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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

[Redacted]

File: [Redacted] Office: Texas Service Center

Date: **MAR 19 2003**

IN RE: Petitioner: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 requisite employment.

On appeal, counsel argues that the director failed to consider the evidence submitted.

Section 203(b)(5)(A) of the Act, as amended by the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), 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, The Deluxe Inn (formerly the Luxury Inn Motel), located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is \$500,000.

INVESTMENT OF CAPITAL

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

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.

* * *

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

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

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(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.

On the petition, the petitioner indicated that he invested \$35,000 on May 16, 2000 and had invested a total of \$500,000 as of the date of filing, March 19, 2001. In Part 4 of the petition, the

petitioner indicated that the business had \$5,000 cash and \$1,400,000 in assets. The petitioner further indicated that he had transferred \$207,750.62 worth of property from abroad for use in the enterprise. In addition, the petitioner indicated \$1,503,569.20 in debt financing and \$1,331,000 in other assets. In his cover letter, counsel asserted that the petitioner purchased property for \$35,115 cash. Counsel further asserted that the petitioner entered into a construction contract for \$1,300,000, financed by a \$700,000 loan from the Bank of Las Vegas and \$200,000 borrowed from Ashwin Amin. According to counsel, the petitioner contributed \$399,922 to the account from which the business paid the contractor. Finally, counsel asserted that the petitioner placed an additional \$65,000 in the business' account at First Security Bank for other business expenses.

The petitioner submitted the unsigned buyer's statement for the Deluxe Inn property reflecting total costs of \$35,115 and the deed to the property. Further, the petitioner submitted the August 15, 2000 contract with Lynn Clark Olds for the construction of the Deluxe Inn. The contract price is \$1,300,000 with a \$20,000 deposit due at the time the building permit was taken out. The petitioner also submitted the August 11, 2000 construction loan agreement with the Bank of Las Vegas for \$700,000 secured by a mortgage on the project and the assets of the business. In addition, the petitioner submitted a January 1, 2001 promissory note executed by himself for \$200,000 payable to Ashwin A. Amin. The promissory note is secured by a Deed of Trust, second to the interest of the Bank of Las Vegas.

The petitioner submitted a chart asserting that he deposited \$350,000 with the business on August 22, 2000, \$10,000 on September 5, 2000, and \$39,992 on November 10, 2000. The petitioner submitted bank statements for his personal account at the Bank of Las Vegas, account 8027064, for January 2000, August 2000, September 2000, October 2000, and November 2000. These statements reflect checks issued on that account for \$213,900 on January 3, 2000, \$795 on January 25, 2000, \$129,000 on January 24, 2000, \$325,000 on August 22, 2000, \$10,500 on August 31, 2000, \$20,000 on September 1, 2000, \$2,085 on September 7, 2000, \$10,000 on September 27, 2000, \$3,400 on September 28, 2000, \$150,900 on October 6, 2000, \$219,000 on November 13, 2000, \$219,021.26 on November 16, 2000, and \$1,000 on November 20, 2000. The petitioner did not submit copies of the cancelled checks in order to establish the recipient of these funds. We note that the statements do reflect deposits of \$350,000 on August 21, 2000, \$10,000 on September 5, 2000, and \$39,922 on November 10, 2000. The petitioner also submitted bank statements for his personal account at First Security Bank, account 045-10705-93, reflecting a transfer of \$350,000 in September 2000 and a check for \$39,922 in November 2000. Thus, the petitioner's personal account at First Security Bank appears to be the source of funds of the same amount deposited in his Bank of Las Vegas personal account.

The petitioner also submitted a February 2, 2001 faxed account statement for account 045-10705-93 at an unidentified bank reflecting a balance of \$65,000. As the account number is the same as the petitioner's account at First Security Bank, it appears that this is a statement for that account. The account holder, however, is now listed as Luxury Inn.

