 1998 invoice from Sabre Group, Inc. listing QIM Travel's address as [REDACTED] in Norwalk. Therefore, it is clear that, almost immediately after his initial "investment" the petitioner's business had two offices in Norwalk, California. Finally, the AAO noted that the petitioner had yet to infuse an additional \$250,000 which remains in his personal account, raising concerns that the remaining money will not all be invested into the part of the business contained within the targeted employment area.

On motion, counsel argues:

Both businesses are managed by the enterprise out of Huntington Park, California. From a business point of view, once capital has been invested, the need is to make it grow. The investment in outlying areas is not to the detriment of the initial

investment in Huntington Park, California. [The Service] should interpret such additional investment as strengthening the original investment placed at risk as discussed above.

Had the entire \$500,000 been invested in a targeted employment area and ten new jobs created in that area, we would agree with counsel that additional growth outside the targeted employment area would not be problematic. In this case, however, the petitioner has not demonstrated that the full \$500,000 was invested at all, let alone within the targeted employment area. Moreover, the petitioner has not resolved how many employees existed prior to the incorporation of the purported new commercial enterprise and how many employees work within the targeted employment area currently. As such, the petitioner has not resolved the AAO's concerns.

As the petitioner has not demonstrated that he has invested sufficient funds and caused or will cause sufficient employment creation in the targeted area alone, the minimum investment amount is \$1,000,000.

THE PETITIONER HAS NOT ESTABLISHED A NEW COMMERCIAL ENTERPRISE

While not raised by the director, the AAO concluded that the record did not establish that the petitioner had established a new commercial enterprise as defined in the regulations and relevant precedent decisions. 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).

8 C.F.R. 204.6(e) states that:

Troubled business means a business that has been in existence for at least two years, has incurred a net loss for accounting purposes (determined on the basis of generally accepted accounting principles) during the twelve or twenty-four month period prior to the priority date on the alien entrepreneur's Form I-526, and the loss for such period is at least equal to twenty per cent of the troubled business's net worth prior to such loss. For purposes of determining whether or not the troubled business has been in existence for two years, successors in interest to the troubled business will be deemed to have been in existence for the same period of time as the business they succeeded.

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] which was registered with the State of California on January 13, 1998.

However, 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.

The AAO referenced the business plan submitted which indicates that [REDACTED] operates four divisions: QIM, QIM Travel, QIM Laundromat, and QIM Computers. The business plan further provides that only QIM is fully operational. The plan states:

Under [the petitioner's] leadership, QIM has already established itself as one of the top insurance agencies in the area. The business, although recently registered, is already a profitable and viable enterprise.

The AAO noted, however, that the record contains evidence that QIM has existed since at least 1994. As the petitioner has not established when QIM was established, the AAO concluded that he could not demonstrate that he has established a new commercial enterprise. The AAO further noted that the petitioner had not claimed or documented that he expanded an existing business by at least 40%.

On motion, counsel fails to address this issue. The record is still absent documentation regarding when QIM was created in any incarnation. Merely incorporating an existing business cannot be considered the creation of an original business or the reorganization of an existing business. See Matter of Soffici, I.D. 3359 (Assoc. Comm., Examinations, June 30, 1998) which held that incorporating a new business which purchases an existing business is not the creation of an original business, nor was it a reorganization such that a new business was created.

CAPITAL AT RISK

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

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided that 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. All capital shall be valued at fair market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) shall not be considered capital for the purposes of section 203(b)(5) of the Act.

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)(2) states:

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 regulations provide that a 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. A mere deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. Matter of Ho, I.D. 3362, 5 (Assoc. Comm., Examinations, July 31, 1998).

