



U.S. Citizenship
and Immigration
Services

B7

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 26 2009
SRC 07 096 51387

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]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 and that he had created or would create the necessary jobs.

On appeal, counsel submits a brief and resubmits all previously submitted documentation, which was already part of the record of proceeding. For the reasons discussed below, counsel has not overcome all of the director's concerns. In addition, the record does not fully document the lawful source of the petitioner's funds. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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, [REDACTED], doing business as [REDACTED]. The business is 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.

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. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

- (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
- (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
- (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
- (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
- (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by

assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The petitioner claimed to have made an initial investment of \$547,254.13 on April 15, 2003 and a total investment of \$1,785,156.05. The petitioner submitted evidence of considerable start up expenses, including a settlement statement for the property reflecting a purchase price of \$547,254.13 and a contract with [REDACTED] A-1 for improvements to the property totaling \$764,864. The check issued to pay the final closing costs of \$542,254.13 shows the remitter as [REDACTED] LP. The only checks issued to [REDACTED] A-1, for \$140,207, \$70,000, \$49,870 and \$47,400, were all issued by [REDACTED]. The other miscellaneous checks, such as the checks issued to [REDACTED] and [REDACTED], were also all issued by [REDACTED].

It cannot suffice to merely demonstrate that the company had over \$1 million in start up costs. A corporation may, and in this case did, have access to funds in addition to those invested by an owner. For example, the record contains a Customer Credit Application for \$20,000 in credit that the car wash filed with Bank of America. In addition, the bank statements for [REDACTED] contain several transfer credits with no corresponding transfer debits listed on the petitioner's bank statements. Specifically, on April 1, 2005, [REDACTED] bank statements shows receipt of a \$10,000 transfer. The petitioner's bank statement for the same period, however, does not reflect a transfer debit of \$10,000 on that date. Similarly, on November 4, 2004, [REDACTED] bank statements shows \$66,014 was transferred to the company. The petitioner's bank statement for the same period does not reflect he transferred out this amount on that date. Finally, the record does not contain the petitioner's bank statements for April 2004 and January 2005. Thus, the record does not allow us to trace [REDACTED] transfer credits of \$47,400 on June 22, 2004 and \$32,876 on January 21, 2005 back to the petitioner's personal account. As the source of these funds is unknown, they cannot be credited to the petitioner. Thus, we must examine how much of the funds spent by [REDACTED] can be traced back to the petitioner.

The record contains credit advices documenting the petitioner's receipt of \$1,981,169.69 into his personal Bank of America Account between February 21, 2003 and June 24, 2005. In the director's final decision, she acknowledged the transfer of funds into the petitioner's account, but concluded that "the documents submitted do not show that the money was transferred to the enterprise."

Counsel does not address this concern on appeal, asserting that the director did not question the petitioner's transfer of \$1,785,156.05 to the new commercial enterprise. We concur with the director's concerns insofar as the record does not trace that entire amount from the petitioner to the new commercial enterprise.

First, the limited partnership agreement, signed April 10, 2003, calls for an initial contribution of \$99,000 by the petitioner. The record, however, contains no transactional evidence such as cancelled checks documenting a transfer of \$99,000 from the petitioner to [REDACTED]. The remaining expense payments and transfers will be analyzed below.

Before listing the transfers between the petitioner and [REDACTED] we note that the petitioner's statements reflect transfers to his personal money market account. As these funds remained in a personal account, they cannot be considered part of a qualifying investment.

The petitioner submitted several documents regarding the purchase of property for the car wash. Specifically, the petitioner submitted his bank statement for April 2003 reflecting a check for \$542,254.13, the exact closing amount, dated April 15, 2003. The petitioner also submitted a receipt for a bank check for that amount on that date listing [REDACTED] and the petitioner as the purchaser. The bank statements for [REDACTED] reveal that the account was opened in May 2003. Thus, we are satisfied that the petitioner is the source of the \$542,254.13 used to purchase the land where [REDACTED] is operating. The deed transferred the property to [REDACTED] and property tax bills list [REDACTED] as the owner of the property. Thus, these funds were spent on an asset now owned by the new commercial enterprise.

