



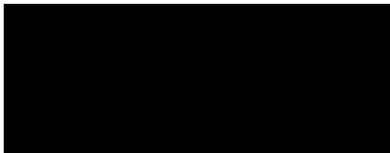
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-00-116-53673 Office: California Service Center

Date: 14 AUG 2002

IN RE: Petitioner:



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

IN BEHALF OF PETITIONER:



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

[Signature]
Robert W. Wierman, 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 he had established a new commercial enterprise, that he had made a qualifying investment of lawfully obtained funds, or that he would create the necessary employment.

On appeal, counsel argues that the director was confused regarding the new commercial enterprise since it operated under a name other than the corporate name, that the director misread the transaction documentation reflecting the petitioner's investment, that the petitioner adequately traced his funds back to Hong Kong, and that the business has already created 10 jobs.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

- (i) which the alien has established,
- (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
- (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, CLY Global Enterprise USA, Inc., located in a targeted employment area for which the required amount of capital invested has been adjusted downward.¹ Thus, the required amount of capital in this case is \$500,000.

ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE

¹ In support of the claim that Pico Rivera is a targeted employment area, the petitioner relied on data from two years prior to the date the petition was filed. Nevertheless, we have independently determined that Pico Rivera remained a targeted employment area at the time of filing.

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(j)(1) provides that the evidence required to demonstrate that the petitioner has established a new commercial enterprise consists of:

- (i) As applicable, articles of incorporation, certificate of merger or consolidation, partnership agreement, certificate of limited partnership, joint venture agreement, business trust agreement, or other similar organizational document for the new commercial enterprise;
- (ii) A certificate evidencing authority to do business in a state or municipality or, if the form of the business does not require any such certificate or the state or municipality does not issue such a certificate, a statement to that effect; or
- (iii) Evidence that, as of a date certain after November 29, 1990, the required amount of capital for the area in which an enterprise is located has been transferred to an existing business, and that the investment has resulted in a substantial increase in the net worth or number of employees of the business to which the capital was transferred. This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth, number of employees.

The alleged new commercial enterprise listed on the petition is CLY Global Enterprise USA, Inc. (CLY), incorporated on March 18, 1999. As evidence that the petitioner established this corporation, the petitioner submitted the following:

1. The articles of incorporation for CLY reflecting a filing date of March 18, 1999.
2. The by-laws of the corporation adopted June 15, 1999.
3. The Minutes of the Organizational Meeting, dated June 15, 1999, where the petitioner was elected to the Board of Directors and as president. These minutes also reflect that the petitioner was issued 50,000 \$10 par value shares of stock.
4. A Statement by Domestic Stock Corporation filed with the State of California in June 1999 reflecting the sale of \$500,000 worth of stock.
5. The registration for a fictitious name filed by CLY registering the name API Group, Inc.
6. A Seller's Permit and a Business License reflecting both CLY and API.
7. A 1999 tax return for CLY reflecting the petitioner as the 100 percent owner of the corporation.

On January 20, 2001, the director requested additional documentation regarding other issues, but did not indicate that the record was insufficient regarding the establishment of a new commercial enterprise. In her decision, the director stated, "the petitioner indicates that the enterprise is doing business with API Group; however, there is not evidence that such a business relationship exists."

On appeal, counsel asserts that the petitioner never claimed that CLY was doing business with API, but rather as API. The record supports this assertion. There is no prohibition against filing the articles of incorporation under one name and doing business under another name. It is common that a corporation does business under another name. In this case, CLY registered API as a fictitious name. The seller's license is issued to CLY and API. We are satisfied that CLY and API are one and the same. The record contains no suggestion that API was operating independently prior to the date the petitioner established CLY. The record contains no evidence suggesting that CLY purchased API, such as a sales contract, assumption of a prior lease, or documentation reflecting that CLY purchased inventory from a preexisting API. On the contrary, API entered into a lease agreement July 1, 1999² and purchased its initial inventory from other companies after the date CLY incorporated. As such, we are satisfied that CLY, using the name API, is an original business established by the petitioner.