On March 28, 2001, the director requested additional evidence of the petitioner's investment, noting that the record contained no evidence of funds deposited in the business' account. The

director also noted that the \$700,000 loan was secured by the assets of the business and could not be considered the petitioner's personal investment. The director then considered the \$200,000 loaned by Mr. Amin under the requirements set forth in *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998) and *Matter of Hsiung*, 22 I&N Dec. 201 (Comm. 1998) regarding promissory notes, concluding that the petitioner had not established the fair market value of the note.

In response, counsel asserts that the Bank of Las Vegas account is the construction account from which the contractor was paid. Counsel asserts that the \$399,922 deposited by the petitioner into that account, the \$35,000 paid for the property, and the \$65,000 deposited into the First Security account (an account counsel acknowledges was once the petitioner's personal account and from which counsel concedes that the petitioner removed \$10,898.34 for personal expenses) are more than enough for a qualifying investment. While counsel asserts that these funds total \$500,185.82, the actual total is \$499,922.

The petitioner submitted the February 2001 and March 2001 statements for the Bank of Las Vegas account, 8027064. They reflect deposits and checks in the four digits with ending balances of a few hundred dollars. The petitioner also submitted a March 20, 2001 draw request for \$295,490.35. The draw request does not provide the account number from which to draw the funds. The document requests a draw greater than the ending balance on the March statement for account 8027064, the account from which counsel alleges the draws were made. The petitioner also submitted an April 23, 2001 letter from Lynn Olds confirming that her company received \$134,590.22 and has been paid in full.

Finally, the petitioner submitted August 16, 2000 receipts for \$8,078.28 for the building permit and \$3000 for water hookup and recent bank statements for the First Security account, subsequently bought out by Wells Fargo. The receipts reference both the petitioner and the business. The petitioner did not submit transactional documentation to reflect the actual source of the funds.

The director did not contest that the petitioner had purchased land for \$35,000. The director concluded that, as the \$700,000 loan and the \$200,000 loan were secured by the assets of the business, they could not be considered part of the petitioner's personal investment. Finally, the director concluded that the petitioner had not submitted evidence reflecting that the \$399,992 were contributed to the business and that, regardless, the amount was less than the \$500,000 required.

On appeal, counsel notes that while the loans are admittedly secured by the assets of the new commercial enterprise, the petitioner has personally guaranteed both loans. Counsel also reiterates the claim that the petitioner contributed \$399,922 to the construction account in addition to purchasing the property for \$35,000 and depositing \$65,000 in the operating account.

The petitioner's personal guaranty of loans secured by the assets of the new commercial enterprise does alleviate the problem. See *Matter of Soffici*, 22 I&N Dec. 158, 162-163 (Comm. 1998).

Regarding counsel's claims regarding the petitioner's investment of cash, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Despite the director's concerns expressed in the request for additional documentation and in his final decision, the petitioner has failed to submit transactional evidence reflecting that the funds in the Bank of Las Vegas account were used for business expenses. The account is in the petitioner's name, not the company's name. The draw request references the Bank of Las Vegas, but not a specific account. Bank of Las Vegas account 8027064, alleged by counsel to be the account from which construction costs were drawn, did not have sufficient funds to cover the only draw request submitted at the time of the request. Furthermore, if account 8027064 is the account from which construction costs were drawn, we would expect to see the \$700,000 borrowed to finance the construction deposited in that account. The loan documentation is dated August 11, 2000. Neither the August 2000 nor the September 2000 statements for account 8027064, however, reflect a deposit of \$700,000. The record contains no evidence that the \$700,000 was deposited in another account and then transferred to account 8027064 in smaller increments.

The few statements submitted for account 8027064 reflect several checks. The petitioner, however, did not submit copies of the cancelled checks. Thus, the petitioner has not demonstrated that those checks represent business expenses. We note that checks were issued on account 8027064 for \$213,900 on January 3, 2000, \$129,000 on January 24, 2000, and \$325,000 on August 22, 2000. All of these checks were issued prior to the \$20,000 check issued September 1, 2000, alleged to be the deposit for the August 15, 2000 construction contract. The record contains no evidence regarding the payee of the \$20,000 check. In addition, the August statement does not reflect checks in the amount of \$2,000 for water hookup and \$8,078.28 for a building permit, both paid on August 16, 2000 according to the receipts in the record. Without transactional evidence for those expenses, we cannot determine the account from which those expenses were paid. In fact, neither the August 2000 nor September 2000 statements for First Security Bank account 045-10705-93 reflect checks for those amounts.