A review of corresponding bank statements of the petitioner and [REDACTED], reveals the following transfer credits to [REDACTED] that are also represented as transfer debits in the petitioner's personal account:

<u>Amount:</u>	<u>Date:</u>
\$99,628	November 12, 2004
\$70,000	November 12, 2004
\$161,391.88	February 11, 2005
\$171,660.69	March 16, 2005
\$150,000	April 12, 2005
\$100,000	May 9, 2005
\$50,000	May 31, 2005

Total \$802,680.57

In addition, the petitioner submitted a May 5, 2003 personal check for \$10,000 used to open [REDACTED]'s bank account. Thus, the petitioner has documented \$1,354,934.70 (\$542,254.13 plus \$802,680.57 plus \$10,000) in funds either transferred from the petitioner to [REDACTED] or funds expended by the petitioner personally to purchase assets for [REDACTED]. This amount, while less than the nearly \$1.8 million claimed by counsel, would be sufficient for eligibility under section 203(b)(5) of the Act if those funds were invested as equity.

We acknowledge that the record contains the Internal Revenue Service (IRS) Form 1065 U.S. Returns of Partnership Income for 2005 and 2006. Both Schedules L reflect that the partners' capital accounts are well over \$1 million and show no significant liabilities. The petitioner's 2005 Schedule K-1 reflects a beginning capital account of \$54,580, a capital contribution of \$751,153, an additional increase of \$881,507 leaving an ending total of \$1,687,240. The petitioner's 2006 Schedule K-1 reflects that the petitioner contributed an additional \$40,315. His capital account also decreased \$227,018 due to the company's losses that year. Thus, his capital account ended the year with

\$1,500,537. As will be discussed in more detail below, increases or decreases in the petitioner's capital account due to the company's net income or loss cannot be considered favorably or held against the petitioner. At issue are his contributions and, had there been any, his withdrawals. The record does not contain the petitioner's Schedules K-1 for 2003 and 2004. Thus, his equity contributions in those years are unknown. The petitioner's contributions in 2005 and 2006 total \$791,468.

The lack of Schedules L and K-1 for 2003 and 2004 is especially significant given the promissory note which the director concluded was problematic. On April 15, 2003, [REDACTED] promised to pay the petitioner \$600,000 due and payable by December 31, 2005. On April 5, 2007, the director issued a request for additional evidence, noting that the \$600,000 promissory note executed by [REDACTED] reflected that these funds could not be considered an equity investment by the petitioner.

In response, counsel notes that the 2005 and 2006 tax returns reflect no loans and that the investment involved loans "in the formal sense intended as coming from a bank or financial institution, and having collateral as security." Counsel further asserted, in the alternative, that even without the \$600,000, the petitioner had placed more than \$1 million at risk because his investment was nearly \$1.8 million. The petitioner submitted a letter from [REDACTED], the attorney who assisted with the formation of [REDACTED]. Mr. [REDACTED] asserts that, according to his files, there were "no loan transactions between [the petitioner] and [the general partner, [REDACTED]]" Mr. [REDACTED] further asserts that there were no loans involved in the purchase or development of the car wash property, a concern not raised by the director.

The director reiterated that [REDACTED] had agreed to pay the petitioner \$600,000, precluding that amount from consideration as an at-risk equity investment. As stated above, the director further concluded that the petitioner had not traced the nearly \$1.8 million claimed from the petitioner to the new commercial enterprise.

On appeal, counsel asserts that the director erred in relying on *Matter of Soffici*, 22 I&N Dec. 158 (Comm'r 1998) in discounting the \$600,000 loan. Counsel asserts that, unlike the loan in that case, the \$600,000 promissory note is unsecured. Counsel notes that [REDACTED]'s tax returns show no loans and claims that the petitioner "was personally and primarily liable to the loans and the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness." (Emphasis in original.)