The AAO noted that, prior to the date of filing, the petitioner had not deposited any money into [REDACTED] account and did not even have \$500,000 in his own account. Moreover, the AAO noted that the mere deposit of money into the enterprise's account, of which the petitioner maintains sole control, is insufficient to demonstrate that the money is at risk. The AAO concluded that while the petitioner has submitted leases and invoices for office equipment and advertising costs, he has not demonstrated that the funds placed in the business' account were used to pay any of those expenses. The only documented expenses, rent of \$700 for one month at [REDACTED] and \$4000 for 5 months at [REDACTED] only adds up to \$4,700. The invoices total less than \$60,000.

The AAO further concluded that the petitioner had also failed to demonstrate that the remaining \$250,000 in his own account was committed to the business and had been placed at risk. The AAO noted that counsel had admitted, "petitioner *intends* to use this sum, *as needed*, to expand the business operations and such expansion is likely to use up the additional \$250,000." (Emphasis added.)

Finally, the AAO noted that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), at 7.

On motion, counsel asserts "the enterprise has continued to maintain at least half a million dollars invested at risk." Counsel refers to bank accounts and assets of the business. The petitioner submits a January 11, 2001 letter from Manufacturers Bank reflecting total balances of \$83,238.58 in [REDACTED] accounts and \$256,417.90 in the petitioner's accounts. The petitioner did not submit any evidence of the business' assets. Regardless, the business' current cash holdings and assets do not necessarily reflect the petitioner's personal investment at the time of filing. In fact, such information does not even reflect the petitioner's investment to date. Businesses can obtain money from a variety of sources, including loans and proceeds. The record does not contain certified tax returns, including schedule L, or audited balance sheets which might reflect the amount of capital

contributed to the business. The record still does not establish that the funds in the petitioner's personal accounts are irrevocably committed to the business.

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 petitioner must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

(iii) Evidence identifying any other source(s) of capital; or

(iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

The petitioner claimed that the \$500,000 allegedly invested in the enterprise originated from investments in the Mexican Stock Market and the sale of real estate. The petitioner submitted poor quality photocopies of Spanish language documents and translations which concede that much of the information is illegible. The "Issuance of Order for Payment Abroad" while barely legible even to the translator, appears to document a transfer of \$44,312.80 to the petitioner from an unknown source. The stock exchange document indicates that the petitioner's available cash is 1,674,320.94 in an unspecified currency. An "invoice" indicates that on January 8, 1998 [REDACTED] transferred \$207,661.72 to the petitioner. A letter dated April 18, 1988, indicates [REDACTED] purchased property worth 1,200,000 Pesos. The petitioner also submitted the deed to his house in Norwalk, California and the lease for his car.

The AAO concluded that these documents did not establish the source of the full \$500,000 allegedly invested. The petitioner only received \$251,974.52 from Mexico, and the source of that money is unclear. The petitioner has not established that [REDACTED] the individual who transferred the funds, is one and the same as [REDACTED] who purchased property in 1988, or [REDACTED] the petitioner's wife as her name appears on the payroll records and articles of organization. As stated above the source of the \$44,312.80 is not indicated on the

“Issuance of Order for Payment Abroad.” While the petitioner’s bank statement reflects a credit for \$207,661.72, the statement does not reflect a credit for \$44,312.80.

While the petitioner has demonstrated that he had an investment account in Mexico, he has not demonstrated that the account was worth \$500,000. The April 18, 1988 letter merely indicates [REDACTED] purchased property. There is no indication in the record that she ever sold the property and transferred the funds to the petitioner’s account. While the petitioner has documented that he received a degree in architectural engineering in Mexico on December 3, 1979, he has not documented any wages from that profession. Therefore, it is not clear where he obtained the money to begin investing in the Mexican Stock Market.

In addition, the \$250,000 credit to the petitioner’s personal account on January 12, 1998 is defined on the bank statement as a “credit memo.” The AAO questioned the source of these funds.

