

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B7

FILE:

[REDACTED]  
SRC 05 170 51135

Office: TEXAS SERVICE CENTER Date:

NOV 17 2006

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the preference visa petition, which 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 or that he would create the requisite employment.

On appeal, counsel asserts that the petitioner need only be actively in the process of making his investment, that the petitioner's investment is not "merely" a reinvestment of proceeds and that the petitioner submitted a sufficient business plan. For the reasons discussed below, the petitioner has not overcome the director's concerns.

Section 203(b)(5)(A) of the Act, as amended by the 21<sup>st</sup> 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, [REDACTED] not located in a targeted employment area for which the required amount of capital invested has not been adjusted downward. Thus, the required amount of capital in this case is \$1,000,000.

### **INVESTMENT OF CAPITAL**

The regulation at 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.

The regulation at 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. 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 claimed to have invested \$535,000 on September 10, 2003 and \$562,021 as of the date of filing. The petitioner then indicated that his investment consisted of \$604,882 cash, \$435,295 in assets purchased for the business and \$824,628 in debt financing. A handwritten note indicates that the investment includes "assets and cash held in personal name in U.S. Bank that is being used for development projects." In his cover letter, counsel asserts that

Altman Enterprises was established in September 2003 “with an initial investment in excess of \$500,000 and in the course of less than 20 months, through [the petitioner’s] reinvestment of profits and personally secured loans, he has increased the value of his investment in Altman Enterprises threefold and now totaling in excess of \$1,500,000.” Counsel reasons that since the petitioner is the sole owner, “his investment, ergo the entire value of Altman Enterprises’ property, bank balances and secured loans, has been placed at risk and at the disposal of the new West Virginia commercial enterprise.”

Counsel relies on a compiled balance sheet as evidence that Altman Enterprises has \$1,512,882 in current assets. The accountant’s compilation report, however, asserts that management stated its property and equipment at estimated fair market value instead of at cost. The accountant concludes that “if generally [accepted] accounting principles had been followed, the property and equipment accounts and member’s equity would have been decreased by \$471,156 at March 31, 2005.” This number appears on the balance sheet under equity as “Excess fair market value of assets over book value.” Without this excess, the petitioner’s capital is only \$227,021. Typically, an equity investment is reflected under equity on a balance sheet. Counsel provides no explanation for his contention that the businesses liabilities should also be considered part of the petitioner’s personal investment other than asserting that the petitioner personally guaranteed the loans. The significance of a personal guaranty by the alien investor will be discussed below. Finally, counsel references a credit line secured by the petitioner as evidence of the petitioner’s “further commitment to secure \$800,000 for future growth should the opportunity arise.”

The petitioner submitted a letter from Branch Banking and Trust Company (BB&T) affirming three bank accounts in the petitioner’s name with balances totaling \$550,844, one bank account in Altman Enterprises’ name with a balance of \$50,919, three mortgages in the petitioner’s name totaling \$490,000, and one mortgage in Altman Enterprises’ name for \$105,000.

The petitioner submitted a personal check issued to [REDACTED] Auto Sales with no evidence as to the type of vehicle purchased and its business use. The petitioner also provided a car title for a Jeep. The Jeep is titled in the petitioner’s name, not Altman Enterprises. The petitioner also submitted several invoices for home furnishings purchased by the petitioner personally. The record lacks evidence that these home furnishings, including a mattress and bed frame, are business expenses. Significantly, the invoice from Grand Home Furnishings reflects that the furniture would be shipped to an apartment. The petitioner also submitted receipts for a computer and a cellular phone. The record does not establish whether the petitioner or the business paid for these items and whether they are for business use. Altman Enterprises purchased excavation and landscaping equipment for \$20,908.50.

On November 16, 2004, the petitioner secured a mortgage for [REDACTED] the location of [REDACTED] according to the petition. While the petitioner personally signed the Adjustable Rate Note, the property secures the note. On May 10, 2005, the petitioner secured a mortgage for 19 Westwood Manor, which also secures the note. The petitioner did not submit the settlement documents or warranty deed for either property. As such, he has not established the ownership of

the properties that secure these loans. On March 25, 2005, the petitioner issued a personal guaranty to BB&T for the extension of credit to Altman Enterprises.

On October 4, 2005, the director issued a request for additional evidence. In this notice, the director requested the business tax returns and the relevant checks, wire transfers and bank statements demonstrating the cash contributed. The director also noted that cash held in personal accounts and not placed at risk could not be considered the petitioner's personal investment. The director further noted that the mortgages submitted were secured in part by the properties, which the director concluded were assets of the business. The director also declined to consider the reinvestment of proceeds of the business.

