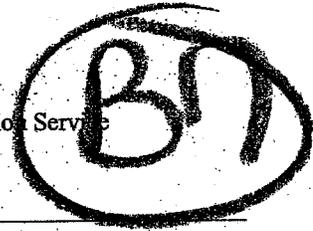


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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy



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



File: WAC-01-137-54655 Office: California Service Center

Date: **JAN 31 2003**

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:



INSTRUCTIONS:

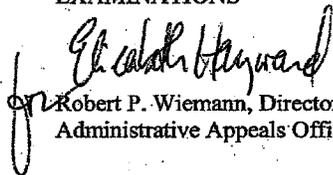
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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 section 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 a qualifying investment of lawfully obtained funds or that he would create the necessary employment. The director also included a section discussing the establishment of the new commercial enterprise, but did not specifically state that the petitioner had not founded a new corporation.

On appeal, counsel challenges the director's purported conclusion that the petitioner had not established a new commercial enterprise. The petitioner resubmits the voluminous documentation reflecting that the petitioner incorporated an entity in March 1999. As stated above, the director does not appear to have disputed that the petitioner founded a new corporation. Regardless, section 203(b)(5) of the Act no longer requires that the petitioner personally establish the new commercial enterprise.

In addition, counsel argues that the petitioner invested the necessary funds, all of which were lawfully obtained and placed at risk, and that the petitioner has already created more than ten jobs. These arguments will be addressed below.

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

The record indicates that the petition is based on an investment in a business, [REDACTED] (the Corporation) 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.

The nature of the new commercial enterprise's on-going commercial activity is unclear. On the petition, the petitioner indicated that [REDACTED] would provide residential and commercial design services, sell decoration materials, and engage in real estate investment. On the company's Form SS-4, application for an employer's identification number, the petitioner indicated that [REDACTED]

██████████ would engage in import and export activities as well as other investments. On the Statement by Domestic Stock Corporation, the petitioner indicated that ██████████ would operate as a residential and commercial interior design business, including the sale of wallpaper and carpets. ██████████ Certificate of Liability Insurance indicates that the company's employees will work on clothing manufacture, in sales, and as clerical employees. The company's use permit indicates that the company will be involved with the sale of home furnishing materials, fabric, and wallpaper. On its tax returns ██████████ indicates that it is involved with the manufacture and sale of draperies and real estate. ██████████ lease indicates that the company will engage in import and export activities as well as the sale of home furnishing materials. The unaudited income statement for the seven-month period ending September 30, 2000 reflects \$502,511 in drapery sales. The business plan, submitted in response to the director's request for additional documentation, asserts:

██████████ USA engages in real estate investments, real estate interior design, remodeling, includ[ing] window covering, wallpaper, carpet, tile, wood floor, real estate purchase [and,] after making some improvements, then sell in real estate market, or make a new plan, get city permit and develop a couple [of] new house[s] or planned units developments to earn profit. Since our investment, we have already purchased five real estates [sic] properties in Southern California.

The business plan calls for a design department, an operation department, a sales department, an administration and accounting department, and an investment department. The organizational chart reflects that eight of the ten positions are within the design, operation, and sales departments. Yet, as will be discussed in more detail below, the overwhelming majority of the voluminous documentation in the record relates to real estate investments, contracts for the development of these properties with non-employees of ██████████ and the resale of those properties. Only on appeal has the petitioner submitted any evidence ██████████ engages in the sale of interior design materials.

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.

In support of the petition, the petitioner submitted the following:

1. Wire transfer receipts documenting the transfer of \$1,000,000 to the petitioner's U.S. account at China Trust Bank, [REDACTED]
2. A money transfer order requesting the transfer of \$1,000,630.78 from account number [REDACTED] to Citibank account number [REDACTED] also belonging to the petitioner.

3. Statements from the petitioner's Citibank account number [REDACTED] reflecting a March 19, 1999 deposit of \$1,000,630.78 and withdrawals of \$210,000 on March 26, 1999 and \$790,000 on April 6, 1999.

4. A statement from General Bank reflecting a corporate account opened on March 26, 1999 with \$200,000.

5. A statement from General Bank reflecting a corporate account opened on March 26, 1999 with \$10,000.

6. An April 6, 1999 letter from Citibank reflecting the following corporate accounts opened in April 1999: a checking account with \$10,000, a money market account with \$480,000, and three certificates of deposit totaling \$300,000.