The AAO also rejected counsel’s argument on appeal that tax returns were only one type of evidence suggested, and were not required to demonstrate the lawful source of one’s funds. The AAO noted that while the regulations provide that tax returns must only be submitted “as applicable,” as the petitioner has only documented the receipt of, at most, \$251,974.52 from Mexico, the remaining money allegedly invested must derive from funds obtained while residing in the United States. According to the petition, the petitioner has been residing in the United States since 1986. As such, the AAO concluded that the petitioner’s tax returns for the last five years appear applicable. The AAO further noted, however, as the petitioner claims to have entered the United States with a visitor visa which expired on November 20, 1986, it does not appear that the petitioner has ever had any authorization to work in the United States. Therefore, the AAO concluded that any wages earned while in the United States cannot be considered lawfully obtained.

On motion, counsel asserts that the \$250,000 credit memo resulted from a bank loan to the petitioner. The petitioner submits the promissory note and security agreement which reflect that the petitioner personally borrowed \$250,000 on January 12, 1998, secured by his personal time-deposit account with a balance of \$250,000. This evidence, however, begs the question of where the petitioner obtained the \$250,000 in the account securing the loan. The petitioner also resubmits the illegible transfer receipts, partial translations, and 1988 letter regarding the sale of property to [REDACTED]. We affirm the AAO’s concerns with this documentation stated above.

THE PLAN DOES NOT MEET THE EMPLOYMENT-CREATION REQUIREMENT

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.

While not directly discussed by the director, the AAO concluded that the petitioner had also failed to demonstrate that his investment will create the required number of jobs. In reaching this conclusion, the AAO noted that the petitioner had not demonstrated that he established a new commercial enterprise. Specifically, as discussed above, QIM existed since at least 1994. The AAO was concerned that the petitioner had not demonstrated how many employees worked at QIM prior to his "investment" in 1998. The record contains three payroll checks issued on January 16, 1998 by [REDACTED] at the [REDACTED] address. Clearly, these checks must be compensation for work done prior to the \$250,000 deposit into [REDACTED] account on the same date. Therefore, QIM had at least three employees prior to the petitioner's alleged investment. In light of the above, the AAO concluded that the petitioner had not demonstrated how many *new* jobs he has created. As stated above, neither counsel nor the petitioner address the AAO's concerns regarding the petitioner's alleged creation of an original business on motion. As such, we affirm the AAO's determination that the petitioner has not demonstrated the creation of 10 new jobs.

In addition, the AAO noted that the I-9s submitted reveal that not all of QIM's employees may be qualifying. Three of the I-9s indicate the employee merely has work authorization, and is not a lawful permanent resident or a citizen. One of the employees did not indicate when his work authorization expires. As quoted above, 8 C.F.R. 204.6(e) specifically states that non-immigrants are not qualifying employees. Once again, neither counsel nor the petitioner address this concern on motion.

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, the decision 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. Id. at 9.

Finally, the AAO questioned whether the business plan credibly projected the creation of additional jobs. The AAO noted that the business plan submitted indicates Phase II of the plan will only create 2-7 jobs. The business plan does not include the job descriptions for all positions. Without additional documentation, the record cannot establish that the petitioner's "investment" will create at least 10 new jobs beyond any jobs which existed prior to the petitioner's "investment." Moreover, at the same time the petitioner submitted the business plan which indicates "it is our present corporate goal to expand [redacted] by adding the Laundromat, Computer and Travel Divisions," the petitioner also submitted bills for QIM Travel and other businesses in Norwalk and Southgate dated as early as January 1998. Therefore, it appears that the expansion discussed in the business plan already occurred. Yet, despite the existence of these branch offices, the petitioner has not demonstrated that [redacted] as created 10 new jobs since January 1998. On motion, counsel does not directly address this concern, but refers to the June 2000 financial report submitted for Quetzalcoatl Insurance Market. The report reflects salaries and wages for 10 employees in addition to the petitioner for the period ending June 15, 2000 and for 11 employees in addition to the petitioner for the period ending June 30, 2000. Four of the employees in the first period and three of the employees in the second period earned wages less than the minimum wage for an employee working full time. Moreover, the petitioner has still failed to address the issue of how many employees worked for QIM prior to his investment.

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 sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of December 15, 2000 is affirmed. The petition is denied.