INVESTMENT OF CAPITAL

² We note, however, that the lease has a reduced evidentiary value as it is not signed by the landlord.

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 submitted the minutes of the organizational meeting and the Statement by Domestic Stock Corporation reflecting the sale of 50,000 shares worth \$500,000 to the petitioner. The petitioner also submitted a stock ledger, a stock certificate, an unaudited balance sheet and uncertified tax returns for CLY reflecting the issuance of \$500,000 worth of stock to the petitioner. As evidence of the transfer of funds from the petitioner to CLY (API), the petitioner submitted a wire transfer receipt reflecting the March 25, 1999 transfer of \$510,000 from the petitioner's account in Hong Kong to account [REDACTED] at the Far East National Bank in San Francisco. The petitioner also submitted a confirmation notice of the transaction which, the director determined, was dated March 23, 1999. The petitioner submitted the March bank statement for account [REDACTED] of which he is the account holder, reflecting the receipt of a wire transfer from the petitioner in Hong Kong on March 25, 1999. On the same date, the petitioner removed all \$510,000 and purchased a time deposit account, [REDACTED] which matured April 26, 1999. The deposit receipt is stamped "paid 5/28/99 \$510,000.-- TCD [REDACTED]

On May 28, 1999, the petitioner purchased another time deposit account [REDACTED] for \$500,000 that matured on June 28, 1999. On June 28, 1999, according to two Advice of Credits, a Debit General Ledger, and a deposit slip, the petitioner transferred \$300,000 from account [REDACTED] to [REDACTED] and \$200,000 from account [REDACTED] to [REDACTED]. The Advice of Credits reflect that the account holder for [REDACTED] is API Group, Inc. and the account holder for [REDACTED] is the petitioner. The petitioner, however, also submitted the July 1999 bank statements for both accounts, reflecting that [REDACTED] is a business savings account in API Group's name and account [REDACTED] is a business checking account also in API Group's name. These accounts had balances of \$300,036.99 and \$207,000 as of June 30, 1999.

While the director requested no clarification of this documentation in her request for additional documentation, in her final decision, she determined that the above documentation was too inconsistent to demonstrate the petitioner's personal investment into CLY. Specifically, the director once again questioned the relationship between CLY and API. As discussed above, we find that the record adequately establishes that CLY and API are one and the same. In addition, the director discounted the wire transfer receipt and bank statement reflecting the March 25, 1999 transfer of \$510,000 from Hong Kong to the petitioner since the confirmation notice, according to the director, is dated March 23, 1999. Further, the director questioned whether the "paid" stamp was sufficient to document that the petitioner closed his time deposit account 691-8003306. Moreover, the director concluded that the Advices of Credit and Debit General Ledger were too illegible, although the director quotes much of the information on those documents. Finally, as the bank statements are for July 1999 and the record includes no evidence that the accounts were opened June 28, 1999 as claimed, the director concluded that the petitioner had not established that his funds were the funds in the accounts as of June 30, 1999.

On appeal, the petitioner submitted two letters from the Far East National Bank confirming that the petitioner transferred \$510,000 from Hong Kong to his personal account at the Far East National Bank in San Francisco on March 25, 1999 and asserting that the Advice of Credit for

the deposit of \$200,000 in account 691-006166 on June 28, 1999 mistakenly identified the account holder as the petitioner when, in fact, the account holder was API.

The confirmation of transfer that the director determined had a March 23, 1999 date is a photocopy of a dot matrix printed receipt. The threes and fives look very similar. Moreover, the remaining documentation, including the new letter submitted on appeal, adequately establish the date of the transfer as March 25, 1999. We do not find any discrepancy regarding the transfer of March 25, 1999 sufficient to cast doubt on the existence of the transfer.

Regarding the director's other concerns, we find that they were either overstated or have been overcome on appeal. In this case, the funds are easily traceable from Hong Kong to the petitioner's personal account at the Far East National Bank on March 25, 1999, to the first time deposit account on the same date, to the second time deposit account on May 28, 1999, to the two business accounts on June 28, 1999. We find the bank's letter regarding the account holder for account [REDACTED] adequately supports the bank statement reflecting that account to be a business checking account in API's name. We also note that the bank statements for that account reflect transactions consistent with a business, including wire transfer deposits from auto part trading companies, API's business.