7. A corporate notice of transaction regarding an offering of \$1,000,000 dated May 10, 1999.

8. A stock ledger and stock certificate reflecting the petitioner's purchase of 10,000 shares for \$1,000,000.

9. Closing statements for [REDACTED] purchase of property and the subsequent sale of some of these properties. Specifically, [REDACTED] purchased 49 Foxhill for \$284,000 on February 25, 2000 and sold that property for \$341,500 on May 30, 2000. [REDACTED] also purchased [REDACTED] for \$264,000 on February 16, 2000 and sold that property for \$325,000 on August 11, 2000. Finally, [REDACTED] purchased [REDACTED] for \$306,500 on September 25, 2000 and sold that property for \$320,000 on December 8, 2000.

10. Official Bank checks issued by Citibank on behalf [REDACTED] to the title and escrow companies conducting the property transactions described above.

11. Invoices and contracts for the development of these properties. The record does not reflect that companies who performed these services are wholly owned subsidiaries of [REDACTED] employees performed the work.

12. Documentation regarding the development [REDACTED] some of which was financed through loans secured by the property, an asset [REDACTED] Hung Yin Construction is the contractor for the construction.

13. Documentation regarding [REDACTED] investment in [REDACTED] including business loans secured by this property. The nature of this investment, development or otherwise, is not clear. The record does not contain a construction contract or evidence of improvements rendered by [REDACTED] employees.

On June 28, 2001, the director requested additional documentation of the petitioner's investment, including invoices and other documentation relating to the purchase of all assets for the new commercial enterprise. In response, the petitioner submitted some of the previously submitted documentation, a chart depicting the flow of money from the petitioner to the new commercial enterprise, numerous recent bank statements for [REDACTED] accounts at General Bank, First Continental Bank, and Sanwa Bank. Finally, the petitioner submitted the closing statement for [REDACTED] which [REDACTED] purchased for \$225,000 on March 1, 2001, a loan secured by that property for \$135,000, and a contract for the development of this property with [REDACTED] and Associates. The petitioner did not respond with any new evidence of the purchase of assets relating to interior design services.

The director listed the submitted documentation and stated:

The Service finds that [REDACTED] USA has invested in five real properties in Southern California, the petitioner (entrepreneur) has conducted several monetary business transactions such as rebuilding, and selling the properties for profit. In reviewing the information submitted to substantiate and establish the investment criterion, the enterprise itself has so far existed to buy and sell real property for profit. Therefore, there is not an actual enterprise that the petitioner has invested in for employment creation.

On appeal, counsel reiterates, "the petitioner used the said investment in purchasing the materials for his company, purchasing the real estate for further development, rebuilding or remodeling the properties." Counsel argues that all the funds transferred to the Corporation are at risk because failure of the business will result in the loss of the investment. Counsel notes that the operating expenses listed on the unaudited financial statements for 2001 were \$400,000, reflecting concrete business activity. Finally, counsel faults the director for only considering the business' real estate investments despite the other business activities described in the business plan. Counsel asserts that these activities account for 10 jobs and are documented by sales invoices submitted on appeal.

As evidence of his purchase of stock, the petitioner did submit a Notice of Transaction regarding the offering of \$1,000,000 by the Corporation, the stock ledger, and a stock certificate. While such documents should not be ignored, as the petitioner is the sole shareholder and director, the documents are all issued by him and are somewhat self-serving. In addition, the petitioner has submitted [REDACTED] Corporate tax returns for 1999 and 2000 that both indicate capital stock of \$1,000,000. These returns, however, are not certified as filed by the Internal Revenue Service. Further, the petitioner has submitted balance sheets [REDACTED] reflecting \$1,000,000 in stock, although these balance sheets are not audited.

Even if we accept that the petitioner has infused \$1,000,000 equity into [REDACTED] he has still not established that the funds were made available for employment creation. It is not relevant to the investment question whether the petitioner's business plan calls for business activities in addition to the passive real estate deals or whether or not those other activities have generated ten jobs. A petitioner may not meet the investment and employment requirements

separately. Rather, the full amount of the investment must go towards the employment-generating activities of the business. A petitioner who uses \$50,000 to start up¹ an employment-generating activity that results in the creation of ten jobs but "invests" the remaining \$950,000 into passive real estate investments with no relationship to the employment-generating activities of the business cannot meet the investment requirements of the entrepreneur law.