In response, counsel reiterates his contention that the reinvestment of proceeds should be considered because the petitioner is the sole owner of Altman Enterprises. Counsel further asserts that the "bulk of [the petitioner's] investment in his enterprise, in fact, is comprised by his personal deposits and commitments in the form of Promissory notes or Secured loans." As evidence of investments that post-date the filing of the petition, counsel references a September 27, 2005 guarantied loan for \$450,000 and a December 4, 2005 Promissory Note secured by property in Israel. The petitioner submitted [REDACTED] deed for Lot "G" dated September 27, 2005. The undeveloped property was appraised at \$1,288,000 on October 31, 2005 "subject to" development.

The petitioner submitted a business plan. Section 7.1 of the plan reflects a "planned investment" of \$602,000. The projected balance sheet for 2006, 2007 and 2008 shows paid-in-capital of \$602,000 in all years, far less than the required \$1,000,000. A September 30, 2005 statement from BB&T reflects that the petitioner has executed security agreements for the following business loans: \$800,000 on January 4, 2005, \$25,000 on July 13, 2005, \$180,000 on July 12, 2005, \$220,000 on August 25, 2005, \$348,000 on September 27, 2005 and \$220,000 on November 1, 2005. A statement from BB&T lists three certificate of deposit accounts all assigned as business loan collateral.

The petitioner also submitted some of the loan and security agreement documentation. The petitioner issued a security agreement on May 20, 2004 to secure a \$161,500 loan by Altman Enterprises. The petitioner did not submit the underlying promissory note from [REDACTED] and nothing in the petitioner's security agreement indicates that BB&T waives its right to recover from [REDACTED]. Significantly, on September 27, 2005, [REDACTED] borrowed \$348,000 from BB&T. The petitioner submitted a September 27, 2005 security agreement signed by the petitioner as security for a promissory note executed by [REDACTED]. For this loan, however, the petitioner also submitted the underlying promissory note. The note indicates that, in addition to the security agreement and securities account pledge by the petitioner, the loan is secured by a control agreement dated September 27, 2005 that covers the "investment property," an asset of [REDACTED]. Thus, the existence of these security agreements does not preclude the loans also being secured by assets of Altman Enterprises.

On December 4, 2005, the petitioner executed a promissory note for payment of \$600,000 to Altman Enterprises "three years after completing the development and marketing of" certain property. The

collateral is the petitioner's property in Israel. The security agreement requires that the collateral be registered with the Pledge Registry in Israel. The petitioner, however, while submitting evidence as to the purpose of the registry, submitted no evidence that he actually registered his property. The petitioner did submit an appraisal indicating that the property has a market value of \$930,000.

The bank statements submitted do not reflect money from the petitioner to the business or in satisfaction of business obligations. The petitioner submitted a statement for his personal account, number [REDACTED] reflecting a September 13, 2005 incoming wire for \$87,000 from an unidentified source. The petitioner does not explain the significance of this transaction. In addition, the petitioner demonstrates deposits into his account of \$162,404.93 on April 26, 2005 and \$288,000 on April 28, 2005. The petitioner subsequently debited \$450,000 from that account on April 28, 2005. While the statements do not establish the source of the deposits into the petitioner's account, a statement for Altman Enterprises reflects a deposit of \$288,000 on April 26, 2005 and a withdrawal of that amount on April 28, 2005. Thus, it appears that this amount was deposited with [REDACTED] from an unidentified source and transferred to the petitioner two days later. The petitioner ultimately transferred \$450,000 to Scott and Stringfellow, Inc., the broker for the September 27, 2005 Securities Account Control Agreement.

The petitioner also submitted checks issued by him to BB&T, one of which is notated as the purchase of a certificate of deposit account, and investment accounts in his own name. These accounts do not necessarily reflect investments into [REDACTED]

The petitioner's 2004 Internal Revenue Service (IRS) Form 1040NR, U.S. Nonresident Alien Income Tax Return, Schedule C, reflects a net profit of only \$5,712. Thus, the amount of potential proceeds reinvested in that year is only \$5,712.

The director rejected the September 27, 2005 loan and December 4, 2005 promissory note as irrelevant to eligibility as of the filing dated, May 31, 2005. In reaching this conclusion, the director relied on *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). **The director then determined that a reinvestment of proceeds is not a contribution of capital.** In reaching this conclusion, the director relied on *De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998) and *Kenkhuis v. INS*, WL 22124059 (N.D. Tex. Mar. 7, 2003).