Counsel misconstrues the director's concerns and mischaracterizes *Matter of Soffici*, 22 I&N Dec 158, 162 (Comm'r 1998). First, at issue is the definition of "invest" at 8 C.F.R. § 204.6(e), which precludes capital contributed in exchange for a note or other obligation. Thus, the plain language of this definition precludes the funds used to purchase the property as they were provided in exchange for the \$600,000 note. Nor does *Matter of Soffici*, 22 I&N at 162 suggest that an unsecured note is acceptable under the definition of "invest." That case involved two loans, the loan the petitioner made to the new commercial enterprise and the bank loan used to purchase the hotel. *Matter of Soffici*, 22 I&N Dec. at 162 addresses the loan to the new commercial enterprise first, concluding

that the long term shareholder loan could not be considered a qualifying investment. The decision does not address whether or not that loan was secured, concluding that “debt arrangements between a petitioner and his business do not constitute qualifying contributions of capital.” The decision then goes on to examine the bank loan which provided additional financing beyond the cash loaned by the petitioner. When considering this second loan, the AAO concluded that the loan was disqualifying because it was secured by the assets of the new commercial enterprise. *Id.* at 162-163.

At issue in the matter before us is the first type of loan addressed in *Matter of Soffici*, 22 I&N Dec. at 162, a loan of cash by the petitioner to [REDACTED]. As the petitioner contributed cash in exchange for a \$600,000 note, this initial \$600,000 cannot be considered part of a qualifying at-risk equity investment. Counsel has failed to explain how the petitioner is “personally and primarily liable” on a loan to himself. The petitioner is the payee on the note, not the payor. As such, it cannot be logically asserted that he is liable to make the payments on this note.

The loan was due on December 31, 2005. Thus, as of the date of filing in 2007, [REDACTED] should have completed its payments on the note. The record contains no evidence that, rather than require payments on the loan, the petitioner forgave the loan and converted the funds to equity prior to the filing date in 2007. The absence of the loan on the 2005 and 2006 tax returns is not determinative as [REDACTED] could have repaid the loan early. As stated above, the 2005 and 2006 returns, Schedules K-1, only reflect contributed capital of \$791,468, less than the requisite \$1 million.

Even if the 2003 and 2004 Schedules L and K-1 reflected no loans and equity contributions of \$600,000, they would be inconsistent with the promissory note. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We will not consider the increases to the petitioner’s capital account in 2005 from proceeds. The regulations specifically state 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, 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’r. 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.

It is acknowledged that the commercial enterprise in [REDACTED] was a corporation, and not a limited partnership. Regardless, a reinvestment of proceeds is simply not an infusion of new capital into a business. We note that a federal court, in an unpublished decision, has upheld our interpretation of

“invest” as applied to a sole proprietorship. In *Kenkhuis v. INS*, No. 3:01-CV-2224-N (N.D. Tex. Mar. 7, 2003), the court stated:

The AAO’s construction is consistent with an everyday usage of “invest,” meaning to put money or capital into a venture. [Footnote citing Mirriam-Webster Online omitted.] It is also consistent with the legislative history indicating the purpose of the EB-5 program is to encourage infusions of new capital in order to create jobs. The Senate Report on the legislation twice refers to investments of “new capital” that will promote job growth. S. Rep. 55, 101st Cong. 1st Sess. 5, 21 (1989). [Footnote providing some of that report omitted.] The AAO’s construction is also consistent with the remarks of Sen. Simon in the floor debate on the statute. [Footnote quoting those remarks omitted.] Finally, as the AAO noted, [REDACTED] contrary construction would permit the accretion of capital over years; that would be contrary to the legislative intent that the job creation resulting from the infusion of capital take place within a reasonable time, in most cases not longer than six months.

Id. at 4-6.