In light of the above, we find that the petitioner has adequately traced his funds from Hong Kong to API. Moreover, while \$300,000 was placed in a business savings account, \$230,000³ was moved to the business checking account between August 1999 and November 1999. Further, as stated, the checking account and invoices reflect that the money in the checking account went towards business expenses. Thus, the money was at risk. Finally, the tax returns and balance sheets, while uncertified and unaudited, consistently reflect that the full \$500,000 transferred to API was transferred as capital. In light of the above, we conclude that the petitioner made a qualifying investment into a new commercial enterprise.

SOURCE OF FUNDS

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

(3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:

(i) Foreign business registration records;

(ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal

³ More than \$230,000 was actually transferred from savings to checking, but the additional money was subsequently transferred back to the savings account. \$230,000 is the amount that remained in the business checking account.

tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;

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

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

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, 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)(affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially the petitioner submitted substantial documentation regarding several businesses in China. The petitioner claims to have started a taxi company in Beijing, Beijing Northern Taxi Station (Northern Taxi) which he subsequently expanded into a car and auto parts sales and service business. The initial documentation reflects that in 1992, Northern Taxi changed its name to Beijing Northern Car Rental Company (BNCRC). A business license for BNCRC issued June 26, 1998, lists Qi Zhao as the legal representative. The petitioner also, however, submitted a resolution of the board of directors of North Pioneer Automobile Trade Group (NPATG) indicating that the petitioner is a 75 percent owner of NPATG and that BNCRC is a subsidiary of NPATG. A brochure for NPATG identifies the petitioner as the president. In addition, the petitioner submitted a declaration by a law office in China asserting that the petitioner received a bonus of RMB 5,033,112 (\$629,139) in 1997 and RMB 6,923,154 (\$865,394) in 1998. The lawyer also indicated that these bonuses were not taxable. Finally, the petitioner submitted a business license for Beijing Northern Chuang Ye Auto Trading Group which indicates that the petitioner was the legal representative and the Beijing Zhong Hui Tong Auditorial Office listing the legal representative as Poling Fang. The petitioner does not claim to have acquired his funds from either of these companies and the relevance of this documentation is not explained.

On January 20, 2001, the director requested evidence explaining the petitioner's bonus and his personal tax returns. In response, the petitioner submitted tax documentation and financial

statements for NPATG and its several subsidiaries, a chart of the petitioner's salary and bonuses at NPATG bearing seals from NPATG and a local tax office, and board resolutions regarding the petitioner's alleged bonuses from NPATG for 1998 and 1999. All of the financial statements reflect significant undistributed profits, but none of them reflect that any profits were actually distributed. The board resolution and the chart of the petitioner's salary and bonuses conflict with each other and the lawyer's declaration regarding the petitioner's bonuses. The chart reflects that the petitioner received no bonuses in 1996, 1997, and 1998 and that he received a bonus of RMB 5,033,112 in 1999 and RMB 6,923,154 in 2000. The Board resolutions reflect that the petitioner was authorized to receive a bonus, or a portion of the profits for 1997 in February 1998 and for 1998 in February 1999. The chart reflects that the petitioner received a monthly salary of RMB 15,000 in 1997 and 1998, which increased to RMB 20,000 in 1999. While the petitioner submitted a tax certificate reflecting income tax paid on a salary of RMB 20,000 for March 2001, it is not clear whose salary this certificate covers. Counsel concedes that individuals in China must pay taxes on monthly income of more than RMB 800. Yet, the petitioner failed to submit any evidence that he paid taxes on his salary or his bonuses.

The director determined that the evidence did not trace the investment money from NPATG to the petitioner. On appeal, counsel argues that the evidence demonstrates that the petitioner received bonuses totaling RMB 12 million during 1997 and 1998, that the petitioner thus earned well in excess of \$500,000 through lawful means, and that "it is more likely than not that the \$500,000 investment to the U.S enterprise came from his earnings from the auto business unless the evidence indicates otherwise." Counsel argues that demonstrating the source of one's funds does not require a petitioner to trace the path of those funds. Counsel notes that China has currency control laws, and the petitioner was only able to transfer out his money by trading it with companies in Hong Kong requiring RMB. Those companies would transfer non-RMB money into the petitioner's account in Hong Kong in exchange for the RMB he transferred to them.