On appeal, counsel asserts that *Matter of Katigbak*, 14 I&N Dec. at 49, is not on point. Counsel notes that section 203(b)(5)(A)(i) only requires that an alien be actively in the process of investing and need not complete his investment until the end of the conditional residency period. Counsel distinguishes *De Jong v. INS*, No. 6:94 CV 850 as involving a corporation, noting that "sole proprietors" pay taxes on profits and are personally liable for the company's debts. Counsel then attempts to distinguish *Kenkhuis v. INS*, WL 22124059, by noting that the court found that "merely" retaining the proceeds of a company was insufficient. Counsel asserts that the petitioner also contributed cash.

We acknowledge that the petitioner is seeking a benefit that would lead to conditional permanent residence and that, if approved, he would need to seek removal of those conditions after two years pursuant to section 216A of the Act. We further acknowledge that the statute requires only that the petitioner be “actively in the process of investing.” The regulation at 8 C.F.R. § 204.6(j)(2) provides, in pertinent part:

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.

*See also Matter of Hsiung*, 22 I&N Dec. 201, 204 (Comm. 1988); *Matter of Izummi*, 22 I&N Dec. 169, 193 (Comm. 1998). Thus, while the petitioner need not have already invested the full amount as of the date of filing, he must have committed the full amount to the business. Examples of such a commitment include a promissory note obligating the petitioner to pay the required money to the new commercial enterprise. In such situations, however, the regulation at 8 C.F.R. § 216.6(c)(1)(iii) requires that the petitioner substantially complete his payments on the note prior to the end of the two-year conditional period. *Matter of Izummi*, 22 I&N Dec. at 193.

Given the above, while the petitioner need not have transferred the entire investment amount to Altman Enterprises as of the filing date, he must show that the funds were fully committed to the business as of that date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175. Thus, we concur with the director that the September 27, 2005 security agreement and December 4, 2005 promissory note, executed after the date of filing, cannot be considered evidence of eligibility as of the date of filing. *See also* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Moreover, the record is absent any evidence as to when Altman Enterprises might complete the development and marketing of the property identified in the promissory note. Thus, the petitioner has not established that the note, due, three years after the completion of the development and marketing, is due within two years. As such, the promissory note does not meet the requirements set forth in *Matter of Izummi*, 22 I&N Dec. at 193. Moreover, it is not clear that these funds were at risk. The loan is not an arms-length transaction as the petitioner owns all of Altman Enterprises and the record lacks evidence that Altman Enterprises had already irrevocably committed itself to the use of those funds, such as by executing a purchase agreement. It is acknowledged that, unlike the petitioner in *Matter of Ho*, 22 I&N Dec. at 210, this petitioner has an operating business. Regardless, the case stands for the proposition that all the funds must be at risk. *Matter of Ho* states:

Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement.

*Id.*

Regarding the security agreements, as stated above, the only underlying promissory note submitted reflects that the investment property, an asset of [REDACTED] also secures the property. The definition of capital, quoted above, clearly states that the assets of the new commercial enterprise cannot secure any of the indebtedness for that indebtedness to constitute capital. A personal guaranty that does not obligate the lender to go only after the petitioner's assets cannot overcome the fact that the assets of the new commercial enterprise also secure the indebtedness. *Matter of Soffici*, 22 I&N Dec. 158, 162-163 (Comm. 1998). We acknowledge that the record is unclear as to whether the petitioner or [REDACTED] owns some of the investment properties to be developed. Either the properties are owned by [REDACTED] and, thus, the assets of [REDACTED] secure the mortgages, or the petitioner owns the properties, which makes the purchase of the properties not an investment into Altman Enterprises.

Finally, the petitioner cannot rely on the company's retention of proceeds. As stated by the director, the regulation at 8 C.F.R. § 204.6(e) specifically states that an investment is a *contribution* of capital, and not simply a failure to remove money from the enterprise. The definition of "invest" in the regulations quoted above does not include the reinvestment of proceeds. In addition, the regulation at 8 C.F.R. § 204.6(j)(2) lists the types of evidence required to demonstrate the necessary investment. The list does not include evidence of the reinvestment of the proceeds of the new enterprise. *See generally De Jong v. INS*, No. 6:94 CV 850 (E.D. Tex. Jan. 17, 1997); and *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm. 1998) for the propositions that the reinvestment of proceeds cannot be considered capital and that corporate earnings cannot be considered the earnings of the petitioner even if he is a shareholder of the corporation.