There is no evidence that [REDACTED] purchased the above properties as part of the interior design business or that the renovations to the houses involved the employees of the corporation. Rather, the property appears to have been purchased as a passive, non employment-generating real estate investment. As such, the funds used to purchase and renovate the property were not made available for employment creation. Even if we accepted that the drapery sales and other interior design services generated ten jobs, any money invested in the passive real estate deals cannot be counted as part of the petitioner's qualifying investment. The petitioner has not demonstrated a personal contribution of more than \$1,000,000. At least \$544,000 of the initial \$1,000,000 went towards the purchase of the first two properties.² Additional funds were spent on improvements to the properties. Thus, the petitioner cannot demonstrate a qualifying investment of \$1,000,000.

Based on the record before her, the director did not err in failing to consider any investment into the interior design portion of the business. As stated above, the only initial evidence of corporate expenditures relates to the passive real estate deals. The director specifically requested invoices for the purchase of all business assets. Yet, the petitioner failed to submit invoices for the purchase of office equipment, sewing machines or other interior design tools, or the initial inventory.³ The unaudited financial statements reflecting inventory, equipment and furniture as assets as well as expenses for advertising and commissions are insufficient. On appeal, the petitioner submitted 11 invoices for draperies and wallpaper sold in 2001 and 2002. While these invoices suggest that [REDACTED] is selling draperies and wallpaper, it does not establish the start-up costs (or other capital costs) for this employment-generating activity.

Counsel's assertion that, should the business fail, the petitioner's funds would be lost, is not supported by the record. The real estate investments appear to be generating their own profit separate from the success of the employment-generating portion of the business.⁴ For all the reasons discussed above, the petitioner has not demonstrated a qualifying investment.

¹ Normal operating expenses incurred after the initial capital expenditures are generally paid from proceeds and are not included in capital. See generally *De Jong v. INS*, Case No. 6:94 CV 850 (E.D. Texas January 17, 1997); and *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998). [REDACTED] purchased the remaining properties after the first two properties were sold. Thus, the company could have funded these later deals with the funds from the earlier sales as opposed to the company's capital.

³ The purchase of inventory after the business is operational is a normal business expense paid from proceeds and is not a capital expenditure.

⁴ It is acknowledged that the creditors of the corporation, should it fail, would be able to reach all of the assets of the corporation, including the real estate or proceeds of the sale of the property, if still in the corporate accounts. The interior design portion of the business, however, is grossly

SOURCE OF FUNDS

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

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

(i) Foreign business registration records;

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

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

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

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. *Matter of Ho, supra*, at 210-211 (Comm. 1998); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998). 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, supra*, at 22 (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).

In support of the petition, the petitioner submitted a business registration [REDACTED] (sometimes spelled [REDACTED] Construction Company, with New Taiwan Dollar 6,000,000 (approximately \$181,818.18) in capital and registered in 1989. The registration reflects the

overcapitalized; resulting in little, if any, risk to the real estate investment funds should the employment-generating business fail.

petitioner as the legal representative of that company. The petitioner also submitted a bank statement from Hua Nan Commercial Bank reflecting a balance of NTD 3,181,781 (\$95,836) as of March 10, 1999; a statement from American Express Bank reflecting a balance of NTD 2,744,255 (approximately \$82,658) as of April 8, 1998; Citibank statements reflecting total balances of NTD 1,682,679.92 (\$50,775) as of March 8, 1999; statements from Hwa Tai Commercial Bank reflecting total balances of NTD 6,082,404 (\$183,204.93) as of March 9, 1999; uncertified translations of property registration certificates for property owned by the petitioner and his wife; and certified translations of sales contracts for property sold by the petitioner and his wife in 1995 and 1996. The petitioner further submitted his personal tax returns for 1994 through 1998.

The director requested the petitioner's marriage certificate, which the petitioner provided in response. The petitioner also submitted a chart depicting the path of the contributed funds from the petitioner in Taiwan to [REDACTED] and an undated sales contract for property sold in Taiwan. The director concluded that the funds in the petitioner's accounts prior to his "investment" into [REDACTED] were far less than the \$1,000,000 transferred to the corporation. Previously, the director had noted that while the record established that the petitioner ordered the initial transfer of \$1,000,000 from Taiwan to his account in the U.S., the record did not reflect that those funds originated from his personal account.