In light of the above, the petitioner has not established that Bank of Las Vegas account 8027064 was a business account and that funds from that account were used exclusively for business expenses. Thus, the transfer of funds from the petitioner's account at First Security Bank, account 045-10705-93, to Bank of Las Vegas account 8027064 is not evidence that those funds were contributed to Deluxe Inn as claimed.

As the petitioner has not established that \$399,922 allegedly invested were actually contributed to the business, we need not examine in depth the petitioner's smaller investment claims. We note, however, that while the director did not contest the \$35,000 used to purchase the motel property, the record contains no transactional documentation, such as a cancelled check or wire transfer receipt, reflecting that the petitioner personally paid the \$35,000.

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*, 22 I&N Dec. 206, 210-211 (Comm. 1998); *Matter of Izummi*, *supra* at 195. 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*, 299 F. Supp. 2d 1025, 1040 (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).

In his cover letter, counsel asserted that the \$399,922 contributed to the business derived from the petitioner’s funds from overseas, his personal account and income from his other business. The petitioner submitted a list of his assets including \$5,000 cash in a personal account, \$66,000 in business accounts, the value of three motels (including the new commercial enterprise), \$200,000 of real estate in India, and \$25,000 in personal property. The petitioner also submitted a list of personal and business liabilities totaling \$1,503,569.20.

The petitioner submitted a chart reflecting that he contributed \$350,000 on August 22, 2000 and \$39,992 on November 10, 2000 from a personal account at First Security Bank deriving from foreign capital transfers, earned income during 2000, and funds acquired from previous years. The petitioner also referenced \$10,000 paid from income from the Budget Inn Motel during August 2000. In support of this chart, the petitioner submits his personal bank statements for his Bank of Las Vegas account, 8027064, for January 2000, October 2000, and November 2000. These statements reflect deposits totaling \$726,480.36. The source of these funds is not reflected on the Bank of Las Vegas statements. As discussed above, the petitioner did submit statements for his account at First Security Bank, account 045-10705-93, reflecting that \$39,922 and \$350,000 of the above deposits derived from that account. The First Security Bank statements reflect several wire transfer credits. The statements do not, however, identify the source of those transfers. The petitioner did submit several checks issued on January 13, 2000 on a Bank of India account totaling \$74,953.87. The January statement for account 045-10705-93 at First Security reflects the deposit of these funds, which were transferred to a certificate of deposit in April 2000.

The petitioner also submitted his United States personal tax returns for 1995 through 1999. These returns reflect adjusted gross annual income increasing from \$28,346 in 1995 to \$50,672 in 1999 for the petitioner and his wife jointly. While the petitioner also submitted documentation regarding his other hotels in the United States, the income derived from these business interests are already reflected on his personal income taxes.

As noted by counsel, the director did not address this issue in his request for additional documentation. In his final decision, however, the director concluded that the petitioner had not documented the source of the wire transfers or submitted corporate tax returns.

On appeal, counsel notes that the petitioner did submit his own personal income tax returns as well as tax returns for his U.S. motels. Regarding the money from India, counsel states:

Not only does [the petitioner] provide the bank account statements from which the funds were deposited, [the petitioner] has provided the order or the request for the wire transfers themselves disclosing that they were from [the petitioner's] account with the Bank of India. Unlike American Banks, the Bank of India does not provide statements but a passbook to record entries and such passbook was surrendered when the account was closed.

We acknowledge that the director incorrectly concluded that no U.S. tax documentation had been submitted. The director, however, noted that the regulations required foreign tax documentation as well, and stated that the petitioner "claims to be a businessman with extensive holdings in both of these tax jurisdictions [the U.S. and India.]" The record still remains absent any evidence of the petitioner's property or other interests in India.