As acknowledged by the director, [REDACTED] is not a corporation. Contrary to counsel's consistent claims throughout the proceedings, however, [REDACTED] is also not a sole proprietorship. Rather, [REDACTED] is a limited liability company, which may be treated *for tax purposes only* as a sole proprietorship where there is only one member. Like a corporation, a limited liability company in West Virginia is a legal entity distinct from its members. 31B W. Va. Code § 2-201. Except where liability by members for the debts of the company is expressly stated in the articles of organization or consented to by a member, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the those of the company. 31B W. Va. Code § 3-303. While the petitioner has assigned certain of his assets as security for [REDACTED] debt, his other assets are protected from [REDACTED] creditors, which is very different from a true sole proprietor.

Regardless, we cite *Kenkhuis*, WL 22124059 at \*2, not as binding legal authority,<sup>1</sup> but as support of the reasonableness of our interpretation of "invest." The judge in *Kenkhuis*, WL 22124059 at \*2,

---

<sup>1</sup> In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

upheld the AAO's definition of "invest." The judge characterized that definition as requiring "an infusion of new capital, not merely a retention of profits in the enterprise." We disagree with counsel that the judge's language "clearly contemplates that a retention of some profits may qualify." Rather, the use of the word "merely" means that, unlike an infusion of new capital, an action that, in and of itself, merely constitutes a retention of profits does not constitute an investment regardless of whether other qualifying investments were made.

In summary, the petitioner may not rely on his promissory note which postdates the filing of the petition, his personal guaranties of Altman Enterprises' loans or the reinvestment of proceeds. The record lacks evidence tracing \$1,000,000 from the petitioner to [REDACTED] or to purchase assets for the company. As stated above, [REDACTED] is a separate legal entity from the petitioner. The apparent decision by the petitioner to mix business and personal funds in his own accounts does not resolve him from the burden of demonstrating which funds were truly invested and placed at risk. Thus, the petitioner has not established a qualifying investment.

### **EMPLOYMENT CREATION**

The regulation at 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.

The regulation at 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.

Full-time employment means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (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 Citizenship and Immigration Services (CIS) 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*, 22 I&N Dec. at 213. 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.*

The petitioner initially claimed to have no employees. He indicated on the petition he would create 12-13 positions. The petitioner submitted a business plan indicating he would hire five laborers and one administrative person within 60 days, three laborers in 12 months and an excavator within eighteen months.

In the request for additional evidence, the director concluded that the business plan submitted included insufficient detail. The petitioner's response, dated November 30, 2005, more than 60 days after the petition was filed, included a quarterly report for the third quarter of 2005 reflecting a single employee. Counsel lists five employees in his cover letter. The petitioner submitted a new business plan indicating that a job supervisor had been hired and that the company would hire four plumbers and four framers within the next 18 months and that the company would hire two additional framers, an excavator and a receptionist by April 2006.

The director concluded that plumbers, framers and excavators are typically temporary contractors and, thus, that the business plan was not credible. On appeal, counsel asserts that large developers sometimes employ such individuals permanently. As evidence that the petitioner is in the process of fulfilling the employment projections in the business plan, the petitioner submits eight Internal Revenue Service (IRS) Forms W-2 issued by Altman Enterprises in 2005. Each employee earned a few hundred or a few thousand dollars, with the most wages for any employee being \$6,128. The petitioner also submits what purports to be a "payroll" account. This document actually appears to be an expense account, and does not list employees, hours worked or wages earned. As such, it is not evident that the petitioner has any full-time employees.

We concede that large developers with continuous, overlapping projects may have some plumbers, framers and excavators as permanent employees. The petitioner has not demonstrated, however, that he will have sufficient, staggered projects to provide ongoing employment for these employees. Specifically, in *Spencer Enterprises*, 229 F. Supp. 2d at 1039, the court noted, as an example, that the detailed build-out employment plans submitted in that case did not support continuous framing projects. The petitioner's business plan in this matter did not include detailed build-out employment plans documenting the need for permanent plumbers, framers and excavators. While counsel has asserted that the petitioner has exceeded previous projections, he has not established that he hired five full-time employees 60 days after filing the petition as initially projected. Even the evidence submitted on appeal fails to establish any full-time employees.

Finally, the petitioner has not provided the Forms I-9 required pursuant to the regulation at 8 C.F.R. § 204.6(j)(4)(i)(A) to demonstrate that all of the employees are qualifying as defined at 8 C.F.R. § 204.6(e), quoted above.

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.