Counsel is correct that had the petitioner demonstrated an investment of \$1 million beyond the \$600,000, the \$600,000 note would not be disqualifying. As discussed above, however, the petitioner has only traced \$1,354,934.70 from his personal account to [REDACTED]. The record lacks Schedules K-1 for 2003 and 2004 and the Schedules K-1 for 2005 and 2006 reflect contributions of less than \$1 million. Thus, we must uphold the director’s ultimate conclusion that the petitioner has not demonstrated a qualifying investment of at least \$1 million.

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) *aff'd* 345 F.3d 683 (9th Cir. 2003) (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 U.S. Citizenship and Immigration Services (USCIS) 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.

On the petition, the petitioner indicated he had created 23 jobs. Initially, the petitioner submitted payroll records for several months in 2005 reflecting an increase in employment but a decrease in the number of employees working full-time. The petitioner also submitted a detailed business plan. While the plan contains an in depth analysis of the market, it lacks employment projections. In response to the director's request for additional evidence, the petitioner submitted biweekly employment reports for January 15, 2007 through May 6, 2007. These nine reports reflect at least 10 full-time employees in every pay period except three. Of the three that showed less than 10 full time employees, one showed nine and another showed seven. During January 15, 2007 through January 28, 2007, however, only two employees worked at least 70 hours (35 hours per week doubled). The petitioner submitted a letter from accountant [REDACTED] asserting that while rain sometimes forced the petitioner to close the car wash, the full-time employees make up the hours in the following pay period.

The director concluded that the positions must be full-time regardless of weather and that the petitioner's assertions suggest that his business will be perpetually subject to weather conditions. On appeal, counsel asserts that the petitioner averages nine full-time employees and that while he intends to employ ten full-time workers, he has no control over the weather.

While the nature of the petitioner's business must be taken into account, it remains that the petitioner has not demonstrated that he consistently employs ten full-time employees. In addition, the petitioner's business plan, while detailed, does not include the specific employment projections required under *Matter of Ho*, 22 I&N Dec. at 213.

SOURCE OF FUNDS

Beyond the decision of the director, there are a few deficiencies in the evidence submitted to demonstrate the lawful source of the "invested" funds.

The regulation at 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. at 210-211; *Matter of Izummi*, 22 I&N Dec. 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 Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 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*, 229 F. Supp. 2d at 1040 (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

Initially, counsel asserted that the invested funds were given to the petitioner as a gift by his father-in-law, [REDACTED]. Counsel further indicated that Mr. [REDACTED] obtained the funds when he sold his multi-media conglomerate, [REDACTED] for \$20 million. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that Mr. [REDACTED] is the petitioner's father-in-law.

The petitioner submitted a letter from [REDACTED] Vice President of [REDACTED] asserting that the [REDACTED] family sold its interest in [REDACTED] in May 1999 for "200MM USD," at which time the funds were transferred to a trust. The petitioner also submitted what appears to be a foreign language 1997 annual report for [REDACTED]. The petitioner did not submit a translation, certified or otherwise, of any of this document. The regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of a certified translation for every foreign language document. The foreign language document does list Mr. [REDACTED] as the "[REDACTED]". [REDACTED] The document does not, however, appear to indicate the size of the [REDACTED] family's interest in the company.

The petitioner also submitted credit advices documenting the transfer of \$1,981,169.69 into his account between February 21, 2003 and June 24, 2005. While most of the transfers are from Mr.

JPMorgan Chase account, some originate from a Citibank account for .
The petitioner has not explained the source of the Citibank funds.

Without additional documentation of the sale of accompanied by any necessary translation, evidence explaining the source of the Citibank funds, and documentation of the petitioner's relationship to Mr. the petitioner cannot establish the lawful source of the invested funds.

Finally, as evidence that the funds were a gift, the petitioner submitted a signed statement purportedly from Mr. confirming the nature of the gift. Given the large sum purportedly gifted with no obligation and the assertion in the business plan that the business would be funded by a family loan, a notarized affidavit would be more persuasive.

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.