On appeal, counsel notes that the tax returns reflect that the petitioner earned \$937,039 between 1994 and 1998, that the petitioner and his wife sold three pieces of property in 1995 and 1996 totaling \$530,120; and that the petitioner maintained savings accounts with a total balance of \$412,438 prior to his investment. The petitioner submits real estate contracts for the property sold.

A review of the tax returns reveals that they include the income from the sale of property. Thus, the petitioner cannot include the income from those sales in addition to the income reflected on his tax returns. The tax business registrations and tax returns, however, reflect that the petitioner has managed two businesses, one since 1989, and has derived substantial income from those businesses. Such income could account for the accumulation of \$1,000,000.

Even if the record reflects that the petitioner could have accumulated \$1,000,000, it is not clear that he did accumulate that sum or that the funds transferred to the United States were the petitioner's funds. The petitioner began transferring \$1,000,000 to his United States bank account on March 1, 1999. As noted by the director, the wire transfer applications do not reveal a bank account number or other source of the funds transferred to the petitioner's United States accounts. The petitioner has not demonstrated he had an account at China Trust Bank, the bank from which the funds were wired. Significantly, the Corporation's 1999 tax returns, Form 5472, reflect that the petitioner's foreign corporation, Hong-Chia Construction Company, Ltd., is an indirect shareholder and related party, suggesting at least some of the funds might have come from that corporation. 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); *Matter of M-*, 8 I&N Dec. 24

(BIA 1958; A.G. 1958). Therefore, any funds contributed by [REDACTED] cannot be considered the petitioner's personal investment.

In light of the above, the path of the petitioner's funds is not completely clear.

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.

Full-time employment means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States, supra*, at 19 (finding this construction not to be an abuse of discretion).

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate

dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *Matter of Ho, supra*. Elaborating on the contents of an acceptable business plan, *Matter of Ho* states the following:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id. at 213. In support of the petition, the petitioner submitted 11 Forms I-9, four of which were not signed, and an employee list. In response to the director's request for additional evidence, the petitioner submitted payroll records for January 2001 through June 2001; quarterly wage and withholding reports for the first two quarters of 2001 reflecting 12 employees for the entire first quarter of 2001 and 13 employees for May and June of 2001; and 13 signed Forms I-9. The petitioner also submitted a business plan containing an organizational chart reflecting a designer, a fabrication manager, three operations department "staff," three sales representatives, an administrative assistant and a "staff" employee for the investment department.

The director concluded that the Forms I-9 were incomplete and that the record did not establish that all of the employees were full-time. On appeal, counsel asserts that the director erred by concluding that only three Forms I-9 were submitted. The director, however, acknowledged that at least 10 Forms I-9 were submitted. Instead, the director concluded that the Forms I-9 were incomplete. In addition, counsel asserts that [REDACTED] already employs 10 full-time employees and need not submit a comprehensive business plan. The petitioner submits additional wage and withholding reports for 2001, reflecting no less than 11 employees in a month. The petitioner also submits corporate tax returns reflecting that J.T. Thompson paid \$212,819 in wages in 2000 and \$103,880 in 1999. Finally, the petitioner submitted unaudited financial statements for the ten-month period ending December 31, 2001 reflecting payroll expenses of \$206,457.

The documentation submitted reflects that [REDACTED] maintains between 11 and 13 employees. The wages reflected are consistent with full-time employment. While the business plan is not comprehensive and fails to describe the job positions, counsel is correct that a business plan is not required when the petitioner has already created at least ten jobs.

That said, the record must be considered as a whole. In this case, the petitioner has not sufficiently documented the nature of his business. Specifically, the documentation of employment is not consistent with or supported by the remainder of the record. As discussed above, while the petitioner claims that the employment is generated by the corporation's interior design services, the overwhelming majority of the documents in the record relate to the real estate investment deals that did not generate any significant employment within [REDACTED]. Prior to appeal, the only documentation relating to the interior design activities were references to operating expenses and inventory in unaudited financial statements and uncertified tax returns.

Only on appeal has the petitioner submitted eight invoices relating to drapery and wallpaper sales. These invoices cannot explain the employment of ten full-time employees. We note that [REDACTED] Use Permit projects only two employees and that the lease only provides for five unreserved and no reserved parking spaces. The record also contains other inconsistencies unrelated to employment. For example, many of the bank statements are addressed to [REDACTED] [REDACTED] well after the company sold that property.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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). In light of the above inconsistencies, the documentation of employment is dubious.

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.