The petitioner submits a letter from Hang Seng Bank, from which the petitioner transferred the \$510,000 to his account in the United States, indicating that the petitioner has had an account with that bank since June 1998 and a statement from that account reflecting the \$510,000 withdrawal.

We do not find counsel's arguments persuasive on this issue. As stated above, Matter of Izumii, supra, specifically states that a petitioner must document the path of his invested funds. Federal courts have consistently upheld the precedent decisions regarding this program. R.L. Investment Limited Partners, 86 F.Supp.2d 1014, (D. Hawaii 2000) *affirmed on appeal* R.L. Investment Limited Partners v. INS, No. 00-15627, slip op. 15813 (9th Cir. Nov. 20, 2001); Golden Rainbow Freedom Fund v. Janet Reno, Case No. C99-0755C (W.D. Washington Sept. 14, 2000) *affirmed on appeal* Golden Rainbow Freedom Fund v. John Ashcroft, No. 00-36020 (9th Cir. Nov. 26, 2001); Spencer Enterprises, Inc. v. United States, Case No. CIV-F-99-6117 (ED Calif. 2001).

The petitioner's response on this issue does not appear to address the director's concerns. Contrary to counsel's assertion, the record does not reflect that the petitioner received his

bonuses in 1997 and 1998. Rather, the record is seriously inconsistent regarding when the petitioner received the bonuses. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). If the petitioner received his bonuses in 1999 and 2000, as reflected on the chart stamped by the local Chinese tax office, it is not clear that he had received the first bonus by the time he allegedly exchanged the money for Hong Kong dollars, which must have occurred prior to the transfer of \$510,000 from Hong Kong to the U.S in March 1999. Moreover, the director noted the lack of evidence reflecting the transfer of the bonus money from NPATG to the petitioner. The petitioner failed to submit any evidence of those transactions. Nor has the petitioner submitted evidence supporting the claim on appeal that he traded his RMB Yuan with Hong Kong companies. The record contains no evidence of the transfer of RMB Yuan to any Hong Kong company or the transfer of Hong Kong dollars to the petitioner's account. The petitioner did not even submit letters from these Hong Kong companies attesting to these alleged exchanges. Finally, the petitioner has still not demonstrated that he paid taxes on his bonuses. The record contains no sections of Chinese law to support the lawyer's statement that bonuses are not taxable. Counsel concedes that monthly income over RMB 800 is taxable to individuals.

In light of the above, we cannot conclude that the petitioner has established the lawful source of his funds.

EMPLOYMENT CREATION

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

To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:

(A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

(B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

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

Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.

Qualifying employee means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

Full-time employment means continuous, permanent employment. See *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).

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.

Initially and in response to the director's request for additional documentation, the petitioner submitted evidence that the business had five current employees. The petitioner also submitted business plans calling for an additional five employees. The final business plan called for the hiring of those remaining employees by mid-2001. The business plan did not include job descriptions for all of the future jobs.

The director concluded that the business had been operating for a long time with only five employees; thus, it was not credible that it needed an additional five. On appeal, counsel asserts that the business now employs 10 full-time qualifying employees. The petitioner submits a list of 10 employees, the date hired, their monthly salary, and the number of hours they work per week. All employees are listed as working 40 hours per week. Three of those employees were hired in 2002. The petitioner also submitted ten Forms I-9 and a wage and withholding report for the fourth quarter of 2001 reflecting seven employees each month of that quarter. Finally, the petitioner submitted a list of employees and their wages for January and February 2002 reflecting seven employees until the second week of February at which point the company had eight employees. The self-serving list of employees and their wages is insufficient evidence of employment. The record does not satisfactorily establish that API employs more than seven full-time employees or will create a need for an additional three employees.

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.