As stated above, the petitioner's personal tax returns do not reflect significant income. Thus, the petitioner has not demonstrated sufficient U.S. income to account for the accumulation of \$500,000. Regarding the funds wired from India, the record does not contain the requests for

wire transfers as claimed by counsel. The First Security Bank statements reflecting the wire transfers do not reveal their source. Thus, the petitioner has not established the source of these wire transfers. While the checks reflect that the petitioner did transfer \$74,953.87 to First Security Bank account 045-10705-93, that money was subsequently moved to a certificate of deposit with a maturity date of April 25, 2001. It is not clear that these funds are the source of any money allegedly used for business expenses. In addition, while the petitioner asserts that he transferred a total of \$399,922 from his First Security Bank account, 045-10705-93, to Bank of Las Vegas account 8027064 in three installments: \$350,000 on August 21, 2000, \$10,000 on September 5, 2000, and \$39,922 on November 10, 2000, the September statement for account 045-10705-93 does not reflect a debit of \$10,000. Thus, the source of those funds is unknown. Similarly, the record contains no transactional documentation or explanation for the following deposits into account 8027064: \$14,000 on January 2, 2000, \$129,000 on January 19, 2000, \$51,559.14 on September 26, 2000, \$125,376.71 on October 6, 2000, \$150,616.44 on November 6, 2000, and \$16,000 on November 16, 2000. Thus, the petitioner has not established the source of these funds deposited in what the petitioner alleges is the business account from which the construction costs were drawn.

In addition, while the petitioner submitted the January 1, 2001 promissory note to Mr. Amin and a January bank statement for the petitioner's account at Bank of Las Vegas reflecting a \$200,000 deposit on January 2, 2001, the record contains no transactional documentation reflecting that the \$200,000 originated from Mr. Amin.

In light of the above, the petitioner has not submitted enough transactional documentation to sufficiently document the path or establish the 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:

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.

Section 203(b)(5)(D) of the Act, as amended, now provides:

Full-Time Employment Defined – In this paragraph, the term ‘full-time employment’ means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

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, supra* at 1039 (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.

On the petition, the petitioner indicated that the business employed no employees, but would create 10 to 14 jobs. In his business plan, the petitioner asserts that the Deluxe Inn will employ three full-time desk clerks, seven housekeepers, and a groundskeeper. He also anticipates an eighth housekeeper during peak season.

In his request for additional documentation, the director requested a more comprehensive business plan. In response, the petitioner submitted a new business plan asserting that nine employees have been hired and that the business hoped to hire three more by summer, a list of nine employees and a payroll report. The report appears to reflect that not all nine employees work full-time and that several are being paid far less than minimum wage. The petitioner also submitted nine Forms I-9.

The director concluded that the evidence did not reflect 10 full-time employees and that the business plan submitted was insufficient in light of the petitioner's admitted difficulty in finding the needed staff. On appeal, counsel asserts that the director failed to consider the business plan and provided no explanation for why it was insufficient. Counsel further asserts that the business plan's admission that it was having trouble finding employees to fill the positions is not akin to an admission that the motel has not created positions. The petitioner submits no new evidence that Deluxe Inn has hired any additional employees as anticipated in the plan.

Without expertise in the motel business, we cannot challenge the assertion that a motel needs a housekeeper for every six rooms. Thus, there is nothing about the business plan standing alone that is not reasonable or credible. The plan must, however, be consistent with the remaining evidence. In the instant petition, the plan is not consistent with the remaining evidence. For example, the business plan asserts that the hotel opened on April 25, 2001, two months prior to the submission of the business plan, and has nine employees. As stated above, however, the employment records appear to reflect that not all of these employees work full-time and that several are making considerably less than minimum wage. If the motel had positions available that it could not fill, one would not expect to see employees working less than full-time. Moreover, as stated above, the petitioner has not submitted evidence on appeal reflecting that the



motel hired an additional three employees as projected in the business plan. Such evidence would have bolstered the petitioner's claim that the plan is reasonable and credible.

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.

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